



Teaching
Regulation
Agency

Mr Malcolm Archer: Professional conduct panel outcome

**Panel decision and reasons on behalf of the
Secretary of State for Education**

July 2022

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher:	Mr Malcolm Archer
Teacher ref number:	75/85754
Teacher date of birth:	29 April 1952
TRA reference:	16880
Date of determination:	19 July 2022
Former employer:	Winchester College, Hampshire

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 25, 26, and 29 May 2022 and 19 July 2022 to consider the case of Mr Archer.

The panel members were Mr Paul D Hawkins (teacher panellist – in the chair, Mrs Patricia Hunt (former teacher panellist) and Mr Stephen Chappell (lay panellist).

The legal adviser to the panel was Mr Ben Schofield of Blake Morgan LLP.

The presenting officer for the TRA was Ms Holly Quirk of Browne Jacobson LLP.

Mr Archer was present and was not represented. Owing to the nature of the case, Individual A was appointed to ask Pupil A questions on behalf of Mr Archer.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 7 January 2022.

It was alleged that Mr Archer was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as assistant director of music at Magdalen College School in Oxford between 1976 and 1978:

1. Between 1977-1978 you engaged in inappropriate and/or unprofessional behaviour towards Pupil A, a pupil at another school, including by:

- a. Sharing a bed with Pupil A;
- b. Kissing Pupil A;
- c: Engaging in sexual activity with Pupil A by:
 - a. Fondling and/or masturbating Pupil A's penis;
 - b. Having and/or asking Pupil A to fondle and/or masturbate your penis.

2. Your behaviour as may be found proven at allegation 1 above was conduct of a sexual nature and/or was sexually motivated.

Mr Archer denied the allegations in their entirety.

Preliminary applications

The panel considered the following preliminary applications and took account of the parties' submissions both written and oral and the advice of the legal adviser, which the panel has followed.

Questioning of Pupil A

The panel have considered an application for the panel to direct that an appropriate person be appointed to put questions on behalf of Mr Archer to Pupil A. The Presenting Officer has invited the panel to consider appointing either a) the panel's legal adviser, b) the panel itself or c) a third party to conduct that role.

Whilst panel members are used to asking questions of a witness in these hearings, this is a serious and sensitive matter and great care will need to be taken when putting Mr Archer's case to the witness. The panel considers that due to the sensitive nature of this case, it would be inappropriate for the panel to ask these questions for the same reasons the legal adviser gave in his advice as to why it would be inappropriate for him to be appointed.

The panel therefore directs that a third party undertakes this appointment. The panel also considers that the person should be a legally qualified advocate with sufficient experience to be able to deal with cross examining witnesses in a case of this nature.

Pupil A's Evidence

The panel is satisfied that Pupil A falls into the category of a [REDACTED]. He is a complainant in an allegation of a sexual nature. In order to safeguard the interests of the witness, the panel directs that the witness will be offered special measures.

The special measure will be that Mr Archer's visual presence on the virtual call will be obscured from Pupil A whilst he is giving evidence. Both Pupil A's and Mr Archer's visual presence should still remain visible to all other participants in this hearing.

Disputed Document (allegations stage)

The panel has considered whether to admit a disputed expert report by [REDACTED], or parts of the report. At this stage of the proceedings, the panel is concerned with whether the allegations set out at allegation 1 and 2 will be proved, and if they amount to unacceptable professional conduct or conduct that may bring the profession into disrepute.

The panel are satisfied from the description of the material from the parties that it does not need to view the disputed material to decide on the issue. The panel considers the only material relevant to the allegations, at this stage, are the responses by Mr Archer in relation to questions about his conduct with Pupil A.

The panel considers that it would be fair to admit this part of the report. Whilst noting the hearsay nature of the evidence, the panel understand these responses would have probative value and are not the sole and decisive evidence in regards to allegations 1 and 2. Whilst Mr Archer takes issue with how the questioning was undertaken, which the panel will take into consideration, he has not disputed that these comment were not a accurate reflection of what he said at the time.

The panel therefore directs that only the material in 'Version 1' that directly relates to the questions and answers in relation to Mr Archer's conduct with Pupil A are admitted at this stage.

Further Documents

On the beginning of the second day (26 May 2022), Mr Archer made an application to admit two further documents into the bundle. They were two emails Mr Archer had written and sent to the TRA the previous evening and related to points he wished to raise on the disputed expert report. The Presenting Officer did not object to the material being admitted. The panel considered the material may be relevant the allegations in the case

and that no unfairness would be caused to either party by admitting the emails. The panel therefore admitted the two emails.

Application to adjourn part-heard

The panel considered an application by Mr Archer to adjourn these proceedings at the conclusion of the findings in relation to unacceptable profession conduct and conduct that may bring the profession into disrepute on 29 May 2022, in order to seek legal advice and potential representation for the remaining stage of this hearing.

Mr Archer explained having taken account of the panel's findings against him, he has reviewed his position on legal representation and wishes to ensure he is able to put his best case forward to the panel for the remaining stage in this case.

In response, the Presenting Officer reminded the panel of any further effect of delaying these proceedings.

The panel have considered the application and in weighing up fairness to both parties, consider that a short adjournment to allow Mr Archer to ensure he is able to put his best case forward to the panel would ensure fairness to him. The panel was satisfied that this would not cause any unfairness to the TRA or the wider public interest, taking into account the historic nature of the misconduct and that any witnesses in this case had already provided their evidence.

The panel are very mindful of the impact of delay on the wider public interest in regulatory proceedings and the panel has extremely limited availability over the coming months. Having made a number of accommodations with Mr Archer's availability, the only available listing date in the near future is 19 July 2022. As there would not be any availability for a significant time period after that date, the panel will not entertain any further directions in accommodating any additional dates for the availability of Mr Archer proposed representative, who he has not yet identified.

Any further documents or notice of proposed witnesses Mr Archer seeks to rely on for mitigation must be served on the TRA by 16:00 on 5 July 2022.

Disputed Document (sanction stage)

Having indicated that the panel would consider a further application in regard to [REDACTED] report, the Presenting Officer applied for further elements of the report to be admitted for the panel's consideration at the sanction stage.

Firstly, the Presenting Officer applied for the rest of the report including both the further question and answers with Mr Archer in regard to his wider sexual conduct and the expert's analysis of those answers. In the alternative, and bearing in mind the panel's

earlier decision, the Presenting Officer applied for just the further question and answers on the wider sexual conduct and not the expert's analysis.

Mr Archer, opposed the further admission of this report, as he did before, on the grounds that it would be unfair to do so. He considered that [REDACTED] assessment had been undertaken in an unprofessional manner, that he gave responses that he knew to be false as he thought those responses would help him return to the school and that he was [REDACTED] at the time of the assessment.

The panel considered that, as before, they did not need the expert opinion of [REDACTED] including any polygraph evaluation to assist them in their assessment for the recommendation to the Secretary of State relating to any possible prohibition order. This is a task routinely undertaken by panels without the requirement for expert evidence. However, the panel accepted that Mr Archer's responses to these wider topics may be relevant to their assessment of the risk of further repetition, not just the mitigating features present and for which the panel could draw its own inferences and conclusions taking into account the concerns that Mr Archer has raised about them.

Accordingly the panel considers it fair and relevant to further admit the Version 3 report only in so far as it relates to the questions and answers Mr Archer gave in regard to wider sexual conduct.

Summary of evidence

Documents

In advance of the hearing, the panel received a bundle of documents which included:

Section 1: Chronology and anonymised pupil list – page 5

Section 2: Notice of proceedings and response – pages 6 to 10

Section 3: Teaching Regulation Agency witness statements – pages 11 to 25

Section 4: Teaching Regulation Agency documents – pages 26 to 139

Section 5: Teacher documents – pages 140 to 160

In addition, the panel agreed to accept the following:

Redacted Version 1 of [REDACTED] Report – pages 161 to 174

Emails dated 25 May 2022 from Mr Archer to TRA – pages 175 to 177

Mr Archer's mitigation bundle including his witness statement dated 5 July 2022 and further references – pages 178 - 214

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing and the additional documents that the panel decided to admit.

Witnesses

The panel heard oral evidence from Pupil A, who was called by the TRA.

Mr Archer did not give oral evidence to the panel.

Decision and reasons

The panel announced its decision and reasons as follows:

The panel carefully considered the case before it and reached a decision. The panel has considered all the admissible evidence before it and the parties' submissions. The panel has also considered and accepted the advice of the legal adviser.

Mr Archer was employed at the Magdalen College School in Oxford from 1976.

Pupil A started attending Widford Lodge Preparatory School, Chelmsford, from the age of [REDACTED] and then from the age of [REDCATED]. Whilst at Widford Lodge, Pupil A became [REDACTED]. We will refer to [REDACTED] at Widford Lodge as '[REDACTED]' in these reasons.

Pupil A was aware that Mr Archer was an [REDACTED] and would accompany the [REDACTED] on occasions for tours and concerts but had not formally met Mr Archer at that stage. Pupil A then started to attend [REDACTED] home address for [REDACTED]. After the [REDACTED], it became the norm for the children to consume alcohol and sleep over at the house. During these visits, [REDACTED] began to sexually abuse Pupil A and other children. Pupil A did not make any disclosures about this abuse until 2017 when the police approached Pupil A, as his name had been mentioned as a possible victim of historic sexual abuse by [REDACTED] by other victims.

Pupil A explained to the police that he was subject to sexual abuse by Mr KF, which took place at [REDACTED] home. Whilst detailing these experiences, Pupil A also mentioned an occasion where Mr Archer was present at [REDACTED] home and that he was sexually abused by Mr Archer on that one occasion. Pupil A stated he was [REDACTED] when this incident happened.

Following further police enquiries, [REDACTED] and Mr Archer were charged with sexual offences. Mr Archer was acquitted by a jury, following a trial that took place at Chelmsford Crown Court in [REDACTED].

As a result of the disclosures by Pupil A, a referral was made to the TRA.

Findings of fact

The findings of fact are as follows:

Allegation 1. Between 1977-1978 you engaged in inappropriate and/or unprofessional behaviour towards Pupil A, a pupil at another school, including by:

- a. Sharing a bed with Pupil A;**
- b. Kissing Pupil A;**
- c. Engaging in sexual activity with Pupil A by:
 - a. Fondling and/or masturbating Pupil A's penis;**
 - b. Having and/or asking Pupil A to fondle and/or masturbate your penis.****

The panel heard from Pupil A, who explained in both his oral evidence and written statements that whilst he was at [REDACTED] house he was introduced to Mr Archer, who was assisting with a rehearsal by [REDACTED]. Pupil A recognised it was Mr Archer, as he had seen him on a number of other occasions assisting [REDACTED] as the [REDACTED].

When it came to bedtime, Pupil A's evidence was that he was expecting to go into [REDACTED] bedroom, which has been part of the pattern of sexual abuse, but on this occasion was told by [REDACTED] that 'he would be going to bed with Malcolm'.

Pupil A gave further evidence that once in the spare room, he and Mr Archer got into the same bed and removed some, if not all, of their pyjamas and began kissing. This then moved on touching each other's penises.

Pupil A provided clear evidence about what happened in the spare room on that occasion, including that he could remember that Mr Archer used his tongue when kissing and how that particular aspect has stayed with him in to later life as he had found it unusual at the time. Pupil A also explained that he could recall that Mr Archer ejaculated, where the ejaculate went and that he was not able to ejaculate himself because of his age.

The panel found Pupil A to be a measured and credible witness. The panel noted that Pupil A reasonably conceded in his evidence, on a number of questions, that he could not remember some of the surrounding events. These included, the exact date that the abuse occurred and the extent of Mr Archer's involvement [REDACTED] on various trips away. However, Pupil A was firm and consistent in all of his evidence (including in his

earlier accounts to the police and in the Crown Court trial) about what happened on that occasion at [REDACTED] house. Making allowances for the passage of time, the panel found Pupil A's evidence still reliable on the central aspects of the allegations.

Despite finding Pupil A a clear and credible witness, the panel was alert to the suggestion in this case that Pupil A may have mis-identified Mr Archer as the abuser on this occasion. The panel was mindful that a credible witness can still be a mistaken witness and took care to examine the surrounding evidence on this point.

Pupil A's evidence was that they were together, alone in the room for the rest of the evening and were in such proximity to each other that they could be intimate. Pupil A also recalled Mr Archer removing his glasses and his hairy chest.

The panel noted that whilst Pupil A's evidence was that he had not formally met Mr Archer until that occasion at [REDACTED] house, he had seen him on a number of occasions over the previous few years supporting [REDACTED], including both at performances and rehearsals and was able to recognise him as the [REDACTED]. Pupil A also recalled that [REDACTED] told him to 'go to bed with Malcom'. He specifically remembered these words as he was surprised to hear them, as he was expecting to go to bed with [REDACTED].

The panel considered that on these factors, it was more likely than not that Pupil A's identification of Mr Archer as the person in the spare room on that occasion was correct.

The panel did not hear any oral evidence from Mr Archer in relation to these allegations. The panel do not consider that any adverse inference should be drawn against Mr Archer for his decision not to give evidence. The panel are mindful that Mr Archer has no duty to disprove any factual element in these proceedings. The panel have simply considered any account Mr Archer has provided in this case, as they would any other piece of hearsay evidence.

As part of that hearsay evidence, the panel have taken that Mr Archer appears to accept that he knew [REDACTED], assisted with [REDACTED] and would on occasion attend [REDACTED] house but that he denied any sexual activity took place with Pupil A. There is no further evidence in the bundle, save for the summary of the police interview under caution about Mr Archer's evidence on the specifics of each element of the allegations, other than they were denied and that he may have been misidentified from the line of questioning in cross examination of Pupil A that took place in the criminal trial.

The panel noted Mr Archer's position in regard to the level of weight that should be given to [REDACTED] report. Having considered the further redacted 'Version 1' of the report, the panel did not find this evidence of much assistance, other than identifying Mr Archer's denial of the factual basis of the allegations. Likewise, Mr Archer has asked the panel to take into account a number of references he has provided in this hearing. The panel

found these references to be of limited assistance at this stage, as to any finding of the allegations being proved or not. The panel will give the references the appropriate weight in regard to any sanction, should it become appropriate.

The panel have not been able to see any account by Mr Archer tested in these proceedings and consider they cannot attach as much weight to Mr Archer's evidence as they can to Pupil A's evidence.

The panel have considered that weighing the evidence and factors mentioned above, it is more likely than not that Mr Archer was the person in the spare room with Pupil A on that occasion and that it was more likely than not that each of the factual elements in this allegation took place between them.

Accordingly, the panel find allegation 1 proved in its entirety.

Allegation 2. Your behaviour as may be found proven at allegation 1 above was conduct of a sexual nature and/or was sexually motivated.

Having found allegation 1 proved, the panel has gone on to consider allegation 2.

The panel consider the specific activities in this case, getting into bed with each other, removing their clothing, kissing with tongues and masturbating each other's penises were plainly of a sexual nature. The panel considered there was no other possible explanation to the purpose and circumstances of these activities and were satisfied on the balance of probabilities these allegations were of a sexual nature.

In addition, the panel were satisfied on the balance of probabilities that Mr Archer's intention in those actions were for sexual gratification, involving as they did masturbating Mr Archer to the point of ejaculation.

Accordingly, the panel find allegation 2 proved in its entirety.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found all the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as "the Advice".

Whilst noting that the relevant Teachers' Standard would not have been in place at the time this misconduct took place, the panel was satisfied that the conduct of Mr Archer in relation to the facts found proved, involved breaches of the Teachers' Standards as they

are now. The panel considered that, by reference to Part 2, Mr Archer was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
 - showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities

The panel was satisfied that the conduct of Mr Archer amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Archer's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice. The panel found that the offence 'sexual activity' was relevant as this was plainly sexual activity between an adult and child. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel noted that the allegations took place outside the education setting. However, these allegations involved a clear breach of the position of trust teachers have over pupils and clearly call into question Mr Archer's ability to maintain proper boundaries, not just between a teacher and pupil, but between any adult and a young child. In addition, Pupil A gave evidence about how he felt frightened of [REDACTED] and felt that he could not challenge what [REDACTED] told him to do with Mr Archer. Pupil A also told the panel how this incident has brought him difficulties throughout various stages in his life.

Accordingly, the panel was satisfied that Mr Archer was guilty of unacceptable professional conduct.

The panel took into account the way the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way that they behave.

The findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception. The panel were particularly mindful of the fact that at the material time, Mr Archer was in effect in *loco parentis* of Pupil A and abused the trust and confidence that the public would have in a person of Mr Archer's position.

Having found the facts of the allegations proved, the panel further found Mr Archer's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely:

- the safeguarding and wellbeing of protection of pupils and the protection of other members of the public;
- the maintenance of public confidence in the profession – assessed by reference to the standard of the ordinary intelligent and well-informed citizen who both appreciates the seriousness of the proposed 'sanction' and recognises the high standards expected of all teachers, as well as other issues involved in the case;
- declaring and upholding proper standards of conduct; the interest of retaining the teacher in the profession;

In the light of the panel's findings against Mr Archer, there was a strong public interest consideration in respect of the protection of pupils, given the findings of serious misconduct in relation to an inappropriate sexual relationship with Pupil A which has resulted on ongoing harm to Pupil A. Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Archer were not treated with the utmost seriousness when regulating the conduct of the profession. The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present

as the conduct found against Mr Archer was outside that which could reasonably be tolerated.

Balanced against this the panel decided that there was also a public interest consideration in retaining the teacher in the profession, since no doubt had been cast upon his abilities as an educator and he is able to make a valuable contribution to the profession.

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Archer.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Archer. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving pupils);
- sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

There was no evidence that Mr Archer's actions were not deliberate. There was no evidence to suggest that Mr Archer was acting under duress, and, in fact, the panel found Mr Archer's actions to be deliberate.

The panel considered a number of character references in support of Mr Archer's character and his positive contribution to the world of music and teaching. These included from colleague teachers, parents of former pupils and others in Mr Archer's sphere of work. It was clear to the panel that Mr Archer has spent his life dedicated to the world of music and which has directly benefited a number of pupils and that consideration should be given to retaining Mr Archer in the profession as a public interest consideration.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Archer of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The conduct was of a serious sexual nature and was at the top end of that spectrum. The appropriate weighting to the public interest factors against Mr Archer, namely protecting pupils and declaring and maintaining standards in the profession outweighed the positive public interest there was in retaining Mr Archer in the profession.

Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend a review period of the order. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. The panel found that Mr Archer was responsible for engaging in a sexual activity with a child whilst essentially under *loco parentis* of Pupil A and fell squarely into the following listed behaviours:

- serious sexual misconduct, such as where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person or persons
- any sexual misconduct involving a child;

Whilst Mr Archer has engaged with these proceedings and had the benefit of an adjournment, following the findings of unacceptable professional conduct and conduct that may bring the profession into disrepute, in order to seek further advice and an opportunity to place further mitigating material before the panel. Mr Archer did place a further witness statement and submissions prepared by counsel he had instructed before the panel, but has not placed any material before the panel which suggests he has demonstrated any significant insight or remorse into his actions.

Additionally, having considered the questions and answers Mr Archer gave to [REDACTED], including the recent inclusion of a pupil in a masturbatory fantasy, the panel was satisfied there remains an ongoing risk of repetition in this case. The panel rejected Mr Archer's explanation regarding the retraction of the comments he made in that assessment. In particular, that he was giving answers that he thought would assist him in returning to his teaching post. The panel considered this further demonstrated a lack of insight on behalf of Mr Archer.

The panel decided that the findings indicated a situation in which a review period would not be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found all of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel has made a recommendation to the Secretary of State that Mr Malcolm Archer should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Archer is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
 - showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach

- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities

The panel finds that the conduct of Mr Archer fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding of serious misconduct in relation to an inappropriate sexual relationship with a Pupil.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Archer, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children/safeguard pupils. The panel has observed, “there was a strong public interest consideration in respect of the protection of pupils, given the findings of serious misconduct in relation to an inappropriate sexual relationship with Pupil A which has resulted on ongoing harm to Pupil A.” A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel’s comments on insight and remorse, which the panel sets out as follows, “Mr Archer did place a further witness statement and submissions prepared by counsel he had instructed before the panel, but has not placed any material before the panel which suggests he has demonstrated any significant insight or remorse into his actions.” In my judgement, the lack of insight or remorse means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils’. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Archer were not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the finding of sexual misconduct with a pupil in this case and the impact that such a finding has on the reputation of the profession.

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order as a failure to uphold those high standards. In weighing these considerations, I have had to consider the matter from the point of view of an “ordinary intelligent and well-informed citizen.”

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order Mr Archer himself and the panel comment “The panel considered a number of character references in support of Mr Archer's character and his positive contribution to the world of music and teaching. These included from colleague teachers, parents of former pupils and others in Mr Archer's sphere of work. It was clear to the panel that Mr Archer has spent his life dedicated to the world of music and which has directly benefited a number of pupils and that consideration should be given to retaining Mr Archer in the profession as a public interest consideration.”

A prohibition order would prevent Mr Archer from teaching. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel's comments, “The panel were particularly mindful of the fact that at the material time, Mr Archer was in effect in *loco parentis* of Pupil A and abused the trust and confidence that the public would have in a person of Mr Archer's position.”

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These include:

- serious sexual misconduct, such as where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person or persons
- any sexual misconduct involving a child;

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Archer has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended that no provision should be made for a review period.

I have considered the panel's comments "having considered the questions and answers Mr Archer gave to [REDACTED], including the recent inclusion of a pupil in a masturbatory fantasy, the panel was satisfied there remains an ongoing risk of repetition in this case. The panel rejected Mr Archer's explanation regarding the retraction of the comments he made in that assessment. In particular, that he was giving answers that he thought would assist him in returning to his teaching post. The panel considered this further demonstrated a lack of insight on behalf of Mr Archer."

I have considered whether not allowing a review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, factors mean that allowing a review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the seriousness of the findings involving sexual misconduct with a pupil and the lack of either insight or remorse.

I consider therefore that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mr Malcolm Archer is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Archer shall not be entitled to apply for restoration of his eligibility to teach.

This order takes effect from the date on which it is served on the teacher.

Mr Archer has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.



Decision maker: Sarah Buxcey

Date: 21 July 2022

This decision is taken by the decision maker named above on behalf of the Secretary of State.