



Teaching
Regulation
Agency

Mr John Fern: Professional conduct panel outcome

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

July 2022

Contents

Introduction	3
Allegations	4
Preliminary applications	4
Summary of evidence	5
Documents	5
Witnesses	6
Decision and reasons	6
Findings of fact	6
Panel's recommendation to the Secretary of State	18
Decision and reasons on behalf of the Secretary of State	22

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

Teacher: Mr John Fern
Teacher ref number: 9659263
Teacher date of birth: 20 September 1974
TRA reference: 19023
Date of determination: 29 July 2022
Former employer: [redacted]

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 25 to 29 July 2022 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Mr Fern.

The panel members were Mrs Melissa West (teacher panellist – in the chair), Mrs Shabana Robertson (lay panellist) and Mr Diarmuid Bunting (lay panellist).

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

The presenting officer for the TRA was Mr David Collins of Capsticks Solicitors LLP.

Mr Fern was present and was represented by Mr Julian Lynch of counsel, instructed by The Reflective Practice.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 20 January 2022 (as amended per the panel's below detailed decision):

It was alleged that Mr Fern was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

1. On one or more occasions, in or around [redacted], you:
 - a. kissed Pupil A;
 - b. [redacted];
 - c. [redacted];

2. Between or around [redacted], you:
 - a. on one or more occasions, told pupils about your sexual activity;
 - b. told Pupil B that you had worn Pupil B's boxer shorts by mistake.

3. Between or around [redacted]:
 - a. on a first unknown date, you:
 - i. put your hand inside Pupil B's clothing;
 - ii. [redacted];
 - iii. [redacted];
 - b. on a second unknown date, you:
 - i. [redacted];
 - ii. [redacted];
 - c. on one or more further unknown dates, you:
 - i. put your hand inside Pupil B's clothing;
 - ii. [redacted];
 - iii. [redacted];
 - iv. [redacted];
 - v. kissed Pupil B.

4. Your conduct at paragraph 2 was sexually motivated in that the conduct was in pursuit of sexual gratification and/ or pursuit of a future sexual relationship.

Mr Fern denied all the allegations in full.

Preliminary applications

There were no preliminary applications before the substantive hearing began.

Amendment to the allegations

Whilst Pupil B gave evidence, he made a correction to his witness statement in that he said, during the events covered in allegation 3.b, it was Mr Fern who asked to give Pupil B a [redacted] and not the other way around, as was written in his witness statement and the original drafting of allegation 3.b.ii.

The panel therefore considered whether the allegations should be amended to properly reflect the disputed evidence. The panel invited submissions from both parties. Both agreed the allegations should be amended and agreed it should be rewritten as [redacted]. The panel was of the view that it was in the interests of justice for allegations to be drafted as accurately as possible and that there was no unfairness to either party and both had an agreed position on the issue. The panel therefore made the following amendment to allegation 3.b.ii:

Original drafting: [redacted]

Amended drafting: [redacted]

Additional Documents

At the start of Mr Fern's evidence, Mr Lynch made an application to adduce a hand drawn sketch plan of Mr Fern's apartment in [redacted] Mr Collins did not object to the plan being admitted into the evidence. However, he reminded the panel that the plan had not been placed before Pupil B in his evidence and that may affect the amount of weight the panel may wish to attribute to this piece of evidence.

The panel considered the plan may be relevant to its considerations of the allegations as that was a location where some of the allegations were said to have taken place. The panel also considered it fair to admit it as the application was not opposed. The panel was mindful of Mr Collins' submissions in regard to weight and would consider that issue when making findings of fact, if it were relevant.

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 – pages 3 to 6

Section 2: Notice of proceedings and response – pages 7 to 11

Section 3: Teaching Regulation Agency witness statements – pages 12 to 50

Section 4: Teaching Regulation Agency documents – pages 51 to 68

Section 5: Teacher documents – pages 69 to 90

The following document was admitted into the evidence:

Witnesses

The panel heard oral evidence from the following witnesses called by the TRA:

- Pupil A [redacted]
- Pupil B [redacted]
- Witness A [redacted]
- Pupil H [redacted]

The panel heard oral evidence from the following witnesses called by the teacher:

- Mr John Fern (the teacher)
- Witness B [redacted]

Decision and reasons

The panel announced its decision and reasons as follows:

Whilst the panel has carefully considered all the evidence before it, not every piece of evidence is discussed in these reasons. The panel has considered and followed the advice of the legal adviser in reaching this decision.

Following the completion of his teacher training, Mr Fern's first teaching post was at the [redacted] ("the School"), a co-educational boarding and day school. Mr Fern started in [redacted] as a [redacted] teacher. There were a number of boys' and girls' boarding houses at the School. Material to this case, were the boys' boarding houses of [redacted].

At the School, staff were required to contribute to both pastoral and extra-curricular activities outside of school hours. Mr Fern's additional responsibilities included: being a visiting tutor for [redacted] and then as the resident tutor for [redacted]. In [redacted], Mr Fern was promoted to head of [redacted]. Mr Fern left the School in [redacted] and held 2 other teaching positions before joining the [redacted] as the headmaster in [redacted].

In [redacted], Pupil A, a former pupil at the School, made a report to Leicestershire police about historical sexual activity with Mr Fern. During discussions with the police, Pupil A also disclosed that Mr Fern discussed with him participating in sexual activity with Pupil B and another pupil. The police made contact with these 2 pupils. Pupil B explained to the police that sexual activity had taken place between Mr Fern and himself. The other pupil explained no sexual activity had taken place.

Mr Fern was interviewed under caution and denied any sexual activity with any pupil had taken place. Both Pupils A and B declined to support a prosecution against Mr Fern and no further action was taken in the criminal investigation.

When Mr Fern was contacted by the police as part of the criminal investigation, he went and informed the chair of governors at [redacted], who was also informed of the criminal investigation by the local authority designated officer. Mr Fern did not return to [redacted]. He was informed on [redacted] that there would be a formal disciplinary hearing and resigned the following day on [redacted]. [redacted] submitted a referral to the TRA following their investigation.

The panel makes reference to other investigations simply to aid the identification of some sources of evidence it has considered. It has given no consideration to any conclusions made by these organisations.

Much of the factual background to this case is agreed between the parties, in particular, the organisation, culture and routines of the boarding houses. Each house had a house master/mistress, a resident tutor and a matron who all lived within the boarding house. Other teachers, known as visiting tutors, who did not live in the boarding house, would also be allocated duties, such as evening supervision of the house.

The culture of the School boarding houses was described by both parties as being quite informal. Residential staff had an 'open door policy' for the pupils and staff would sometimes have pupils in the staff residences on evenings and weekends. There were occasional events held in the staff residences, such as film nights and dinner parties. Small quantities of alcohol provided by the staff would be openly consumed by the older pupils. Staff also consumed alcohol in front of the pupils.

The disputed position between the parties is simple. At the heart of the TRA's allegations is that Mr Fern engaged in sexual misconduct with Pupils A and B. Mr Fern denies the allegations in their entirety. Whilst the dispute is simple, the evidential analysis the panel is required to undertake to resolve it, is not. These are historic allegations from over 2 decades ago. There is a complete absence of any contemporaneous documentary evidence. The panel is essentially left with a careful enquiry of witnesses' recollections of events. In particular, Pupil A, Pupil B and Mr Fern were of central importance. All 3 of these witnesses gave balanced and measured evidence to the panel. All conceded points in questioning where it appeared reasonable to do so. The panel is particularly mindful of the passage of time and the effect it can have on the memory of a witness. Accordingly, the panel has spent a significant amount of time in its deliberations considering the reliability of the witness evidence and only drawing inferences from that evidence where it feels it can do so.

The panel has taken account of Mr Fern's good character evidence and the fact he appears, certainly in later years, to have fulfilled his professional obligations very competently and without incident.

However, from the evidence the panel considered, it was left with the impression that around the time of the allegations, Mr Fern was a teacher who was well liked and who also wanted to be liked by the pupils. As a young new teacher, he was close in age to the pupils he taught and wanted to be seen as being on a similar level to them.

He was working in an environment where boundaries were already relaxed, and the pupil witnesses indicated Mr Fern was the type to further push or blur those boundaries and take risks.

Findings of fact

The findings of fact are as follows:

1. On one or more occasions, in or around [redacted], you:

a. kissed Pupil A;

b. [redacted];

c. [redacted].

Pupil A attended the School as a boarder from the ages of [redacted]. From the ages of [redacted], Pupil A resided in [redacted]. During this time, Mr Fern was one of the visiting tutors at [redacted]. Pupil A first met Mr Fern when Mr Fern was on evening duties in the boarding house. Mr Fern did not directly teach Pupil A to begin with.

Pupil A described himself as a [redacted] child who enjoyed the company of adults. Pupil A got to know Mr Fern as both of them were part of the School choir, which included both pupils and staff as choir members, and their relationship developed.

Pupil A recalled a situation, prior to [redacted], but when he was still [redacted], when he went to Mr Fern's house. Pupil A stated that it happened when the School was deserted, either because it was a Sunday or the School holiday. He shared a beer with Mr Fern in his garden, after they had gone around the School campus looking for a discreet place where they could have a drink.

Pupil A stated allegation 1 as taking place on [redacted]. He was able to specify this date as he had recalled that it took place after the School's annual 'Guest Night' dinner. As Pupil A was not able to remember what date this occurred, he emailed the School's archivist on [redacted] to enquire what the date was. The reply was that the Guest Night took place on [redacted].

Following the dinner, during which he consumed some wine, Pupil A went back to the resident tutor's apartment in [redacted] and further consumed alcohol. Mr Fern was also present. The house master went to bed at some point, which left Mr Fern and Pupil A alone in another room of the apartment. Pupil A described the atmosphere between the two of them as being quite flirtatious. At some point, both went outside the apartment onto the flat roof for a cigarette. The discussion started to turn to a sexual nature. At some point Pupil A leaned in and started to kiss Mr Fern. He described it as being very much reciprocated by Mr Fern. At no point did Mr Fern say anything along the lines of "let's stop" or "this isn't right."

Pupil A described that whilst still on the roof he [redacted] Mr Fern [redacted] and then they returned back inside the apartment where further sexual activity took place on the sofa which included Mr Fern [redacted].

Pupil A said he told the resident tutor about the sexual activity the following day, but he did not discuss it with anyone else in a position of authority at the School.

Following the sexual activity with Mr Fern, Pupil A told a number of other pupils what had happened between them in the following days, months and years. This included Pupil G, Pupil H and Pupil I, amongst others.

Pupil A told Pupil H in the days following the event that something sexual had happened between him and Mr Fern, but he did not go into full detail about what specifically happened as he was uncomfortable doing so. (Whilst they were good friends at the time, they had not retained that close friendship in the years after they left the School and had not discussed these events in the intervening years.) Pupil A also disclosed the event to Pupil I and they had discussed the event a number of times over the years, as they have remained in touch since leaving school. Pupil A told Pupil G only limited information about the event as he would have felt uncomfortable telling him the detailed sexual elements of what happened, and that was still the case today.

Mr Fern did go on to become Pupil A's [redacted] teacher in the final year of Pupil A's time at the School and they would also still see each other in passing at social occasions. Pupil A described this time as not weird or awkward and he was able to work with Mr Fern without any issue. There were no other sexual encounters with Mr Fern and Pupil A described only brief occasional contact over the intervening years.

Pupil A said that the sexual activity had not negatively affected him in the long term. However, he felt compelled to report Mr Fern to the police in [redacted], when he saw that Mr Fern had taken up a headteacher post. He was concerned that Mr Fern was in a senior trusted role and had the potential to misuse that position. He was further moved to report this following his own experience as a teacher from [redacted] during which he had gained a professional understanding and experience of safeguarding issues. Pupil A did not want to support a prosecution as he did not feel that the sexual activity between Mr

Fern and himself warranted any criminal sanction. His purpose in reporting this matter was to ensure the future protection of pupils.

Pupil H said that Pupil A told him about the incident with Mr Fern either the day after or at most a few days after it happened. This evidence was not challenged by Mr Lynch. Pupil A told Pupil H that sexual activity had taken place on the sofa. In his statement Pupil H referred to them being naked. However, in his oral evidence, Pupil H accepted that he could not be sure of this detail. Pupil H also said that Pupil A made reference to how risky this incident was, as the resident tutor could have walked in at any time.

The panel did not hear from Pupils G or I. Their accounts were before the panel in written witness statements.

Pupil G's account was that: "I do not remember exactly what Pupil A told me, but I know that some sort of sexual encounter between him and Mr Fern took place. Pupil A did not tell me the details of what happened, and I never asked."

Pupil I's account was that: "Pupil A told me that he and Mr Fern had been in a flat together (from recollection I think it was [the resident tutor's] apartment in [redacted], but I cannot be certain) and that they had had a few drinks. He said that they then went into a bedroom together and had sex, or some sort of sexual encounter. Pupil A did not go into detail when describing what happened; he effectively just said that it had happened, and I cannot recall any further details. To the best of my recollection, the incident took place when we were in [redacted] at the School, when we were aged around [redacted]."

Mr Fern described a similar background to that described by Pupil A in respect of meeting and getting to know Pupil A. Mr Fern described Pupil A as a clever, [redacted] and well liked student.

Mr Fern could not remember if he had ever had a drink privately with Pupil A, but he denied that he took Pupil A around the School looking for a place to drink. He explained there would be no need to surreptitiously seek out a discreet place to drink with a senior pupil, as there were plenty of legitimate places they could have gone to. There was even a bar in the senior boarding house, albeit it was not open at all times.

Mr Fern had visited the resident tutor's apartment on occasion, but he did not think he was there on [redacted]. He denied that he was ever with Pupil A alone in the apartment and accordingly that any sexual activity could have ever happened between them there or anywhere else.

In his statement, Mr Fern stated: "[t]o the best of my recollection, no such flat roof was accessible from [the resident tutor's] flat". In his oral evidence, Mr Fern clarified it was more that he could not recollect one way or another as to the presence of the flat roof.

Mr Fern did not know why Pupil A was making these accusations against him.

The panel did not hear from Pupils G or I. Their accounts were before the panel in written witness statements formatted for these proceedings and each signed with a declaration of truth. Mr Collins confirmed that these witnesses had been warned to attend these proceedings, but that Mr Lynch did not seek to put any questions to these witnesses. Recognising this was therefore hearsay evidence and taking into account to the above factors, the panel considered it was fair to admit the statements and the panel felt significant weight could be attached to their reliability.

In assessing this evidence, the panel noted Pupil A's account was essentially corroborated by the other pupils in so far as they were told about the incident by Pupil A within a relatively short time after the event. This evidence was not challenged. There was no evidence that Pupil H had retained any contact with Pupil A in the intervening years, apart from when he was contacted as part of these proceedings.

There was no evidence before the panel to suggest that Pupil A was mistaken in his identification of Mr Fern on the evening of [redacted]. There was no evidence before the panel that Pupil A was being dishonest about this account. If Pupil A was purposefully lying about the sexual activity, it is a lie that has been [redacted] in the making. The panel considers this a highly unlikely explanation.

The panel therefore considers it is more likely than not that the events on the evening of [redacted] were as Pupil A described them to be. Accordingly, the panel find allegation 1 proved in full.

2. Between or around [redacted], you:

a. on one or more occasions, told pupils about your sexual activity;

Occasion 1: Discussion with Pupil A regarding Pupil B / Unknown Pupil

Pupil A saw Mr Fern on the last day of his final year in [redacted], after going back to Mr Fern's home with another teacher and his wife. During the evening, out of earshot of the others, Mr Fern confided in Pupil A that he had been involved in sexual activities with 2 other pupils at the School.

Pupil A said Mr Fern gave Pupil A some details of what had happened, in particular that one of the boys had only been [redacted]. Mr Fern told Pupil A that he had had full penetrative sex with the [redacted] boy. Mr Fern's words were [redacted]. Pupil A knew the [redacted] boy that Mr Fern was talking about, and in particular recalled that he was shocked as the boy looked very young.

According to Pupil A, Mr Fern also went on to describe an incident with Pupil B. Pupil B, along with other boys, took part in a film night in Mr Fern's apartment. Mr Fern said that they had all been bundled up on the sofa, and Mr Fern then described that Pupil B had picked up Mr Fern's hand and put it on his [redacted]. When Pupil A recounted this incident to

the police, he could not recall Pupil B's name, but was later able to pick him out in a school photo.

Mr Fern could not recall a specific time when Pupil A was at his property with another teacher and his wife, but accepted it was a possibility that it may have occurred.

Mr Fern denied that any conversation about sexual activities with pupils took place.

Central to the panel's consideration has been the relationship between Pupils A and B. Pupil A was 3 academic years ahead of Pupil B. They both attended different boarding houses at the School. It was the evidence of both Pupil A and Pupil B that they were not friends at school, although they were able to recognise each other by sight. They had not been in touch with each other since leaving the School. This position was not challenged by Mr Lynch.

The panel noted that Pupil A suggested that he only became aware of sexual activity between Mr Fern and Pupil B by reason of Mr Fern telling him about it. After Pupil A contacted the police and disclosed this information about Pupil B, Pupil B corroborated the sexual activity between Mr Fern and himself. There is no other reasonable explanation before the panel as to how Pupil A gained this information. The panel considers it was more likely than not that Mr Fern told Pupil A about this sexual activity with Pupil B and therefore find this factual element of the sub-allegation proved. The panel also considers this to be a significant factor in relation to lending credibility to the accounts of Pupil A and Pupil B in other allegations.

Occasion 2: Discussions with Pupil A regarding threesomes

Pupil A recalled a conversation on [redacted], whilst out on the flat roof. Pupil A recounted to Mr Fern that Mr Fern had previously mentioned a story about having a threesome. Pupil A asked Mr Fern if it was with other men or women. Mr Fern responded with 'who said anything about women?'

Mr Fern had denied being on the roof with Pupil A at all and said that no such conversation had taken place.

The panel considers that Pupil A's account sits consistently with the surrounding evidence of the events that allegedly took place on the flat roof and that it was more likely than not that Mr Fern made these remarks. The panel finds this factual element of the sub-allegation proved.

Occasion 3: Discussions with Pupil B

Pupil B stated in his statement that there were instances where Mr Fern had told him about past sexual activity, including sex with other teachers and masturbating before attending a parents' evening.

Mr Fern denied making sexualised remarks to Pupil B or any other pupils. Mr Fern explained that he was in a relationship with another teacher at the School, whilst he was working there and that sometimes, pupils might make comments about that relationship. Mr Fern explained that any discussions of this nature would not cross any professional boundary, on his part, even if the pupils had crossed the boundary.

Whilst the panel noted these remarks in Pupil B's evidence, he was not taken to this topic by either party in his oral evidence. The description of these events in Pupil's B statement was a general description and did not give much detail about the events and surrounding circumstances. On these grounds, as opposed to on the grounds of any concern regarding Pupil B's credibility, the panel considered that it had insufficient evidence to be able to fully assess this aspect of the allegation. Accordingly, the panel found that it was not satisfied the TRA had achieved the standard of proof required and finds this factual element of the sub-allegation not proved.

Therefore, the panel finds allegation 2.a. proved in so far as it applies to Occasion 1 and Occasion 2.

2. Between or around [redacted], you:

b. told Pupil B that you had worn Pupil B's boxer shorts by mistake.

Pupil B said that on one occasion Mr Fern had told him that he had been previously wearing Pupil B's boxer shorts by mistake, as the house matron had accidentally put them in Mr Fern's laundry.

Mr Fern denied making these remarks to Pupil B. Mr Fern explained that he had his own washing machine in his residence. He would on occasions use the communal house dryer, but could not recall any mix up in clothes, when he used the dryer.

There was no evidence before the panel to suggest that Pupil B was mistaken or had misinterpreted a conversation of this nature with Mr Fern. There was no evidence before the panel that Pupil B was being dishonest about this account. Whilst being mindful that there was no duty on Mr Fern to disprove this allegation, there was no explanation from Mr Fern as to why he thought Pupil B would make this allegation and the panel believed Pupil B.

The panel considered this allegation alongside its other findings in the case, which tended to support Pupil B's account as being credible and therefore the panel finds that this discussion was more likely than not to have taken place.

The panel finds this allegation proved.

3. Between or around [redacted]:

a. on a first unknown date, you:

i. put your hand inside Pupil B's clothing;

ii. [redacted];

iii. [redacted];

Pupil B attended the School from [redacted]. From Years [redacted] he was a full time boarder and resided in [redacted] House at the School. Pupil B first met Mr Fern when Mr Fern was appointed as the resident tutor at [redacted] during Pupil B's first year at the School.

Pupil B described several sexual encounters with Mr Fern when Pupil B was [redacted] which all took place in Mr Fern's apartment. Pupil B described that a group of pupils, including himself, would often attend Mr Fern's apartment to watch a film on a Saturday evening and there were also some dinner parties there.

Pupil B explained that on one occasion he was at Mr Fern's apartment and was in the kitchen preparing some food for a dinner party. Mr Fern walked up behind Pupil B and placed his hand down Pupil B's trousers. [redacted].

Pupil B explained that he froze, that it felt like time had slowed down and he just carried on preparing the food. There was no one else in the apartment at the time and when others started to arrive Pupil B did not say anything as he was unsure what to do and was worried about ruining the dinner party if he said anything.

3. Between or around [redacted]:

b. on a second unknown date, you:

i. [redacted];

ii. [redacted];

Pupil B described another event at Mr Fern's apartment where Pupil B had gone along with a few other pupils to watch a film. During a break from watching the film, everyone went to get some refreshments. Whilst walking down the apartment hallway, Mr Fern cut Pupil B off by walking in front of him. [redacted].

Pupil B said no. Pupil B also went on to say he was left confused by Mr Fern's actions being so brazen whilst there were others who may have seen what he was doing. Pupil B further explained that he had seen Mr Fern consume a number of gin and tonics that evening. The pupils may have consumed no more than 2 or 3 small beers, which Mr Fern had given to them.

3. Between or around [redacted]:

c. on one or more further unknown dates, you:

i. put your hand inside Pupil B's clothing;

ii. [redacted];

iii. [redacted];

iv. [redacted];

v. kissed Pupil B.

Pupil B described that on a further occasion, whilst in Mr Fern's apartment during a film night, he went to sit on the sofa and Mr Fern (who was already sitting on the sofa) put his right hand out and under Pupil B's bottom as he sat down. [redacted].

Pupil B explained that a further event happened, but that he could not remember if it was on the same night or a different night as the above [redacted] incident. On this occasion, whilst the other pupils had gone either to the kitchen or toilet during a break in the film, [redacted].

Following that, Mr Fern leant in towards Pupil B and they kissed. Mr Fern put his tongue into Pupil B's mouth. Pupil B described a rotating motion in his statement and a propeller like motion in his oral evidence. Pupil B also recalled feeling Mr Fern's stubble against his face.

These events happened for no longer than 30 seconds each.

Pupil B gave an explanation for not raising any objection at the time or reporting the incidents to others. He said that he felt helpless at the time. He was [redacted]. He was worried about how people would react at school and that he might not be believed. He did not want to rock the boat. He was also worried about what his parents would say about it. Whilst he had revealed this information to others in later years, he had not done so whilst he was at school.

Pupil B explained that he met with Mr Fern in [redacted]. This was due to his girlfriend at the time also knowing Mr Fern and wanting to meet with him. Pupil B described his girlfriend talking about Mr Fern as a 'legend' and she was eager to see him. At this point, Pupil B had not fully processed what had happened to him. He did not want to create a situation and so went along with his girlfriend.

Mr Fern broadly agreed with the factual background evidence of Pupil B. Mr Fern described him as a strong willed pupil who had a clear sense of right and wrong. He was a pupil who could often divide opinions between others, both of fellow pupils and teachers.

Mr Fern explained that one of the things he liked to do as the resident tutor was to encourage the pupils to learn how to cook. There were no cooking appliances in the communal facilities, so this took place in his apartment. Pupil B was often involved in the cooking process as he enjoyed it and also because Pupil B did not return home as often as a lot of the other pupils on weekends.

Mr Fern denied that any sexual activity took place with Pupil B on these occasions in the apartment. It was highlighted that there was usually other pupils in the apartment at the same time which made it more unlikely that these events had taken place.

Mr Fern also gave evidence that they had seen each other in later years when Pupil B and his friends visited him in [redacted].

During the course of Pupil B's evidence, he gave a different account regarding allegation 3.b.ii. to what was in his witness statement. In his statement, Pupil B had written that Mr Fern had asked Pupil B to give him a [redacted]. Pupil B explained this was an error in his statement and that it was actually his evidence that Mr Fern asked to give him a [redacted]. The panel is prepared to accept this explanation, including because the account is consistent with the other evidence of Mr Fern being on his [redacted] in front of Pupil B at the time.

The panel considered Pupil B's evidence in the wider context of the evidence before the panel and finds that it shares some similarity with the conduct regarding Pupil A. These appeared to be snatched opportunities in high-risk scenarios. It was not out of keeping with the impression of Mr Fern given by other witnesses.

The panel also considered the similarity in the detail of allegation 2.a. and the description Pupil A was able to give to the police about what Mr Fern had told him. As previously discussed, Pupil A was not present with Pupil B when these events were said to have occurred. There was no evidence that Pupil B had told Pupil A about these events. The panel finds that Pupil A only learnt of the events that were subsequently corroborated by Pupil B when Mr Fern discussed them with Pupil A.

There was no evidence before the panel to suggest that Pupil B was mistaken in his identification of Mr Fern. There was no evidence before the panel that Pupil B was being dishonest about this account. There was no evidence before the panel that Pupil B may have been mistaken in his recollection of events. Whilst being mindful that there was no duty on Mr Fern to disprove this allegation, there was no explanation from Mr Fern as to why he thought Pupil B would make these allegations and panel believes Pupil B.

Therefore, taking these factors into account, the panel considers it is more likely than not that the events described by Pupil B are true. Accordingly, the panel finds allegation 3 proved in full.

4. Your conduct at paragraph 2 was sexually motivated in that the conduct was in pursuit of sexual gratification and/ or pursuit of a future sexual relationship.

Having found allegation 2 proved, the panel went on to consider whether this was conduct that was sexually motivated.

In regard to allegation 2.a. (Occasion 1), the panel considers that the timing of the conversation whilst on the flat roof with Pupil A, directly before their sexual activity started and making an indirect reference to sex with men, was more likely than not a conversation with the aim of advancing a sexual relationship with Pupil A.

In regard to allegation 2.b., the panel considers that these remarks were made as part of Mr Fern's risk taking and boundary pushing behaviour with Pupil B. The panel considers these are more likely than not to have been for Mr Fern's sexual gratification as they were a reference to wearing Pupil B's underwear.

Accordingly, the panel finds this allegation proved.

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

The panel is mindful that this was conduct that happened a number of years ago, and in some circumstances, holding teachers to the standards that are in place today, could lead to an injustice. That is not the position in Mr Fern's case. Mr Fern's conduct fell significantly short of the expected standards of a teacher, even considering the passage of time.

The panel is satisfied that the conduct of Mr Fern in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Fern 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
- 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 also considered whether Mr Fern's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice. The panel found that offences involving 'sexual activity' was relevant.

The Advice indicates that where behaviours associated with such offences exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

Mr Fern's actions included serious sexual misconduct with more than one pupil, including some non-consensual acts. Mr Fern's behaviour was further aggravated by the significant breach of trust between that of a teacher and pupil, taking into account his effective role *in loco parentis* whilst these pupils were with him.

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

Accordingly, the panel is satisfied that Mr Fern 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 panel finds that the conduct it has found proven would damage the reputation of the profession.

The panel further finds that, for largely the same reasons as above, Mr Fern's conduct also amounted to 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 protection of pupils/the protection of other members of the public
- the maintenance of public confidence in the profession
- declaring and upholding proper standards of conduct
- retaining good teachers in the profession

In light of the panel's findings against Mr Fern, there was a strong public interest consideration in respect of the protection of pupils, given the serious findings of sexual misconduct with children.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Fern 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 Fern was outside that which could reasonably be tolerated.

The panel decided that there was 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 Fern. 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 Fern.

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;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of the Police Act 1997 and criminal record disclosures (in so far as it could apply to non-consensual sexual activity with Pupil B);
- misconduct seriously affecting the safeguarding and well-being of pupils;

- an abuse of any trust, knowledge, or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or former pupil;
- abuse of position or trust (particularly involving pupils);
- violation of the rights of 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;
- failure in their duty of care towards a child.

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

There was a range of material before the panel which spoke to Mr Fern's ability as a teacher and his contribution to the sector. These included:

- In Pupil A's evidence, he described Mr Fern as a very good teacher, very bright and competent;
- In Pupil B's evidence, he described a high level of respect for Mr Fern's abilities as a teacher and how he approached teaching, and he was considered one of the best [redacted] teachers at the School;
- In Witness A's [redacted] evidence, she described Mr Fern as hardworking and a very visible headteacher. She considered him a 'teachers' headteacher and caring towards staff;
- In Witness B's [redacted] evidence, he described Mr Fern's teaching as inspirational and that every boy would want to be in his [redacted] classes. He thought that Mr Fern had been the perfect deputy headteacher;
- A further character statement, by a teacher who taught alongside Mr Fern at the School remarked that Mr Fern was kind and big-hearted. Further, that the teacher always found Mr Fern to be good company, gregarious with a great sense of humour. He said Mr Fern was very hard-working and someone who was completely committed to supporting his students however he could;

- Mr Fern also worked for national exam boards for A Level and trained as an instructor and examiner for the International Baccalaureate.

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 Fern of prohibition.

The panel was of the view that prohibition is both proportionate and appropriate. The panel decided that the public interest considerations of maintaining and declaring the standards of the profession significantly outweighed the interests of retaining Mr Fern in the profession. Mr Fern's behaviour, which was not a one off incident and included non-consensual sexual activity was at the most serious end of the spectrum of sexual misconduct which could not be resolved in any other fashion than making a recommendation to prohibit.

Accordingly, the panel makes 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. These behaviours 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:
- any sexual misconduct involving a child.

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 provision 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 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 John Fern should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Fern 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
- 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 Fern fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they included serious sexual misconduct with more than one pupil, including some non-consensual acts.

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 Fern, 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 and safeguard pupils. The panel has observed, "In light of the panel's findings against Mr Fern, there was a strong public interest consideration in respect of the protection of pupils, given the serious findings of sexual misconduct with children." A prohibition order would therefore prevent such a risk from being present in the future.

Although the panel have not commented on insight and remorse, 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 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 Fern were not treated with the utmost seriousness when regulating the conduct of the profession."

I am particularly mindful of the finding of sexual misconduct involving a child in this case and the impact that such a finding has on the reputation of the profession, the conduct found proven could damage 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 on Mr Fern himself and I have observed the following comments from the panel, "There was a range of material before the panel which spoke to Mr Fern's ability as a teacher and his contribution to the sector."

"The panel decided that there was 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."

A prohibition order would prevent Mr Fern 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, "Mr Fern's actions included serious sexual misconduct with more than one pupil, including some non-consensual acts. Mr Fern's behaviour was further aggravated by the significant breach of trust between that of a teacher and pupil, taking into account his effective role *in loco parentis* whilst these pupils were with him."

I have also placed considerable weight on the finding of the panel that "The panel is mindful that this was conduct that happened a number of years ago, and in some circumstances, holding teachers to the standards that are in place today, could lead to an injustice. That is not the position in Mr Fern's case. Mr Fern's conduct fell significantly short of the expected standards of a teacher, even considering the passage of time."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Fern 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 evidence of remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

Mr Fern breached the trust of pupils in his care, the misconduct happened over a period of time, with more than one pupil. Pupil B was [redacted] old at the time the misconduct took place, and the panel noted in his evidence, how he felt helpless and was worried about how people would react at the School and that he might not be believed. Mr Fern's actions mean that he presents a risk to the safety and wellbeing of pupils in the future.

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 "The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours 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:
- any sexual misconduct involving a child.

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 provision for a review period.”

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. Various factors, including the seriousness of the findings, involving sexual misconduct with pupils/children and the lack of evidence of remorse or insight mean that that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mr John Fern 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 Fern 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 Fern 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.

A handwritten signature in black ink, appearing to read 'SABuxcey', with a stylized, cursive script.

Decision maker: Sarah Buxcey

Date: 4 August 2022

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