



Teaching  
Regulation  
Agency

# **Mr Alan Finlay Professional conduct panel meeting outcome**

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

**November 2021**

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

<b>Teacher:</b>	Mr Alan Finlay
<b>Teacher ref number:</b>	7746009
<b>Teacher date of birth:</b>	2 July 1947
<b>TRA reference:</b>	15806
<b>Date of determination:</b>	15 November 2021
<b>Former employer:</b>	The Virtual School, North Tyneside Council

### **Introduction**

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 15 November 2021, remotely via TEAMS to consider the case of Mr Finlay.

The panel members were Mr Maurice McBride (lay panellist – in the chair), Mr David Raff (lay panellist) and Ms Susanne Staab (teacher panellist).

The legal adviser to the panel was Miss Sarah Price of Blake Morgan solicitors.

In advance of the meeting, after taking into consideration the public interest and the interests of justice, the TRA agreed to a request from Mr Finlay that the allegations be considered without a hearing. Mr Finlay provided a signed statement of agreed facts and admitted unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel considered the case at a meeting without the attendance of the presenting officer Sherelle Appleby, Mr Finlay or any teacher representative.

The meeting took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

## **Allegations**

The panel considered the allegations set out in the notice of meeting dated 22 July 2021.

It was alleged that Mr Finlay was guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute in that:

1. He failed to maintain appropriate professional boundaries with Pupil A during one or more one-to-one sessions between February and April 2016, including by;
  - a. Taking one or more photographs of Pupil A, including;
    - i. One or more photographs of her legs;
    - ii. One or more photographs of her face and/or profile;
    - iii. One or more photographs up her skirt;
  - b. Telling Pupil A that he was "looking in to your beautiful brown eyes" or making a comment to that effect;
  - c. Saying to Pupil A "a pretty girl like you going in to the army, I'd cry" or making a comment to that effect.
2. His behaviour as may be found proven at 1a and/or 1b and/or 1c above was conduct of a sexual nature and/or was sexually motivated.

Mr Finlay has admitted the facts and that he was guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute.

## **Preliminary applications**

There were no preliminary applications.

## **Summary of evidence**

### **Documents**

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

Section 1: Notice of referral, response and notice of meeting – pages 2 to 15

Section 2: Statement of agreed facts – pages 17 to 22

Section 3: Teaching Regulation Agency documents – pages 24 to 106

## Section 4: Teacher documents – pages 107 to 110

The panel members confirmed that they had read all of the documents within the bundle, in advance of the meeting.

### Statement of agreed facts

The panel considered a statement of agreed facts which was signed by Mr Finlay on 15 February 2021. The panel noted that there was a witness statement from Mr Finlay in the bundle, in which he denied the allegations. However, the panel noted that the statement of agreed facts was signed after Mr Finlay had made these denials. The agreed statement of facts stated, *"Any statement made by Mr Finlay pre-dating this document which conflict with the agreed facts set out below should be disregarded for the purposes of establishing the facts of the allegations."*

### Decision and reasons

The panel carefully considered the case and reached a decision.

The panel announced its decision and reasons as follows:

In advance of the meeting, the TRA agreed to a request from Mr Finlay for the allegations to be considered without a hearing. The panel had the ability to direct that the case be considered at a hearing if required in the interests of justice or in the public interest. The panel did not determine that such a direction was necessary or appropriate in this case.

Mr Finlay had been employed by North Tyneside Council as a teacher in The Virtual School ("the School") between August 2009 and October 2016. Mr Finlay was deployed to the School to assist Pupil A through one-to one sessions. The purpose of these sessions was to provide additional support to Pupil A in the lead up to her GCSE examinations. On 20 April 2016, Pupil A reported allegations to the School regarding Mr Finlay's conduct. Mr Finlay was suspended pending investigation. On 21 October 2016, a disciplinary hearing took place and Mr Finlay was dismissed. The concerns were reported to the police, but no action was taken. [redacted].

In considering the allegations, the panel did not rely upon any findings made or opinions expressed in the documentation included within the hearing papers. It formed its own, independent view of the allegations based on the evidence presented to it.

### Findings of fact

The findings of fact are as follows:

The panel found the following particulars of the allegations against you proved, for these reasons:

**1. You failed to maintain appropriate professional boundaries with Pupil A during one or more one-to-one sessions between February and April 2016, including by;**

In making comments about Pupil A's features and by taking images of her body, the panel was satisfied that this very clearly transgressed all boundaries, not just professional boundaries. In particular, these allegations occurred in the School setting, during one-to-one sessions, where Mr Finlay should have been observing proper boundaries at all times.

The panel noted that Pupil A, initially thought Mr Finlay was being friendly. However, through the course of the one-to-one sessions, it is clear that Pupil A started to feel uncomfortable, to the point of tears and that she did not wish to see him again. This appears to have made her report her concerns, which led to a police investigation.

**a. Taking one or more photographs of Pupil A, including;**

**i. One or more photographs of her legs;**

**ii. One or more photographs of her face and/or profile;**

**iii. One or more photographs up her skirt;**

The panel considered allegation 1 in its entirety.

The panel had, in its bundle, an image of an individual's profile. The evidence available to the panel confirmed that this was Pupil A. Mr Finlay accepted that he took the photos in the agreed statement of facts.

In her witness statement, and in her evidence to the police, Pupil A gave a credible and detailed recollection of Mr Finlay's conduct. Pupil A had suspicions that Mr Finlay was using his phone or an iPod to take photos of her from underneath the desk, during one-to-one sessions. Over the course of several sessions with Mr Finlay, her concerns developed to the point that she told friends about her concerns and the police were ultimately informed.

The panel noted that the police had located a total of 30 images on Mr Finlay's device.

The panel found the facts of 1.a. proved in its entirety.

**b. Telling Pupil A that you were "looking in to your beautiful brown eyes" or making a comment to that effect;**

**c. Saying to Pupil A "a pretty girl like you going in to the army, I'd cry" or making a comment to that effect.**

The panel considered allegation 1.b. and 1.c. together.

Pupil A had clearly recalled the comments made to her by Mr Finlay, both in her statement and in her interview with the police.

Mr Finlay accepted that he made the comments. The panel noted that during the local investigation, Mr Finlay had explained that he may have been naïve when making the comments. In particular, Mr Finlay accepted "*that looking back, some of the language [!] used may have been ineffective and saying she was a beautiful girl was probably inappropriate*".

The panel found the facts of allegations 1.b. and 1.c. proved.

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

Having found the facts of allegation 1 proved in its entirety, the panel went on to consider whether Mr Finlay's conduct in relation to 1.a., 1.b. and 1.c. was conduct of a sexual nature and/or was sexually motivated.

The panel noted that Mr Finlay had accepted in the statement of agreed facts, that the conduct was sexually motivated.

The panel's findings in relation to these allegations were that Mr Finlay had taken a series of photographs of Pupil A (including one or more up skirting photographs) and that this, together with the comments he had made to her, clearly suggested conduct of a sexual nature. The panel found that Mr Finlay's behaviour was sexually motivated, which he had admitted.

The panel noted that in Pupil A's evidence to the police, she recalled Mr Finlay's finger movements on his iPod. She also recalled clearly seeing the camera button displayed on his iPod. He had previously explained to her that he was using his iPod as a calculator to check her answers. She stated that Mr Finlay had said something along the lines of "*Aw yes that's nice, aw that's lovely that*". Pupil A said she was thinking that was not something you do when making calculations. The panel found that this further indicated that Mr Finlay's conduct was sexually motivated.

Pupil A described, in a detailed way, how Mr Finlay's behaviour made her feel increasingly uncomfortable. The panel found that Mr Finlay's comments to Pupil A, which were made during the early one-to-one sessions, may have paved the way for his later actions, of taking photos of Pupil A.

On the balance of probabilities, this indicated to the panel that Mr Finlay's conduct was sexually motivated.

The panel found allegation 2 proved.

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

Having found 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.

Mr Finlay admitted that his conduct amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute. Whilst the panel took these admissions into account, it made its own determination.

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

The panel was satisfied that the conduct of Mr Finlay in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Mr Finlay was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within 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 also considered whether Mr Finlay's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice.

The panel found that the offence of sexual activity and any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image



or pseudo photograph or image of a child, or permitting any such activity, including one-off incidents was relevant.

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.

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

In relation to the conduct found proved, Mr Finlay was in a position of responsibility and trust. In particular, Mr Finlay had an obligation to follow safeguarding requirements, and to maintain clear professional boundaries.

The panel was satisfied that the conduct of Mr Finlay fell significantly short of the standards expected of the profession. The panel noted that Pupil A was a vulnerable student and that Mr Finlay's conduct took place in the educational setting. The panel found that Mr Finlay was aware of Pupil A's vulnerabilities because he had been informed of Pupil A's background prior to the one-to-one sessions, and Pupil A's statement confirmed that she spoke to Mr Finlay about her [redacted] family. The panel determined that his behaviour was totally unacceptable because it fell short of the standards of any common decent person.

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 they behave.

The findings of misconduct were very serious, and the conduct displayed would very likely have a negative impact on Mr Finlay's status as a teacher and may also damage the public perception.

The panel therefore found that Mr Finlay's actions constituted conduct that may bring the profession into disrepute.

Having found the facts of particulars 1 and 2 proved in full, the panel further found that Mr Finlay'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/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.

In the light of the panel's findings against Mr Finlay which involved a failure to maintain professional boundaries, conduct of a sexual nature and conduct that was sexually motivated, there was a strong public interest consideration in respect of the protection of pupils and other members of the public.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Finlay were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel decided that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Finlay was outside that which could reasonably be tolerated.

Notwithstanding 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 Finlay.

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 Finlay. 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 are relevant in this case are:

- 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 of trust (particularly involving vulnerable pupils) or 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;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one-off incidents;

Even though 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.

The panel considered the following mitigating factors:

- The panel was provided with limited evidence regarding Mr Finlay's record as a teacher. There was no evidence that he had been subject to any previous regulatory or disciplinary proceedings. There was no evidence of any prior complaints in relation to his conduct.
- Mr Finlay had engaged with the TRA and had signed an agreed statement of facts in which he fully admitted the allegations.
- There was some evidence that Mr Finlay had sought some assistance [redacted]. The panel noted that Mr Finlay appeared to have sought assistance in relation to his own [redacted] regarding the allegations against him, although there was little evidence in relation to this.

Weighed against this, the following aggravating factors featured in this case:

- Mr Finlay's actions were deliberate, and he was not acting under duress.
- Mr Finlay initially denied taking photographs of Pupil A. This was maintained during the local investigation and a police interview.
- Mr Finlay ought to have known what was required of him in terms of safeguarding and Pupil A's vulnerabilities.
- Mr Finlay failed to act as a role model.
- The panel was not provided with any evidence of insight. For example, there was no explanation of what lessons he had learnt.

- There was no evidence of regret or remorse about taking the photographs, including in relation to the impact of taking those photographs on Pupil A. The focus has been on the impact on himself and his family.
- Mr Finlay's actions had an impact on Pupil A. When the incidents occurred, this was a crucial time for Pupil A. Mr Finlay had been specifically assigned to assist Pupil A with her maths, in the lead up to her GCSE examinations. The panel found that Mr Finlay had been placed in a position of trust with a vulnerable student and that he failed to maintain professional boundaries. The panel consider that Mr Finlay's conduct impacted the additional work that had been planned for Pupil A and this may have impacted her examination results.
- Pupil A became increasingly concerned about Mr Finlay's behaviour and became upset at the thought of having to see him again. Pupil A was a vulnerable student, and the panel noted that Pupil A had recently been groomed through Facebook and considered that Mr Finlay's actions would have compounded Pupil A's vulnerable state of mind.

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 was sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Finlay of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate.

The panel decided that the public interest considerations outweighed the interests of Mr Finlay. The seriousness and nature of the conduct found proven was a significant factor in forming that opinion. The panel considered that Mr Finlay's insight into the nature and implications of his conduct was very limited. Mr Finlay initially denied the allegations but has since signed an agreed statement of facts admitting them in full. The panel found that Mr Finlay had breached his position of trust, in relation to a vulnerable student.

There was limited evidence as to the steps taken by Mr Finlay to remediate his failings. The panel was not provided with any character testimonials or reflections from Mr Finlay. The panel was not satisfied that there was no risk of repetition.

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 to recommend that a review period of the order should be considered.

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 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. It also included an activity involving taking and possessing indecent photographs of a child. Given the panel's findings, it considered that these behaviours were relevant in this case. The panel found that Mr Finlay's conduct was sexual misconduct as it was conduct of a sexual nature and was sexually motivated.

The panel was not provided with evidence of Mr Finlay's insight into his actions. There was also no regret or remorse, in relation to the impact on Pupil A.

The panel noted that Mr Finlay has stated that he is not currently practising and has no intention of returning to the teaching profession, but it did not take this into consideration when making its decision on the recommendation.

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

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

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within 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 also, "found that the offence of sexual activity and any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting any such activity, including one-off incidents was relevant."

The findings of misconduct are particularly serious as they include a finding of behaviour that was sexually motivated or sexual misconduct.

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 Finlay, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has, "noted that Pupil A was a vulnerable student and that Mr Finlay's conduct took place in the educational setting. The panel found that Mr Finlay was aware of Pupil A's vulnerabilities because he had been informed of Pupil A's background prior to the one-to-one sessions, and Pupil A's statement confirmed that she spoke to Mr Finlay about her [redacted] family. The panel determined that his behaviour was totally unacceptable because it fell short of the standards of any common decent person."

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, "was not provided with evidence of Mr Finlay's insight into his actions. There was also no regret or remorse, in relation to the impact on Pupil A."

In my judgement, the lack of insight and remorse means that there is some risk of the repetition of this behaviour and this puts at risk the future well-being 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 that it, "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 they behave.

The findings of misconduct were very serious, and the conduct displayed would very likely have a negative impact on Mr Finlay's status as a teacher and may also damage the public perception."

I am particularly mindful of the finding of sexual misconduct 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 on Mr Finlay himself. The panel comment "There was limited evidence as to the steps taken by Mr Finlay to remediate his failings. The panel was not provided with any character testimonials or reflections from Mr Finlay. The panel was not satisfied that there was no risk of repetition."

A prohibition order would prevent Mr Finlay from teaching and 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 concerning the lack of insight or remorse. The panel has said, "There was limited evidence as to the steps taken by Mr Finlay to remediate his failings. The panel was not provided with any

character testimonials or reflections from Mr Finlay. The panel was not satisfied that there was no risk of repetition.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Finlay 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 “The panel found that Mr Finlay's conduct was sexual misconduct as it was conduct of a sexual nature and was sexually motivated.”

I have considered whether to allow for no review is proportionate and necessary to achieve the aim of maintaining public confidence in the profession. In this case, the factors which mean that allowing for a no review period is necessary are the serious nature of the misconduct and the lack of remorse or insight.

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 Alan Finlay 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 Alan Finlay 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 Alan Finlay 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: Alan Meyrick**

**Date: 17 November 2021**



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