



Teaching  
Regulation  
Agency

# **Mr Alexander Day: Professional conduct panel outcome**

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

**July 2019**

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

**Teacher:** Mr Alexander Day

**Teacher ref number:** 1668400

**Teacher date of birth:** 04 January 1990

**TRA reference:** 17472

**Date of determination:** 16 July 2019

**Former employer:** Nottingham Girls' High School, Nottingham

### **A. Introduction**

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("the TRA") convened on 15 July to 16 July 2019 at Cheylesmore House, 5 Quinton Road, Coventry CV1 2WT to consider the case of Mr Alexander Day.

The panel members were Mr Tony Woodward (former teacher panellist – in the chair), Ms Nicolé Jackson (lay panellist) and Dr Robert Cawley (teacher panellist).

The legal adviser to the panel was Miss Claire Watson of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Ian Perkins of Browne Jacobson solicitors.

Mr Day was not present and was not represented at the hearing.

The hearing took place in public and was recorded.

## B. Allegations

The panel considered the allegation(s) set out in the Notice of Proceedings dated 5 April 2019.

It was alleged that Mr Alexander Day was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher by Nottingham Girls' High School (the "School") he:

1. Engaged in and/or developed an inappropriate relationship with Pupil X between approximately January and May 2018 specifically by:
  - a. exchanging emails with her, including one or more emails;
    - i. which were sent late at night and/or at the weekend;
    - ii. of a personal nature;
    - iii. in which he informed Pupil X of where he would be/what he would be doing;
  - b. communicating with her via 'YouTube and/or 'SoundCloud';
  - c. meeting with her outside of school on one or more occasions;
  - d. allowing her to visit his flat on one or more occasions;
  - e. buying a gift and/or gifts for her on one or more occasions;
  - f. engaging in sexual activity with her on one or more occasions;
2. He deleted emails he had sent to Pupil X during the school's investigation into his conduct;
3. His behaviour as may be found proven at:
  - a. 1 above was conduct of a sexual nature and/or was sexually motivated;
  - b. 2 above was dishonest and/or lacked integrity in that he was attempting to conceal the nature and/or extent of his communications and/or relationship with Pupil X from the school.

Mr Day admitted the facts of allegations 1a.i. and 1a.ii. and that these admitted allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. Mr Day did not admit the facts of any other allegation.

## C. Preliminary applications

The panel considered the following preliminary applications.

### Proceeding in absence

The panel considered an application from the presenting officer to proceed in the absence of Mr Day.

The panel was satisfied that the TRA had complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel was also satisfied that the Notice of Proceedings complied with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher.

The panel understood that its discretion to commence a hearing in the absence of the teacher had to be exercised with the utmost care and caution, and that its discretion was a severely constrained one.

In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel took into account the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. The panel was satisfied that the teacher was actually aware of the proceedings as more than 8 weeks' notice had been given to the teacher and the teacher's representative had responded and indicated that Mr Day would not be attending the hearing. The panel therefore considered that the teacher had waived his right to be present at the hearing in the knowledge of when and where the hearing was taking place.

The panel had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There is no indication that an adjournment might result in the teacher attending the hearing. The teacher had also indicated through his representative that he was content for the hearing to proceed in his absence and without his legal representative present.

The panel had regard to the extent of the disadvantage to the teacher in not being able to give his account of events, having regard to the nature of the evidence against him. The panel had the benefit of written evidence from the teacher which included a written response to each of the allegations. The panel was also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel also noted that there were witnesses present at the hearing, who were prepared to give evidence, and that it would be inconvenient for them to return again.

The panel had regard to the seriousness of this case, and the potential consequences for the teacher and had accepted that fairness to the teacher was of prime importance. However, it considered that in light of the teacher's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witnesses; that

on balance, these were serious allegations and the public interest in the hearing proceeding within a reasonable time was in favour of the hearing continuing.

#### Additional documents

The presenting officer applied to admit the witness statement of Witness C. That document was not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel was required to decide whether it should be admitted under paragraph 4.25 of the Procedures at the discretion of the panel. The panel took into account the representations from the presenting officer. The panel exercised caution in exercising this discretion given that it had determined to proceed with the hearing in the absence of the teacher.

Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel was satisfied that the document was relevant to the case and decided to admit the document. Given the absence of the teacher, the panel considered whether he had received the document and had sufficient opportunities to make representations about it. The panel had sight of an email from Mr Day's representative acknowledging receipt of the witness statement and confirmation of their agreement to include it in the bundle.

#### Anonymity of witnesses

Paragraph 4.60 of the Procedures allowed the panel, if it considered it to be in the interests of justice, to decide that the name and identity of a witness, either referred to in the hearing papers or present before the panel to give oral evidence, should not be disclosed during the hearing or at all.

The panel had taken into account the general rule that matters pertaining to these hearings should be held in public and took account of case law that states: "It is necessary because the public nature of proceedings deters inappropriate behaviour on the part of the court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely".

The panel had regard to whether the anonymity of the witnesses ran contrary to the public interest. The panel also had regard to the principle that limited interference with the public nature of the proceedings was preferable to a permanent exclusion of the public.

The panel had decided that, in the circumstances where the allegations related to matters of a sexual nature, it was appropriate to anonymise the names of the pupil

witnesses. The panel noted that the TRA had already provided an anonymised pupil list in the bundle and that the witnesses were pupils at the School at the time of the relevant actions.

### Amending the allegations

The panel considered whether to amend the word “including” in allegation 1 to “specifically” or “namely”. The panel had the power, in the interests of justice, to amend an allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case had been proved.

Before making an amendment, the panel was required to consider any representations by the presenting officer. The presenting officer opposed the amendment on the ground that the allegations were sufficiently particularised, Mr Day understood the allegations and that Mr Day was not present to consider or respond to the proposed amendment.

The panel decided to amend the allegation to ‘specifically’. The panel considered the proposed amendment, and given the seriousness of the allegation, was of the view that it was in the interests of justice for the allegation to be properly formulated and clear. The panel exercised caution to ensure that there was no unfairness to Mr Day. The panel noted that the stem of the allegation had been repeatedly set out throughout the documents. The teacher had the opportunity to provide his response to allegation 1 in advance of the hearing, and on reading the explanations provided, the panel did not consider his response would have been different had the allegation referred to “specifically”, rather than “including”. The panel therefore decided to make this amendment.

## **D. Summary of evidence**

### **Documents**

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

Section 1: Chronology, anonymised pupil list and list of key people – pages 2 to 4

Section 2: Notice of Proceedings – pages 6 to 14

Section 3: Teaching Regulation Agency witness statements – pages 16 to 69

Section 4: Teaching Regulation Agency evidence – pages 71 to 820

Section 5: Teacher evidence – pages 822 to 833

The panel members confirmed that they had read all of the documents in advance of the hearing.

## Witnesses

The panel heard oral evidence from:

- Witness A
- Witness B
- Witness C

All of the above witnesses were called on behalf of the TRA.

## E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and has reached a decision.

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Mr Day had been employed at the School since September 2017 as a teacher of English and Psychology. In May 2018, the School's headteacher was made aware of Mr Day and Pupil X being seen together, both in School and outside of the School setting. The School's investigation uncovered a vast amount of emails between Mr Day and Pupil X and Witness A and Witness B disclosed to the School that Pupil X had been in a sexual relationship with Mr Day.

## Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegation(s) against you proven, for these reasons:

**It was alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as a teacher by Nottingham Girls' High School (the "School") you:**

**1. Engaged in and/or developed an inappropriate relationship with Pupil X between approximately January and May 2018 specifically by:**

**a) exchanging emails with her, including one or more emails:**

**i) which were sent late at night and/or at the weekend;**

The panel had seen a vast number of emails between Mr Day and Pupil X that were sent late at night and/or at the weekend. For example, emails from Mr Day were sent to Pupil X at 11:07pm, 00:16am and 00:41am.



The allegation has been admitted.

Taking into account all of the evidence, the panel found the allegation proved.

**ii) of a personal nature;**

The allegation has been admitted.

The panel has seen the content of the emails and noted that some of these included reference to topics outside of the academic and school setting, such as personal interests, films, books, music, hobbies, moving house and holiday destinations. The panel acknowledges that some of the emails made reference to academic matters, such as coursework and school clubs. However, the panel considered that some of the emails went beyond these topics and were of a personal nature.

Therefore, the allegation is found proved.

**iii) in which you informed Pupil X of where you would be/what you would be doing;**

The panel heard evidence from Witness B that Pupil X had admitted to her that she and Mr Day had been using “coded talk and were very careful over email not to directly make plans to meet”.

The panel has read the emails and noted that Mr Day did inform Pupil X of where he would be and what he would be doing. In a particular email chain, Mr Day informed Pupil X of a time and cinema at which he was intending to see a screening of a film. Pupil X responded that she may go to an earlier screening at 15:00, then Mr Day responded, “I’m free around 3, too, so could pop in then”. In another email, Pupil X told Mr Day that she intended to book tickets online for a particular theatre production at 12:30 the following day, to which Mr Day responded that he did not want to miss it and “might do the same”.

The panel has seen written evidence, contained in the emails, in which Mr Day informed Pupil X of his whereabouts. This was corroborated by the oral evidence of Witness B. In contrast, Mr Day denied the allegation. The panel considered all of the evidence and found the email evidence compelling.

The panel found this allegation to be proved.

Therefore, the panel found allegation 1a to be proved.

**b) communicating with her via ‘YouTube’ and/or ‘SoundCloud’;**

In his statement, Mr Day states that he did not communicate with Pupil X via SoundCloud or YouTube. He also stated in his response to the allegations that several pupils knew that he uploaded music he created to SoundCloud.

The panel heard evidence from Witness B that she had seen Pupil X use SoundCloud. Witness A stated that, as a result of this, Witness A and Witness B had looked at who Pupil X was following on SoundCloud and found that Pupil X was following a particular account with songs Pupil X had talked about in relation to Mr Day, such as the song 'longing'. Witness A and Witness B had, therefore, made the assumption that this account belonged to Mr Day.

The panel noted that, in an email from Mr Day to Pupil X in February 2018, Mr Day provided a link to the account in question, on SoundCloud, and to the song 'longing', writing that he had "played around a little more with the song". Therefore, the panel found that this account on SoundCloud was Mr Day's account.

The panel also heard evidence from Witness B that she had seen Pupil X's laptop, on which SoundCloud was open and she saw instant messages between the account in question and Pupil X. The panel considered Witness B to be a credible witness. Therefore, the panel found that Mr Day had communicated with Pupil X via SoundCloud.

Other than the links to YouTube videos sent via email, the panel did not consider that it had been provided with evidence to find that Mr Day had communicated with Pupil X on YouTube itself.

The panel found this allegation to be proved, in that Mr Day communicated with Pupil X via SoundCloud.

### **c) meeting her outside of school on one or more occasions;**

The panel has seen a photograph of two individuals sitting together on a bus, taken by another pupil at the School. Witness B confirmed that these individuals were Pupil X and Mr Day.

In his written evidence, Mr Day states that he did not meet, or arrange to meet, with Pupil X outside of school hours, but did see Pupil X on the bus once. The panel did not consider that this was a credible explanation. The panel had heard that Pupil X drove and as such did not use the bus, as well as an explanation from Witness B that Pupil X and Mr Day had been travelling on the bus to a local bar. The panel had also seen screenshots of messages from Pupil X to Witness A, in which, following the photograph being posted on social media, Pupil X had asked Witness A to "diffuse" the situation. The panel heard evidence from Witness A that she had taken such a message to mean to change the subject or cover for Pupil X.

The panel took into account all of the evidence and found that the meeting on the bus was not accidental. The panel noted that Pupil X and Mr Day had used "coded talk", as outlined in allegation 1.a.iii. above, and communicated their whereabouts to one another. This is further corroborated by Pupil X stating in her witness statement that she met Mr Day in several bars around Nottingham.

The panel therefore found this allegation to be proved.

The panel went on to consider whether the allegations found proven above amounted to an inappropriate relationship with Pupil X between approximately January and May 2018.

Mr Day had stated in his written evidence that there was an expectation on teachers to respond to emails “expressly and thoroughly”, with the pupils likened to customers, to explain the extensive emails between himself and Pupil X. In contrast to this, the panel heard evidence from Witness C regarding the School’s ICT acceptable use agreement and that a client relationship would be more relevant between parents and teachers.

The panel had sight of the emails and considered that they went beyond acceptable communication between a pupil and a teacher relating to work and pastoral matters. The panel considered that it was clear from the emails that a number of topics was discussed and a relationship beyond that expected between a teacher and pupil was developed, amounting to an inappropriate relationship.

The panel also considered that by communicating with Pupil X via SoundCloud and meeting with Pupil X outside of school on one or more occasions, Mr Day had engaged in and developed an inappropriate relationship with Pupil X.

### **3) Your behaviour as may be found proven at:**

#### **a) 1 above was conduct of a sexual nature and/or was sexually motivated**

The panel considered that the emails showed the progression of a relationship between Mr Day and Pupil X, with the content of the emails initially covering work and pastoral matters, and gradually becoming more detailed, discussing matters of an increasingly personal nature and expressing views on matters relating to love and relationships. The panel noted that the emails contained an intellectual intimacy, created through the use of “coded talk” by reference to topics such as books, music (such as many references to song lyrics) and films. Examples of such emails included: “words are not adequate ways to tell people what we really feel”; “one of the key impediments to full expression is the worry that the person to whom you disclose deeper feelings won’t understand them or understand you, but when you meet somebody that you are so akin to, somebody whose inner working are similar to yours, that worry goes away”; and “I’ve been practicing recently at being more of an observer to my feelings and asking myself the question, am I actually the one feeling this way or why, so I can be more objective with my reactions, if that makes sense...”.

The panel considered that the emails were designed to move the relationship between Pupil X and Mr Day forward and that there was an underlying sexual current to the emails. The panel did not consider that there was any other reasonable explanation for the exchange of such emails and did not accept Mr Day’s explanation for the purpose of the emails.

The panel did not have sight of direct messages sent between Pupil X and Mr Day on SoundCloud, but noted the title of the song “longing”. Again, the panel considered that this showed the development of the inappropriate relationship between Pupil X and Mr Day.

The panel found that Mr Day did meet Pupil X on one or more occasions outside of school. Taking into account the nature of the emails, the panel considered that Mr Day’s actions in doing so were sexually motivated. Whilst the emails were not of an overtly sexual nature, the panel considered that the volume, content and intensity of the emails demonstrated an intention to progress towards a sexual relationship.

Therefore, the panel found that Mr Day’s conduct as found proven above in relation to allegation 1a, 1b and 1c was sexually motivated.

The panel has found the following particulars of the allegation(s) against you not proven, for these reasons:

**1) Engaged in and/or developed an inappropriate relationship with Pupil X between approximately January and May 2018 specifically by:**

**d) allowing her to visit your flat on one or more occasions;**

The panel heard evidence from Witness A and Witness B that Pupil X had visited Mr Day’s flat on more than one occasion.

In his statement, Mr Day had stated that several pupils had seen him getting on the bus at various times throughout the year and that a pupil had seen him walking to his flat. The panel considered this to be a credible explanation for the pupils knowing the general location of his flat, as Mr Day had lived close to the School. The panel noted that Pupil X had stated she had visited Mr Day’s flat on multiple occasions, but the panel had not had the opportunity to question Pupil X on this statement and thereby to test her credibility directly. There was no further corroboration that she had visited his flat.

Therefore, the panel found this allegation not proven.

**e) buying a gift and/or gifts for her on one or more occasions;**

The panel had seen messages between Pupil X and Witness B relating to a chocolate cake with a candle on it given to Pupil X by Mr Day as a “well done” for her Spanish work. In her witness statements, Pupil X does not make any reference to gifts bought for her and Mr Day denies buying any gifts for pupils. The panel considered that, should the chocolate cake have been brought in for Pupil X by Mr Day, it was reasonable the cake was given in a manner to congratulate Pupil X on her schoolwork and did not indicate an inappropriate relationship.

The panel considered that there was no evidence that Mr Day had bought Pupil X a gift and/or gifts on one or more occasions. The panel did not find the allegation to be proved.

**f) engaging in sexual activity with her on one or more occasions;**

The panel noted that Pupil X had not been initially forthcoming about any sexual activity between herself and Mr Day throughout the School's investigation, until her supplementary witness statement in which she confirmed they did engage in sexual activity. In comparison, Mr Day denies that any sexual activity took place.

The panel heard from Witness A and Witness B that Pupil X had told them that she did engage in sexual activity with Mr Day. The panel has also seen screenshots of messages from Pupil X to Witness B, in which Pupil X describes sexual activity. In her oral evidence, Witness B states that in these messages, Pupil X was describing her sexual activity with Mr Day.

The panel found Witness A and Witness B to be credible and genuine when giving evidence in relation to conversations with Pupil X. However, the panel noted that there was a marked difference between Pupil X's earlier official accounts in relation to sexual activity, information given to Witness A and Witness B at the same time, and her later supplementary witness statement where she stated that sexual activity had occurred.

The panel did not have the benefit of hearing evidence from Pupil X or asking questions of her, and as such placed less weight on her written evidence, given that the panel did not have the opportunity to test her credibility, in particular the reasons why she had changed her account. The evidence of Witnesses A and B relied entirely on information from Pupil X, which directly contrasted with her official account given at the same time.

The panel noted that a vast number of emails, particularly from February 2018 onwards, make reference to love and "desires", when describing books, films and music. However, the panel did not consider that these emails, although showing an inappropriate relationship was developed as found above, proved that sexual activity had occurred.

Therefore, the panel did not find allegation 1f to be proven.

**2) You deleted emails you had sent to Pupil X during the school's investigation into your conduct;**

No evidence was presented in respect of this allegation. This allegation is not proved.

**3) Your behaviour as may be found proven at:**

**b) 2 above was dishonest and/or lacked integrity in that you were attempting to conceal the nature and/or extent of your communications and/or relationship with Pupil X from the school;**

No evidence was presented in respect of this allegation. This allegation is not proved.

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

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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

The panel is satisfied that the conduct of Mr Day in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Day 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 is satisfied that the conduct of Mr Day amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Day’s conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice.

The panel has found that none of these offences are relevant, as it did not find that sexual activity had taken place.

The panel notes that the allegations 1b and 1c took place outside of the School. However, including allegation 1a and 3a, Mr Day’s actions stemmed from the email exchange which took place on the School network and therefore the relationship developed in the education setting. As such, the panel considered that Mr Day’s conduct affected the way he fulfilled his teaching role.

Accordingly, the panel is satisfied that Mr Day is guilty of unacceptable professional conduct.

The panel has taken into account how 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 has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore finds that Mr Day's actions constitute conduct that may bring the profession into disrepute.

Having found the facts of particulars 1a, 1b, 1c and 3a proved, the panel further find that Mr Day's conduct amounts 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 is 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 has to consider whether it is an appropriate and proportionate measure, and whether it is 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 has considered the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case, namely the protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct. The panel also noted that there is a public interest in retaining good teachers in the profession.

In light of the panel's findings against Mr Day, which involved engaging in and developing an inappropriate relationship by exchanging emails, communicating with Pupil X on SoundCloud and meeting her outside of school, and such conduct being sexually motivated, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of an inappropriate relationship with Pupil X.

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



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

The panel considered whether there was a public interest consideration in retaining the teacher in the profession, since no doubt has been cast upon his abilities as an educator. However, the panel gave less weight to this public interest consideration given both the serious nature of the misconduct and the limited evidence of his abilities as an educator given the short length of time Mr Day has been in 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 Day.

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Day. 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 proven. 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 or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- sexual misconduct, e.g. 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 there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

There was no evidence that the teacher's actions were not deliberate and no evidence to suggest that the teacher was acting under duress. Although the panel noted that Mr Day was of previous good character, the misconduct occurred within his first year of teaching. Witness A and Witness B gave evidence of how he was "helpful" as a teacher. However, the panel noted that no professional references have been provided that can attest to his abilities as a teacher.



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 is sufficient.

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

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Day. The extent and content of the email exchange and panel's finding of sexual motivation were significant factors in forming that opinion. 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 that a review period of the order should be considered. The panel was mindful that the Advice advises 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 proven, would militate against a review period being recommended. One of these behaviours includes serious sexual misconduct, e.g. 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 their professional position to influence or exploit a person or persons. The panel has found that Mr Day has been responsible for serious sexual misconduct, but noted that Pupil X, taking into account the passage of time since the proven conduct, stated that she "has no complaints to make against Mr Day". The panel has also seen and heard evidence from Witness A and Witness B that Pupil X deliberately sought out Mr Day and was excited to see him.

Mr Day had acknowledged that the conduct of the nature described in the allegations could be perceived as inappropriate. The panel felt that this was indicative of a lack of insight and remorse. Mr Day had failed to take full responsibility for his actions and was entrenched in his view that the blame for his situation, encompassed by the allegations, lay largely elsewhere.

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period.

Therefore, the panel recommends a prohibition order with provisions for a review period after 5 years. The panel acknowledges that a prohibition order is not intended as a punitive measure. Having regard to Mr Day's lack of insight and need to redress his behaviour, the panel felt that a review period of 5 years was appropriate and proportionate.

## **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 some of the allegations (facts of particulars 1a, 1b, 1c and 3a) proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. In this case, the panel has found some of the allegations not proven, and / or found that some allegations do not amount to unacceptable professional conduct or conduct likely to bring the profession into disrepute, or a relevant conviction. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Day should be the subject of a prohibition order, with a review period of five years.

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

The findings of misconduct are particularly serious as they include a finding of 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 Day, 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 say, "In light of the panel's findings against Mr Day, which involved engaging in and developing an inappropriate relationship by exchanging emails, communicating with Pupil X on SoundCloud and meeting her outside of school, and such conduct being sexually motivated, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of an inappropriate relationship with Pupil X." 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 Day had acknowledged that the conduct of the nature described in the allegations could be perceived as inappropriate. The panel felt that this was indicative of a lack of insight and remorse. Mr Day had failed to take full responsibility for his actions and was entrenched in his view that the blame for his situation, encompassed by the allegations, lay largely elsewhere." In my judgement, the lack of insight means that there is some risk of the repetition of this behaviour and this puts at risk future pupils' safeguarding. 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 public confidence in the profession could be seriously weakened if conduct such as that found against Mr Day was not treated with the utmost seriousness when regulating the conduct of the profession." 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 Day himself. The panel comment that there was, "limited evidence of his abilities as an educator given the short length of time Mr Day has been in the profession." The panel also noted that although, "Mr Day was of previous good character, the misconduct occurred within his first year of teaching. Witness A and Witness B gave evidence of how he was "helpful" as a teacher. However, the panel noted that no professional references have been provided that can attest to his abilities as a teacher."

A prohibition order would prevent Mr Day 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 concerning the lack of insight or remorse.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Day 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 a 5 year review period.

I have considered the panel's comments, "The panel has found that Mr Day has been responsible for serious sexual misconduct, but noted that Pupil X, taking into account the passage of time since the proven conduct, stated that she "has no complaints to make against Mr Day".

The panel has also said that, "Having regard to Mr Day's lack of insight and need to redress his behaviour, the panel felt that a review period of 5 years was appropriate and proportionate."

I have considered whether a 5 year 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, two factors mean that a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the serious sexual misconduct found and the lack of either insight or remorse.

I consider therefore that a five year review period is required to satisfy the maintenance of public confidence in the profession.

**This means that Mr Alexander Day is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England.** He may apply for the prohibition order to be set aside, but not until 19 July 2024, 5 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Day remains prohibited from teaching indefinitely.

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

Mr Alexander Day 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 'Dawn Dandy', with a stylized, flowing script.

**Decision maker: Dawn Dandy**

**Date: 19 July 2019**

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