



Teaching
Regulation
Agency

Mr Robert Anthony Donnelly: Professional conduct panel outcome

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

June 2019

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

Teacher: Mr Robert Anthony Donnelly
Teacher ref number: 1082529
Teacher date of birth: 25 September 1988
TRA reference: 17198
Date of determination: 13 June 2019
Former employer: St Columba's Catholic Boys School

A. Introduction

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("the TRA") convened on 12 to 13 June 2019 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT to consider the case of Mr Robert Anthony Donnelly.

The panel members were Mr Paul Hawkins (teacher panellist – in the chair), Ms Shamaila Quershi (lay panellist) and Dr Melvyn Kershaw (teacher panellist).

The legal adviser to the panel was Mrs Charlotte Wood of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Ms Lisa Wright of Browne Jacobson LLP solicitors.

Mr Donnelly was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 17 April 2019.

It was alleged that Mr Donnelly was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst he was employed as Head of PE at St Columba's Catholic Boys School he:

1. Failed to maintain appropriate professional boundaries in relation to Pupil A including by:
 - a. Exchanging personal contact information with him;
 - b. Exchanging messages with Pupil A, including one or more messages:
 - i. Which were sent late at night;
 - ii. In which he asked him what kind of underwear he wears.
2. Failed to maintain appropriate professional boundaries in relation to Pupil B, including by:
 - a. Exchanging personal contact information with him;
 - b. Exchanging messages with Pupil B, including one or more messages:
 - i. Which were sent late at night;
 - ii. In which he asked him what kind of underwear he wears;
 - iii. In which he stated that he was lying in bed and that he "should put some clothes on", implying that he was naked;
 - iv. In which you describe how Pupil B should arrange his genitalia within his underwear'.
3. His conduct, as may be found proven at 1 and/or 2 above was;
 - a. Flirtatious;
 - b. Conduct of a sexual nature and/or sexually motivated.

Mr Donnelly admitted allegations 1 and 2 (save for 2 (b) iv) as set out in the Statement of Agreed Facts and that this behaviour amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute. However, Mr Donnelly denied that the conduct was flirtatious or conduct of a sexual nature and/or sexually motivated (allegation 3).

C. Preliminary applications

Application to proceed in the absence of Mr Donnelly

The presenting officer applied to proceed with the hearing in the absence of Mr Donnelly. The panel heard that the Notice of Proceedings was sent to Mr Donnelly on 17 April 2019 and confirmation of receipt was received on the same day, from Mr Donnelly's representative, who was authorised to accept service on his behalf.

The panel noted that Mr Donnelly's representative, by proxy, had completed and returned the Notice of Proceedings dated 13 May 2019 together with a copy of Mr Donnelly's signed witness statement and Statement of Agreed Facts, in advance of the hearing, copies of which were contained in the hearing bundle.

In addition the panel was presented with correspondence from Mr Donnelly's representative which stated that Mr Donnelly had waived his right to attend the hearing, that he was aware of his right to be present but decided not to do so. The email concerning this was sent by the teacher's representative on 23 May 2019. Subsequently on 29 May 2019, Mr Donnelly's representative confirmed that the hearing bundle was not contested.

After hearing submissions from the presenting officer and receiving legal advice, the panel announced the decision as follows.

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"). Furthermore the panel was 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 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 severely constrained.

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 continuing with the hearing. There was no indication that an adjournment might result in the teacher's attendance at the hearing and it was in the interests of justice and appropriate to proceed in his absence.

Taking account of the public interest in proceedings taking place within a reasonable time, the panel decided to exercise its discretion under paragraph 4.29 of the Procedures to proceed in the absence of the teacher.

Application to admit documents

The presenting officer applied to admit documents including correspondence to and from Mr Donnelly and his representative in addition to correspondence from the St Columba's Catholic Boys School ("the school") in respect of its application, requesting anonymity during these proceedings. A further application was made by the presenting officer to admit email correspondence between Mr Donnelly's representative and the presenting officer dated 12 and 13 June 2019 with regards to the proposed amendment to allegation 2 (b).

The documents were not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel was required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures, at the discretion of the panel.

The panel took into account representations from the presenting officer with regards to the admission of documents. The panel exercised caution when considering whether to allow the documents to be admitted 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 determined that both of these factors applied.

The panel confirmed that it allowed those documents to be included in the bundle and paginated at 218 to 231.

Application for anonymity of a school

On behalf of the school, the presenting officer made an application for the name of the school not to be disclosed during the hearing. The panel considered the representations made by the school in an email dated 11 June 2019 together with a letter from Ofsted dated 7 February 2019.

Paragraph 4.60 of the Procedures gives discretion to the panel, if it considers it to be in the interests of justice, to anonymise the name and identity of a school during a hearing or at all. In considering whether to grant anonymity, the panel took into account the general rule that 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 request for anonymity ran contrary to the public interest and the principle that limited interference with the public nature of the proceedings is preferable to a permanent exclusion of the public.

The panel determined that, in the circumstances of this case, it was not appropriate to anonymise the name of the school. In doing so, the panel commented that the school's concerns in respect of the impact of this hearing on its reputation could be alleviated since the allegations did not arise in a school setting.

Application to amend allegation

An application was made by the presenting officer to amend the Notice of Proceedings by amending allegation 2 (b) to include an additional allegation at (iv), *'in which you describe how Pupil B should arrange his genitalia within his underwear'*.

The panel has the power to, in the interests of justice, amend an allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case have been proven.

Before making an amendment, the panel is required to consider any representations by the presenting officer and by the teacher, and the parties have been afforded that opportunity. The teacher's representative opposed the application on the ground that to add the proposed allegation at this stage, during the hearing and in the knowledge that Mr Donnelly is not present or represented at the hearing, is unfair to him.

The panel heard (and saw evidence of the fact) that the TRA had sent the proposed amendment to Mr Donnelly's representative by email on 12 June 2019 and a response was sent the following day.

The panel was concerned that this application was made at such a late stage in the proceedings, and exercised caution to ensure that there was no unfairness to the teacher. Whilst Mr Donnelly was given a short amount of notice of the proposed application, the panel determined that the teacher's case would not have been presented differently had the amendment been made at an earlier stage because the evidence in support of the allegation had been served sometime prior to the hearing and Mr Donnelly responded to this in the Statement of Agreed Facts, in a letter from Mr Donnelly's representative dated 8 October 2018 and his witness statement dated 15 May 2019. Therefore, no unfairness or prejudice was caused to the teacher.

The panel noted that, if the panel exercised its discretion and allowed the amendment then a request to include additional evidence was made. The panel allowed an additional sentence, as requested by Mr Donnelly, to be incorporated into his witness statement.

For the reasons set out above, the panel allowed the amendment to allegation 2 (b).

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – page 1

Section 2: Notice of Proceedings and Response – pages 2 to 15

Section 3: Teaching Regulation Agency documents – pages 16 to 208

Section 4: Teacher documents – pages 209 to 217

In addition, the panel agreed to accept the following:

- Correspondence between Mr Donnelly (and his representative) to the TRA with regards to his voluntarily waiving his right to attend the hearing – pages 218 to 223
- Correspondence from the School dated 11 June 2019 – pages 224 to 229
- Correspondence between the presenting officer and Mr Donnelly’s representative dated 12 and 13 June 2019 – pages 230 to 231

The panel members confirmed that they had read all of the documents in advance of the hearing, and in the case of the additional documents, during the course of the hearing.

Witnesses

The panel did not hear witness evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirmed that it had read all documents provided in the bundle in advance of the hearing and those it had received during the course of the hearing.

Mr Donnelly was employed as Head of PE at St Columba’s Catholic Boys School (“the school”) until his resignation on 26 April 2018. The school was informed of the concerns raised in respect of Mr Donnelly’s inappropriate behaviour, outside of the school setting, on or around 25 January 2018 and commenced immediately thereafter, an internal investigation to consider the allegations raised and the safeguarding concerns.

In addition, but separate to his position at the school, Mr Donnelly was the manager of a local [Redacted] football team. Pupils at the school were team members of the football team including Pupil A and B.

The allegations against Mr Donnelly related to his failure to maintain appropriate boundaries in relation to Pupil A and B by exchanging personal contact details and thereafter, exchanging inappropriate messages with those pupils late at night. It was alleged that such conduct was flirtatious, of a sexual nature and/or sexually motivated.

Findings of fact

Our findings of fact were as follows:

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

Whilst employed as Head of PE at St Columba's Boys School you:

1. Failed to maintain appropriate professional boundaries in relation to Pupil A including by:

a. Exchanging personal contact information with him;

The panel had regard to the admissions made in the Statement of Agreed Facts together with Mr Donnelly's witness statement, which detailed that he came to have the telephone number of Pupil A as he had created a WhatsApp group and Pupil A was a participant of that group.

Mr Donnelly accepted that he did not have consent from Pupil A's parents to send direct messages on WhatsApp and he exchanged a number of messages with Pupil A between 8 December 2017 and 25 January 2018.

On the basis of the admission and in consideration of the evidence before it, the panel found the allegation proven.

b. Exchanging messages with Pupil A, including one or more messages:

i. Which were sent late at night

As with allegation 1 (a), the panel had regard to the Statement of Agreed Facts together with Mr Donnelly's witness statement.

Mr Donnelly admitted that *"it was not uncommon to send these messages late at night and on at least three separate occasions, messages were sent between 9pm and 2am"*. This admission was supported by WhatsApp messages which were date and time-stamped.

The panel did not consider Mr Donnelly's explanation as to why messages to Pupil A were sent late at night as plausible. Whilst it was accepted that Mr Donnelly went on holiday on or around 23 December 2017 and returned on or around 1 January 2018, the panel determined that Mr Donnelly's account of having jet lag was inconsistent with the evidence available. The panel noted that messages were sent late at night on 21 December 2017, prior to Mr Donnelly's holiday, for example on 21 December between 00:26 am to 01:21 am and sometime after his holiday on 5 and 21 January 2018.

On the basis of the admission and in consideration of the evidence before it, the panel found the allegation proven.

ii. In which he asked him what kind of underwear he wears;

The panel had regard to the Statement of Agreed Facts together with Mr Donnelly's witness statement providing an explanation as to the circumstances surrounding this allegation.

The panel noted that Mr Donnelly initially discussed, in the WhatsApp messages, football, team arrangements and also general conversation with regards to holidays. Mr Donnelly then initiated a conversation on 21 December 2017 at 01.00 am regarding male underwear. During the same conversation Mr Donnelly asked Pupil A's underwear preference and made suggestions with regards to the type of underwear Pupil A should wear, going as far as providing a photograph by way of illustration. The same conversation was resurrected on 1 January 2018, where Mr Donnelly provided his view of Pupil A's underwear size.

The panel considered Mr Donnelly's explanation of the discussion had with Pupil A which stated that his *"intention in sending the messages was to support Pupil A as a football player and ensure that he was wearing appropriate clothing to minimise the risk of injury"*.

The panel noted that Mr Donnelly was not in direct communication with parents and had, on one occasion, asked Pupil A to seek his parents' permission to purchase a team tracksuit. The same consent had not been sought for underwear. Mr Donnelly accepted that he purchased underwear for Pupil A and contained within a WhatsApp message on 5 January 2018, was a separate photograph of a model wearing briefs.

The panel noted that there was no evidence of a history of sports injuries associated with wearing incorrect underwear in the football team, or Pupil A, [Redacted]. The panel determined that the forum and the context in which the advice was given, was inappropriate.

On the basis of the admission and in consideration of the evidence before it, the panel found the allegation proven.

2. Failed to maintain appropriate professional boundaries in relation to Pupil B, including by:

a. Exchanging personal contact information with him;

The panel had regard to the admissions made in the Agreed Statement of Facts together with Mr Donnelly's witness statement which detailed that he came to have the telephone number of Pupil B as he had created a WhatsApp group and Pupil B was a participant of that group.

Mr Donnelly accepted that he did not have the consent of Pupil B's parents to send direct messages on WhatsApp and he exchanged a number of messages with Pupil B between 20 December 2017 and 24 January 2018.

On the basis of the admission and in consideration of the evidence before it, the panel found the allegation proven.

b. Exchanging messages with Pupil B, including one or more messages:

i. Which were sent late at night;

Mr Donnelly accepted in the Statement of Agreed Facts that it was "not uncommon to send these messages late at night and on at least six separate occasions, messages were sent between the hours of 9pm and 2am". The panel noted that this statement was inconsistent with the evidence, in that on 1 January 2018, the last message sent from Mr Donnelly to Pupil B was 04:08 am.

It was clear from the evidence that Mr Donnelly had initiated multiple conversations with Pupil B late at night including on 20 December 2017 at 23.32 pm, 1 January 2018 at 00:24 am, 5 January 2018 at 22:25 pm and 6 January 2018 at 23:20 pm.

For the same reasons as allegation 1 (b) (i) as set out above, the panel does not find Mr Donnelly's account credible. The panel determined that on more than one occasion, Mr Donnelly could not have plausibly been jet lagged, as suggested due to him not having been on holiday at that time or sufficient time had elapsed since his return. Moreover, jet lag in the panel's opinion would not explain why a teacher would breach professional standards by contacting students early in the morning.

On the basis of the admission and in consideration of the evidence before it, the panel found the allegation proven.

ii. In which he asked him what kind of underwear he wears;

The panel considered the Statement of Agreed Facts in which Mr Donnelly stated that:

"(a) Matters discussed in these messages were not limited to Pupil's involvement with the football team but included general conversation about how Pupil B spent his time over the Christmas holidays..."

“(b) Multiple messages were exchanged, after 11pm, where the subject under discussion was Pupil B’s underwear and how he can wear them for the most comfortable fit. These exchanges [began] by Mr Donnelly asking Pupil B if he is still wearing his briefs to train and play in. There then follows a number of exchanges that discusses, the size of the brief, [whether the these are the right size and Mr Donnelly offers to buy Pupil B some larger briefs]”.

“(c) Mr Donnelly [expressed] that he has a preference for tight underwear.”

“(d) The messages exchanged were not the first conversation Mr Donnelly and Pupil B had about Pupil B’s underwear as is demonstrated by Mr Donnelly’s prior knowledge that Pupil B wore briefs to play in.”

The panel heard that the conversation discussing underwear had taken place via WhatsApp at 23.04 pm on 5 January 2018.

Mr Donnelly explained in his witness statement that his intention in sending the messages to Pupil B about his underwear was to provide support as a football player and ensure that he played wearing appropriate clothing.

In an earlier account, separate to the case brought by the TRA, Mr Donnelly accepted that he had previously discussed underwear with another member of the football team, because that player had sustained an injury. Mr Donnelly explained that he had previous experience of a friend suffering from testicular issues, due to wearing incorrect underwear. In respect of Pupil B, there was no evidence that he was suffering from the same or similar injury. Furthermore there was no evidence that the same conversation had taken place with parents present, only via direct WhatsApp messages with Pupil B.

The panel found the messages sent to be inappropriate given the tone, content and the time in which they were sent.

On the basis of the admission and in consideration of the evidence before it, the panel found the allegation proven.

iii. In which he stated that he was lying in bed and that he “should put some clothes on”, implying that he was naked.

The panel noted Mr Donnelly’s admission in respect of this allegation in that he described “how he was lying in the bed and [was] cold and should put some clothes on. He [suggested] that he may not own any pyjamas”.

The panel had regard to the time the conversation had taken place between Pupil B and Mr Donnelly together with the context of the disclosure. This particular conversation was instigated by Mr Donnelly, via private message, on 1 January 2018 at 03:59 am and concluded on the same day at 04:08am.

Mr Donnelly suggested in his witness statement that, ‘The message stating that “I should put some clothes on” was in the context of an exchange I had informed the pupil that I had just returned from a trip to Australia and was awake late at night because of jet lag and cold because of the change in temperature between Australia and the UK”.

The panel accepted, given the timing of this message, that Mr Donnelly may have been suffering from jet lag. However, the panel determined that, for the type of relationship Mr Donnelly had with Pupil B, such comments were highly inappropriate.

On the basis of the admission and in consideration of the evidence before it, the panel found the allegation proven.

iv. in which you describe how Pupil B should arrange his genitalia within his underwear.

The panel noted during the presenting officer’s application to include this sub-allegation that Mr Donnelly objected to the amendment, for the reasons set out above. On that basis the panel considered this allegation to be contested.

The panel went onto consider the evidence before it, together with the representations made by the presenting officer and email dated 13 June 2019 from Mr Donnelly’s representative, in determining whether the allegation had been proven.

Mr Donnelly accepted in the Statement of Agreed Facts that he provided *“a step-by-step guide to Pupil B about how he should arrange his genitalia within his briefs”*.

Furthermore, in a letter dated 8 October 2018, Mr Donnelly’s representative (on his behalf) stated that *“Our member accepts that his exchanges in respect of how Pupil B arranged his genitals were not appropriate. However his comments were made in the context of appropriate clothing for playing sports”*.

Mr Donnelly reiterated again in an email dated 13 June 2019 (which the panel admitted as additional evidence) that *“Mr Donnelly’s intention in sending this message was to support pupil B as a football player to ensure comfort and prevent injury”*.

The panel considered the WhatsApp messages, which began on 5 January 2018 at 22:25 pm. The discussion, instigated by Mr Donnelly, initially centred around football and then led to an discussion between Mr Donnelly and Pupil B whereby both exchanged information about their emotional feelings. Again the conversation shifted to school, relationships and football. At 23:34 pm, Mr Donnelly instigated a conversation about underwear, which escalated from discussing Pupil B’s underwear size to genitalia. Comments from Mr Donnelly included:

- “Do they feel too tight” at 23.11 pm;
- “Although you will be used to your boxers allowing everything to hang loose...” at 23;14 pm;

- “You should think about how you arrange yourself inside them...” at 23:23 pm; and
- “Yep – Briefs up – hand in – pull balls up – pull junk up to whichever side you prefer. Should be more comfortable” at 23:38 pm on the same evening.

The panel determined that the conversation leading up to Mr Donnelly’s advice to Pupil B with regards to how to arrange his genitalia, together with the context and time in which the messages were sent is highly relevant evidence that Mr Donnelly failed to maintain a professional boundary with Pupil B. The panel noted that, on at least one occasion during the conversation on 5 January 2018, Pupil B attempted to change the subject.

The panel determined that the allegation had been found proven, on the balance of probabilities.

3. Your conduct, as may be found proven at 1 and/or 2 above was;

a. Flirtatious;

b. Conduct of a sexual nature and/or sexually motivated.

The panel went on to consider whether those particulars and elements of allegations 1 and 2 found proven amount to conduct which was flirtatious, conduct of a sexual nature and/or sexually motivated.

The panel assessed in detail the circumstances of the allegations to consider whether, on the balance of probabilities, the conduct was flirtatious, sexual in nature and/or sexually motivated or whether, as Mr Donnelly argued, the conduct of a caring football coach/teacher.

The panel received legal advice on the definition of sexual motivation and considered the case law put forward by the presenting officer (Mohammed Suhaib Sait v The General Medical Council [2018] EWHC 3160 Admin).

For ease of reference, the panel went onto consider allegations 1 and 2 separately as the circumstances for each differed.

In respect of Pupil A, the panel found that Mr Donnelly initiated the conversations with Pupil A regarding the type and size of underwear he wore. Mr Donnelly also purchased underwear for Pupil A, which in the panel’s view was highly inappropriate. The panel determined that, on the evidence available, Mr Donnelly’s conduct was flirtatious, of a sexual nature and sexually motivated, taking into consideration (either individually or collectively) the forum in which the conversation took place such as direct messages without parental consent. The time in which the messages were sent and Mr Donnelly’s persistence in resurrecting conversations of a sexual nature were also highly relevant to the panel’s determination.

In respect of Pupil B, the panel determined that Mr Donnelly had developed a friendly relationship with Pupil B which led (on more than one occasion) to a more intimate discussion about underwear and thereafter genitalia. Mr Donnelly had, in his capacity of a teacher (and football coach), developed trust with Pupil B. The panel determined that this relationship led to Pupil B making emotional disclosures and a discussion about intimate information. The panel noted that on a number of occasions, Pupil B attempted to redirect the conversation to a different topic, which suggests that Pupil B was uncomfortable with the conversation.

The panel noted in the Statement of Facts that *“my perception of appropriate boundaries had become blurred... The messages I sent to Pupils A and B were of the type which I might have sent to friends of my own age and I accept that it was not appropriate to send them to pupils of the age of A and B”*.

As in the case of Pupil A, the panel found that Mr Donnelly’s conduct towards Pupil B was flirtatious, of a sexual nature and sexually motivated given the context and content of the conversations, in addition to the time the messages were sent.

The panel found that in respect of both Pupil A and B, Mr Donnelly acted in a way which was contrary to the school’s safeguarding policy by obtaining contact details of students. Initially the conversations, instigated by Mr Donnelly late at night, were of a non-sexual nature. The conversations then escalated, by Mr Donnelly, into discussions about underwear (including advice on types and size) and in the case of Pupil B, there was reference to his genitalia.

The panel formed the view that, on the balance of probabilities, it did not find Mr Donnelly’s account credible in that his actions in respect of Pupil A and B, as accepted and found proven, did amount to conduct which was flirtatious, of a sexual nature and/or sexually motivated.

The panel found that Mr Donnelly’s conduct was sexually motivated and that the WhatsApp conversations that he had with Pupils A and B were for sexual gratification and/or in hope of a future sexual relationship. The panel did not consider that Mr Donnelly’s conduct was as a result of his concern for pupils’ health and welfare.

Considering the evidence as a whole, the panel noted that such conduct could be deemed by an ordinary citizen to be sexually motivated. This is reinforced by the fact that a parent initially reported Mr Donnelly’s conduct as inappropriate.

The panel gave due regard to the notes of the Police investigation referring to eight members of the football team receiving similar messages and the Police concluded that they were of a “grooming nature”. The panel exercised caution when considering this information since this is a separate forum and decision making process however determined that these factors were highly relevant to Mr Donnelly’s intentions and state of mind.

The panel therefore found the allegation proven, on the balance of probabilities.

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

Having found all of the allegations proven, the panel went 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 referred to as “the Advice”.

The panel was satisfied that the conduct of Mr Donnelly in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considered that by reference to Part Two, Mr Donnelly 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; and
 - 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 was satisfied that the conduct of Mr Donnelly amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Donnelly conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel found that the offence of sexual activity was relevant.

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

The panel noted that the allegations took place outside of the education setting, often late at night and instigated by Mr Donnelly. The conversations were intimate, inappropriate and of a sexual nature. The panel determined that Mr Donnelly’s conduct affected the way the person fulfils their teaching role, may lead to pupils being exposed to or influenced by the behaviour in a harmful way and affected the way in which the profession is perceived.

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

The panel took 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 took into account 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 found that Mr Donnelly's actions constitute 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 considered whether it was an appropriate and proportionate measure, and whether it was 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 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 protection of other members of the public, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining the teacher in the profession.

In light of the panel's findings against Mr Donnelly, which involved inappropriate conduct which was considered to be of a sexual nature and sexually motivated, there was a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate relationships with children. Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Donnelly 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 Donnelly was outside that which could reasonably be tolerated.

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 Donnelly.

In carrying out the balancing exercise the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Donnelly. The panel took further account of the Advice, which suggested 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;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils; and
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and 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. In light of the panel's findings, there was no evidence that the teacher's actions were not deliberate and there was no evidence to suggest that the teacher was acting under duress, and in fact the panel found the teacher's actions to be calculated and motivated.

The panel was provided with no evidence of Mr Donnelly's character. However the panel had regard to Mr Donnelly's witness statement where he stated that he realised his actions were misguided, showed a lack of understanding of child protection procedures, breached professional boundaries and were entirely inappropriate. He was profoundly sorry for any distress his actions caused to any member of the football team of which he was immensely proud. He realised that his lack of judgement meant that he ran the risk of being barred from the profession he loves and to which he had dedicated his adult life.

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 was of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order was not a proportionate and appropriate response.

Recommending that publication of adverse findings was 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 was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweigh the interests of Mr Donnelly because the conduct towards pupils was sexual and predatory, which was a significant factor in forming that opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for them to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice stated 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 indicated that there are behaviours that, if proven, would militate against a review period being recommended. This behaviour 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. Mr Donnelly has shown limited insight into his behaviour but in his witness statement, he expressed remorse for any distress caused and realisation that his actions were misguided.

The panel felt 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 Donnelly should be the subject of a prohibition order, with no provision for a review period.

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

The panel also considered whether Mr Donnelly conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel found, “that the offence of sexual activity was relevant.”

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 Donnelly, 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 observed, “In light of the panel’s findings against Mr Donnelly, which involved inappropriate conduct which was considered to be of a sexual nature and sexually motivated, there was a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate relationships with children.” 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, “the panel had regard to Mr Donnelly’s witness statement where he stated that he realised his actions were misguided, showed a lack of understanding of child protection procedures, breached professional boundaries and

were entirely inappropriate. He was profoundly sorry for any distress his actions caused to any member of the football team of which he was immensely proud. He realised that his lack of judgement meant that he ran the risk of being barred from the profession he loves and to which he had dedicated his adult life.”. The panel go on to say, “Mr Donnelly has shown limited insight into his behaviour”. In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this puts at risk future safeguarding 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, “public confidence in the profession could be seriously weakened if conduct such as that found against Mr Donnelly 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 Donnelly himself. The panel observe it, “was provided with no evidence of Mr Donnelly’s character”.

A prohibition order would prevent Mr Donnelly 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 Donnelly 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 full 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, "This behaviour 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. Mr Donnelly has shown limited insight into his behaviour but in his witness statement, he expressed remorse for any distress caused and realisation that his actions were misguided."

I have considered whether a 2 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 nature of the misconduct found and the lack of full 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 Robert Donnelly 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 Donnelly 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 Robert Donnelly 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: 18 June 2019

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