



Teaching
Regulation
Agency

Mr Marc Thompson: Professional conduct panel outcome

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

February 2023

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

Teacher:	Mr Marc Thompson
Teacher ref number:	3735236
Teacher date of birth:	27 December 1968
TRA reference:	17007
Date of determination:	24 February 2023
Former employer:	Salisbury Sixth Form College, Wiltshire

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 21 February 2023 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Mr Marc Thompson.

The panel members were Ms Jasmin Choudhury (teacher panellist – in the chair), Mr Terry Hyde (former teacher panellist) and Mrs Shabana Robertson (lay panellist).

The legal adviser to the panel was Mr Delme Griffiths of Blake Morgan LLP solicitors.

The presenting officer for the TRA was Ms Matilda Heselton of Browne Jacobson solicitors.

Mr Thompson was present and was represented by Mr Shyam Thakerer of Counsel.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 19 December 2022.

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

1. On or around 16th March 2017, he provided false and/or misleading information in connection with his application for employment as a Teacher at the Salisbury Sixth Form College, by indicating on a disclosure form that he had not been subject to any previous disciplinary investigations, when he knew that was untrue;
2. His conduct as may be found proven at allegation 1 above was dishonest and/or demonstrated a lack of integrity;
3. Whilst employed as a Teacher at the Salisbury Sixth Form College, between or around September 2017 to November 2017, he acted inappropriately towards and/or in the presence of pupils in that he;
 - a. used sexual language and/or sexual innuendo;
 - b. instructed and/or encouraged one or more pupils to undertake inappropriate and/or sexual actions;
 - c. asked if Pupil A had a boyfriend and/or in response to Pupil A's reply as to whether she had a boyfriend said "that's so sad" or used words to that effect;
 - d. commented that Pupil A would be "asking for it", or used words to that effect, if Pupil A wore a crop top and/or jeans;
 - e. suggested that Pupil A looked depressed as she undertook religious studies;
4. His behaviour as may be found proven at 3a and/or 3b and/or 3c and/or 3d above was sexually motivated.

Whilst Mr Thompson made admissions in relation to certain factual particulars, the allegations were denied. Mr Thompson also denied that his conduct amounted to unacceptable professional conduct or conduct that may bring the profession into disrepute.

Preliminary applications

Applications were made on behalf of Mr Thompson and the TRA to admit the following documents:

- Mr Thompson's late evidence served in response to the Notice of Proceedings.
- A witness statement from Witness A.
- A letter dated 16 November 2017 from [REDACTED] to Witness A.

First, the panel was satisfied that the documents were relevant to the issues before it.

Secondly, it concluded that the documents should be admitted in the interests of fairness and justice. Neither party objected to the introduction of these late documents. The panel was, therefore, satisfied that their admission did not give rise to unfairness.

The documents were therefore added to the hearing bundle.

Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 6 to 7

Section 2: Notice of proceedings and response – pages 9 to 33

Section 3: Teaching Regulation Agency witness statements – pages 35 to 40

Section 4: Teaching Regulation Agency documents – pages 42 to 146

In addition, the panel agreed to accept the late documents outlined above in response to the preliminary applications made by the parties as pages 147 to 163.

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

Witnesses

The panel heard oral evidence from:

- Witness A, [REDACTED]
- [REDACTED] Pupil A.

Mr Thompson also gave oral evidence to the panel.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Introduction

Mr Thompson was formerly employed as a teacher of health and social care at the Salisbury Sixth Form College ("the College").

Mr Thompson commenced employment at the College in August 2017. He had previously been engaged by the College on a temporary basis via a teaching agency.

Concerns regarding Mr Thompson arose in Autumn 2017 in relation to his conduct during an assessment.

Specifically, on or around 9 November 2017, a pupil reported Mr Thompson to the College in connection with an allegedly inappropriate role play undertaken during the course of the assessment.

In response to the concerns, the College undertook an investigation. At the conclusion of the investigation, the College commenced a disciplinary process.

On 30 November 2017, a disciplinary hearing was held and Mr Thompson left his position.

On 26 January 2018, Mr Thompson was referred to the TRA.

Evidence considered by the panel

The panel carefully considered all of the evidence presented. It accepted the legal advice provided.

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

- Witness A, [REDACTED]
- Pupil A.

The TRA also relied upon a witness statement from Individual B, [REDACTED] at the College who was appointed as [REDACTED]. The panel was informed that Individual B

had indicated to the TRA, shortly before the hearing, that he would not be attending to give evidence.

Individual B's evidence, together with the written accounts from other individuals obtained during the College's investigations, was admitted as hearsay evidence.

The panel was satisfied this gave rise to no unfairness in the specific circumstances of this case.

Nonetheless, the hearsay evidence presented was considered with appropriate caution. If and where it was relied upon, this is addressed in the panel reasons, below.

Mr Thompson attended the hearing and was represented by Mr Shyam Thakerar of Counsel. Mr Thompson also gave oral evidence to the panel.

The panel confirmed it had not relied upon any findings made, or opinions expressed, during the College's investigation or subsequently. It formed its own, independent view of the allegations based on the evidence presented to it.

Findings of fact

The findings of fact are as follows:

- 1. On or around 16th March 2017, you provided false and/or misleading information in connection with your application for employment as a Teacher at the Salisbury Sixth Form College, by indicating on a disclosure form that you had not been subject to any previous disciplinary investigations, when you knew that was untrue.**

Whilst still engaged by the College via a teaching agency, Mr Thompson applied to the College for a permanent position as a sports teacher, which was unsuccessful.

As part of the application process, Mr Thompson completed an application form dated 16 March 2017, which was included in evidence. In response to a question asking if he had been the subject of any disciplinary investigation and/or sanction by any organisation, Mr Thompson ticked a box indicating that he had not been.

In November 2017, during the course of the College's investigation, Witness A contacted the [REDACTED].

There was a lack of clarity as to the precise circumstances in which Witness A did so. There was a suggestion that this was prompted by Mr Thompson alluding to an involvement in an investigation process previously at [REDACTED]. [REDACTED] was Mr Thompson's most recent employer prior to his placement at the College.

In any event, in response, by letter dated 16 November 2017, [REDACTED] confirmed that:

"... [REDACTED] *undertook an investigation into Marc Thompson in January 2016*

...

... I am also able to confirm that he resigned prior to us completing our investigation. Had he not resigned, the investigating manager would have recommended that the matter be dealt with by way of a disciplinary hearing."

Witness A confirmed that he did not obtain any further information regarding the precise circumstances of the investigation which, on the face of the letter, had been at least commenced by [REDACTED]. He confirmed that, at one stage, a [REDACTED] representative relayed to him orally that a form of settlement agreement had been entered into between [REDACTED] and Mr Thompson, including non-disclosure obligations, which prevented [REDACTED] from providing full details.

On the basis of the information set out in [REDACTED] letter, the College alleged, as part of its disciplinary process, that Mr Thompson did not declare the investigation undertaken by [REDACTED] to the College when he should have done. That allegation was maintained by the TRA in these proceedings.

Mr Thompson denied the allegation. He accepted that, on a literal interpretation, he did provide false or misleading information, in connection with his application, by indicating that he had not been subject to any previous disciplinary investigations. However, he denied knowing that this was untrue.

Mr Thompson relied upon the following matters in particular:

- He disclosed the circumstances of his departure from [REDACTED] to the teaching agency that placed him at the College, which advised him that it was not a matter that he needed to disclose.
- When the sports teacher post was advertised, he also utilised the support of the teaching agency, which checked his application.
- He received advice from his union representatives at the time of his departure from [REDACTED] that he did not need to disclose the circumstances due to the existence and nature of the settlement agreement.
- When he was applying for the position of sports teacher, he spoke to his line manager, Individual B, who told Mr Thompson to use him, Individual B, rather than [REDACTED] as referee.

- The College only became aware of the investigation which had taken place at [REDACTED] because Mr Thompson informed them about it.

There was agreement between the parties as regards to the fact that Mr Thompson had been subject to an investigation, which he was aware of and which, on the face of the College's application form, should have been disclosed.

Accordingly, the only issue in dispute was whether, by not revealing that he had been subject to an investigation by [REDACTED], Mr Thompson provided information which he knew was untrue.

On balance, the panel was persuaded by Mr Thompson's explanation that, at the point at which the application form was submitted, he genuinely believed this was not a matter he needed to disclose.

Whilst the panel had only limited information available to it regarding the circumstances of his departure from [REDACTED], it was clear that it resulted in the parties entering into a confidential settlement agreement, which Mr Thompson believed he was bound by. Furthermore, Mr Thompson confirmed that he resigned from his position within a very short period following his suspension, such that whatever investigation was undertaken, it was unlikely to have progressed substantively.

The panel was satisfied that when Mr Thompson completed the form and ticked 'no' in relation to the question in issue, he was of the belief that what happened at [REDACTED] was not something that fell within the scope of it.

The panel therefore concluded that Mr Thompson did not provide information which he knew to be untrue and found allegation 1 not proved.

2. Your conduct as may be found proven at allegation 1 above was dishonest and/or demonstrated a lack of integrity

Having found allegation 1 not proved, the panel was not required to consider whether Mr Thompson's actions were dishonest or demonstrated a lack of integrity.

Allegation 2 was, as a consequence, not proved.

3. Whilst employed as a Teacher at the Salisbury Sixth Form College, between or around September 2017 to November 2017, you acted inappropriately towards and/or in the presence of pupils in that you;

- a. used sexual language and/or sexual innuendo;**
- b. instructed and/or encouraged one or more pupils to undertake inappropriate and/or sexual actions**

The panel considered allegations 3(a) and (b) together.

They concerned an assessment undertaken during the delivery of a BTEC Health and Social Care qualification.

Mr Thompson alluded to the fact that he did not consider himself to be a specialist in this subject and addressed the circumstances in which he began teaching health and social care at the College.

A specific assessment for one of the units taught as part of this qualification required a role play exercise to be undertaken.

As well as the oral and documentary evidence presented, the panel was presented with video recordings of the role plays, undertaken by students, on or around [REDACTED].

Pupil A was one of six students tasked with performing certain roles as part of the role play exercise, designed around a care home scenario. The students who were being assessed, on this particular day, were brought into a room, in which Pupil A and the other students were located, and were required to interact with them. The student 'actors' were expected to present challenges to the assessed learners as part of the assessment process.

Pupil A and her fellow students were given written instructions about the roles they were being asked to perform. Pupil A confirmed that her role was to be a person with dementia.

However, after several students had completed their assessments the scenario was not deemed, by Mr Thompson, to be as challenging for the learners being assessed to the extent anticipated.

Pupil A gave evidence in the following terms as regards to what happened subsequently during the assessment:

- Mr Thompson told the role play actors about changes/improvements he wanted to be made.
- This included telling Pupil A that her personality was, henceforth, to be 'flirty'. In oral evidence, Pupil A stated that the pretext to this was that Mr Thompson stated that dementia sufferers, as being depicted by Pupil A, could be "*sexually frustrated*".
- Mr Thompson told Pupil E that a book she was pretending to read, as part of the role play scenario, was 'Fifty Shades of Grey'. During subsequent feedback sessions, he told Pupil E that she needed to talk more about 'Fifty Shades of Grey'.

- Pupil A stated in her witness statement that Mr Thompson told her she should talk about a 'red room', which was said to refer to a form of 'play room' depicted in the book and the film adaptation of it.
- In response to Mr Thompson's instruction for her to be 'flirty', Pupil A started to make comments, to the students being assessed as part of the role she was performing, like *"You're cute"* and *"You're my boyfriend"*.
- Following filming of one student's video, in which the game 'Connect 4' was being used as a prop, Pupil B made a comment to the effect that Pupil A should say, *"We connect on all 4's"*. Mr Thompson responded by stating, *"That's a good idea, [Pupil A] say that"*, which she did.
- She was told by Mr Thompson that, when Pupil F came into the classroom, she was to walk over him, touch him, ask him to be her *"boyfriend"* and *"flirt"*. Pupil A stated that, before Pupil F came in, she told Mr Thompson that she did not know Pupil F and said aloud, *"I don't want to do this"*. She accepted that this was not directed at Mr Thompson or acknowledged by him. In the course of questioning, Pupil A accepted Mr Thompson may not have heard the comment. In any event, Pupil A stated that Mr Thompson did not rescind his instructions, and she proceeded to follow them.
- Before Pupil D entered the room for their assessment, Mr Thompson said to Pupil A that he wanted her to mispronounce Pupil D's name as *"[REDACTED]"* and *"To keep calling him [REDACTED] very innocently as if you would not know"*. This was a direct play on Pupil D's actual name. Pupil A asserted that Mr Thompson gave examples of what to say, such as *"Oh we love a good [REDACTED]"* and *"Oh that's a nice name [REDACTED]"*. Pupil A asserted that Mr Thompson also told Pupil C to get angry when Pupil A was calling Pupil D *"[REDACTED]"*.
- During the filming of one assessment, she saw Mr Thompson signal to Pupil C to look down Pupil H's top. Mr Thompson did this, when he was filming, by pointing two fingers at his eyes, to Pupil H and to his own chest as the *"boob area"*. Mr Thompson then *"pointed to Pupil C, then pointed to Pupil H and then to his chest again"*. In oral evidence, Pupil A confirmed that Mr Thompson did not verbalise this instruction but rather this was her interpretation of the gestures she witnessed Mr Thompson make.
- After Pupil I was filmed, Mr Thompson told Pupil C that he was surprised Pupil C did not say anything about Pupil I's legs, as she was wearing a short dress.
- At the conclusion of the session, Mr Thompson made a comment to the effect that *"Now that is what we know [Pupil A] likes to do in the bedroom"*.

In oral evidence, Pupil A was shown some of the assessment recordings. She accepted that certain comments she could be observed making, some of which were overtly sexual, were made of her own volition as part of her adopting her 'role'. They were not expressly suggested by Mr Thompson. However, Pupil A maintained that all of her actions and comments were in direct response to Mr Thompson instructing her to be 'flirty', and stated that at no point did Mr Thompson bring matters to a close or suggest that she had gone too far.

The TRA also relied upon the written hearsay accounts provided by other students, present during the assessment, obtained during the course of the College's investigation. These were carefully considered by the panel.

Mr Thompson denied this allegation. His position in relation to these allegations was, in summary, as follows:

- 'Flirting' may constitute an awkward situation and so he felt this was an appropriate instruction. In oral evidence, he stated he had in mind "*cheeky*" behaviour of a type that could be observed from an elderly lady towards a younger man, although he accepted he did not do anything to put students on this path, having observed their interpretation of his direction.
- Specific directions were provided quickly in the limited period following one student exiting and the arrival of the next student to be assessed.
- The role play 'actors' choose how to present their characters. His focus was not the characterisation but to ensure students being assessed faced communication issues to address, which they could then reflect upon.
- At no point did any student indicate they did not want to play a character, in fact several appeared to get into their characters and added their own material.
- Each role play actor took on what they felt comfortable with and some expanded on it, and rejected suggestions with which they felt uncomfortable.
- During feedback, he did make comments about pulling back on performance or "*toning it down*" when he felt things were escalating. He provided one example of stopping a recording in response to a particular comment made by Pupil A. However, on reflection, in oral evidence he accepted he should have done more.
- He admitted that he used some sexual language and/or sexual innuendo in the presence of pupils but the language was age appropriate and used within the context of the role play scenario.

- He denied that he instructed or encouraged any pupils to undertake inappropriate or sexual actions. He maintained that no physical sexual actions were suggested, beyond a suggestion "*for looking at inappropriate dress*".
- In relation to the student pretending to read 'Fifty Shades of Grey', he asserted this was suggested by the student in question, not by him, and explained the context for this. He confirmed he was content for her to do so. He similarly maintained that it was Pupil A who suggested commenting upon a 'red room', which he was also content with at the time.
- Finally, in relation to the comment he allegedly made to Pupil A at the end of the session, he accepted that he could have said it as a "*throw away gag*" but it would have been a reference to the character and not the student.

Having carefully considered the evidence before it and the parties' submissions, the panel made the following findings of fact:

1. Mr Thompson instructed Pupil A and Pupil C to behave in a 'flirty' manner. In the panel's view, this term could reasonably be construed as sexual language. This was also an instruction and encouragement for these students to undertake inappropriate and sexual actions.
2. Mr Thompson told Pupil E to reference the book '*Fifty Shades of Grey*' and for Pupil A to reference a '*red room*'. The panel considered it was irrelevant whether or not the original suggestion for doing so came from Mr Thompson or the students. Even if it was the students who made these suggestions, they were instructed and encouraged by Mr Thompson to introduce these elements to the assessment. In doing so, the panel was satisfied that he instructed and encouraged the pupils to act in this way and thereby undertake inappropriate actions.
3. Mr Thompson instructed Pupil A to call Pupil D "[REDACTED]" and gave examples of how she might use that term. Accordingly, Pupil A's evidence in relation to this aspect was accepted. Given the other sexualised elements and themes to the lesson and having regard to the evidence from Pupil A, the panel rejected Mr Thompson's suggestion that this was entirely innocent on his part.
4. The panel, therefore, did not accept that Mr Thompson saw no difference between [REDACTED] and, for instance, [REDACTED] or [REDACTED]. Whilst the panel was not of the view that Mr Thompson was instructing Pupil A to do anything beyond the use of the term [REDACTED], it was satisfied that by doing so he was using sexual language and sexual innuendo. Furthermore, Mr Thompson's conduct was such that he was instructing and encouraging Pupil A to undertake inappropriate and sexual actions. It was more likely than not that Mr Thompson

was fully aware of the implications of the term [REDACTED] when he gave his instruction.

5. At the conclusion of the session, Mr Thompson made a comment to the effect that "*Now that is what we know [Pupil A] likes to do in the bedroom*". Whether or not Mr Thompson was referring to Pupil A or her character, the panel was satisfied that by making such a comment, Mr Thompson was using sexual innuendo.
6. Mr Thompson instructed Pupil C to look at or down Pupil H's top. Having carefully considered the evidence before it, including Mr Thompson's admission, the panel was satisfied that Mr Thompson did direct this pupil, albeit in character, to look at Pupil H's chest area, which Mr Thompson maintained was due to the attire Pupil H was wearing. By doing so, Mr Thompson was instructing and encouraging Pupil C to undertake inappropriate and sexual actions, even though Pupil C declined to adhere to this instruction as he felt it was inappropriate.

The panel went on to consider whether Mr Thompson's actions, as found proven, were inappropriate, which he denied.

The panel concluded that Mr Thompson's actions were inappropriate for the following reasons in particular:

- The nature and circumstances of this lesson and Mr Thompson's conduct within it were not appropriate having regard to the age of the students present. It was clear from the accounts of the students that they recognised the inappropriate nature of the assessment activities.
- His actions presented a risk of students feeling embarrassed and unsafe and could have exposed them to ridicule.
- Mr Thompson allowed the inappropriateness of the lesson to escalate in circumstances where, as the adult and teacher in the room, he had a duty to ensure it remained appropriate at all times. Even if Mr Thompson may have taken some, limited action to respond to certain aspects he felt had gone too far, he did not go anywhere near far enough. He failed to make robust, incisive and timely interventions to ensure the assessment remained professional, safe and appropriate.
- It was not necessary or appropriate, within the parameters of the assessment being undertaken, to introduce any sexual elements. At the point at which Mr Thompson believed the scenario was not sufficiently challenging, he had various options open to him. It followed that Mr Thompson consciously and deliberately chose to direct the lesson and the students down a path that introduced sexual elements and themes.

The panel therefore found allegations 3(a) and 3(b) proved.

- c. asked if Pupil A had a boyfriend and/or in response to Pupil A's reply as to whether she had a boyfriend said "that's so sad" or used words to that effect;**

Pupil A gave evidence about a specific incident, which she stated occurred in or around October 2017.

In general terms, she described Mr Thompson as a teacher she felt was "cool", who "*bantered with the class*" and was "*funny*".

However, she stated this particular incident and others caused her to change her opinion of Mr Thompson.

It occurred in a lesson when Pupil A stated she was talking with a friend, Pupil J. Mr Thompson proceeded to join the conversation and asked her if she had a boyfriend. When she told Mr Thompson that, at the time, she did not have a boyfriend, Pupil A stated he replied by saying, "*Oh that's so sad*".

Mr Thompson accepted that he recalled asking Pupil A if she had a boyfriend.

In his witness statement, Mr Thompson also stated that in response to Pupil A's reply, he did make a comment along the lines of "*That's so sad*".

However, in oral evidence, he suggested it was more likely that he would make a comment such as, "*I wonder why*", as part of his jocular approach. He stated this was an attempt to be light-hearted in addressing low level disruptive behaviour to the extent that Pupil A and her friend were not on task and talking about 'boys'.

In response, he confirmed Pupil A laughed and the lesson moved on, which she accepted in oral evidence.

The panel was satisfied, given the clear evidence before it, it was more likely than not that Mr Thompson did act as alleged. This was ill-judged and ill-advised insofar as Mr Thompson could have chosen to address the students' behaviour in a different way.

However, on balance, the panel was not persuaded that Mr Thompson's actions could be said to be inappropriate.

The panel therefore found allegation 3(c) not proved.

- d. commented that Pupil A would be "asking for it", or used words to that effect, if Pupil A wore a crop top and/or jeans;**

Pupil A gave evidence about a development day in October 2017, when Mr Thompson delivered a lesson about child/personal safety.

As part of this lesson, she stated that Mr Thompson talked to the class about what is appropriate to wear and showed slides showing two photographs of women wearing crop tops and jeans. In her statement, Pupil A stated:

"Mr Thompson said that girls who dressed like this should be prepared to be harassed by boys. I put my hand up and said that no girls deserved to be harassed. Mr Thompson said something along the lines of "would you wear that." I said "no because I don't have the right figure". Mr Thompson then asked again if I would wear the outfit, to which I replied yes. Mr Thompson then said something like "well you're asking for it". The class then went quiet."

Mr Thompson denied this allegation. He refuted that he commented that Pupil A "*would be asking for it*", or used words to that effect, in the manner alleged. Rather, he stated that he used those words in a specific context that was misinterpreted. Mr Thompson stated, in particular:

- This was a PSHE lesson in which the theme being addressed was personal safety. A primary purpose of the lesson was to make the students think about their actions and their safety.
- At the outset of such lessons, he would warn the students that it would involve a discussion of issues they may find "*uncomfortable*".
- The lesson covered several elements, including safe practices and clothing, providing strategies and practical advice. It also involved an open discussion regarding realistic issues such as how certain actions and behaviours could be perceived.
- In that context, Mr Thompson stated that he showed slides, specifically developed by professional organisations with expertise in this area, depicting women in certain attire. With reference to those slides, he made a comment regarding how someone might perceive a person wearing such clothing as 'asking for it'. Mr Thompson stressed that this was part of a realistic approach and he was not suggesting that Pupil A, or anyone else, would be, in fact, 'asking for it'. Rather, that could be the unreasonable perspective of another person, which was something that the students could not control.

The panel was not presented with any evidence from anyone else who was present in the lesson in question. It was not something that was specifically investigated by the College and it was not raised by any of the students who were interviewed. This incident was not something that was recorded or reported by Pupil A at the time. She did not raise it during the course of the College's investigation.

Furthermore, the panel recognised that this was a highly sensitive topic that was likely to have been emotive for the students present. Accordingly, the panel had in mind that it was possible that comments made within such a lesson could have been misconstrued or misinterpreted.

In those circumstances and given the lack of contemporaneous and collaborative evidence, the panel was not persuaded that the TRA had proved, to the requisite standard, that Mr Thompson, even if he may have used the specific words alleged in a certain context, directed them at Pupil A in the manner alleged.

The panel therefore found allegation 3(d) not proved.

e. suggested that Pupil A looked depressed as she undertook religious studies;

Pupil A addressed a further incident that occurred during an opening evening at the College, around October 2017.

Pupil A stated that she had been assisting at the event and at one stage in the evening she went into the health and social care classroom, occupied at the time by Mr Thompson, a prospective pupil and their mother. She stated:

"There was work laid out on the table and Mr Thompson was explaining the work to them. Mr Thompson turned around and said, "this is [REDACTED], she takes RS (religious studies) which is why she looks depressed all the time". I laughed and said "yes, see you later". I felt like this situation was very awkward."

Mr Thompson accepted that he may have made reference to Pupil A looking 'depressed', as a general comment at some point, but did not understand the reference to religious studies. He also did not believe he would have made such a comment in the presence of a parent. In oral evidence, Mr Thompson stated that he would not have necessarily known that Pupil A was studying religious studies, which he was more likely to have referred to as philosophy and ethics.

The panel concluded that, as with allegation 3(e), there was a lack of contemporaneous and collaborative evidence in relation to the precise circumstances of this incident. It was not raised by Pupil A until her statement in these proceedings. Even though Mr Thompson accepted he may have used the term 'depressed' at some stage, the panel was unable to determine whether he did so in the precise manner alleged or whether this was necessarily inappropriate.

The panel therefore found allegation 3(e) not proved.

4. Your behaviour as may be found proven at 3a and/or 3b and/or 3c and/or 3d above was sexually motivated.

Having found the facts of allegations 3(a) and 3(b) proved, the panel went on to consider whether Mr Thompson's conduct was sexually motivated.

On the basis of his actions and in the context in which they occurred, the TRA submitted that the appropriate inference to draw was that Mr Thompson's actions were sexually motivated, in that they were in pursuit of sexual gratification. The TRA made reference to the sexual nature of the conduct and language used during the course of the assessment in question.

Mr Thompson denied that his conduct, in any respect, was sexually motivated.

In addition to Mr Thompson's evidence, the panel took account of the fact he was a person of prior good character. This factor, particularly when considered in conjunction with the serious nature of this allegation, meant that the panel had firmly in mind the need to undertake careful and vigorous scrutiny of the evidence before it.

The panel considered allegations 3(a) and 3(b) together.

The panel considered it was more likely than not that this was an occasion when Mr Thompson was not sexually motivated but rather acted as he did due to a misguided approach to the delivery of this particular assessment. This was a significant error of judgement on his part. The fact that matters of a sexual nature were introduced and the fact that Mr Thompson did not appear to appreciate the inappropriateness of his actions, at the time, were in themselves a matter of concern. Nonetheless, the panel was of the view that there was no basis for concluding that his actions, in relation to these allegations, were sexually motivated.

In arriving at that conclusion, the panel placed particular emphasis on the following factors:

- This was a situation that developed from relatively prosaic beginnings into a scenario that became highly inappropriate, in terms of the behaviour Mr Thompson encouraged and allowed to occur. It followed this was not a pre-determined course of conduct but one that evolved.
- There was nothing secretive about Mr Thompson's actions. The assessments were recorded and would therefore have been considered as part of the evaluation process.
- Mr Thompson did not target a particular student or students and the lesson involved male and female students.
- The specific behaviours evidenced were suggestive in nature, as part of the portrayal of characters, rather than being explicitly sexual.

In addition, this proven behaviour was not of a nature, in the panel's view, that would ordinarily result in sexual gratification.

The panel was not, therefore, satisfied that Mr Thompson's conduct in relation to allegations 3(a) or 3(b) was sexually motivated.

The panel therefore found allegation 4 not proved.

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

Having found allegations 3(a) and 3(b) proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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

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

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

The panel also considered whether Mr Thompson's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice.

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

The panel found that none of these offences was relevant.

The panel considered its findings in relation to allegations 3(a) and 3(b) together.

The panel took into account Mr Thompson's experience in teaching health and social care and the fact that this was a one-off incident. It accepted his actions were not pre-planned and evolved during the course of the assessment. There was no clear evidence that his actions resulted in significant or enduring harm to those involved. In addition, Mr Thompson's conduct related to a role play exercise and the characters being portrayed.

Nonetheless, for the reasons set out in the panel's findings and reasons, Mr Thompson's actions were highly inappropriate. Over and above the breaches of the Teachers' Standards identified above, he introduced sexual elements and themes into an assessment process when that was neither necessary nor justified. The course content that he was required to follow made no reference to sexual themes. For those reasons, the panel was satisfied that Mr Thompson's conduct amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

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

The panel next considered whether Mr Thompson's conduct was such that it may bring the profession into disrepute.

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

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

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

In summary, having found the facts of allegations 3(a) and 3(b) proved, the panel further found that Mr Thompson's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was necessary for the panel to go on to

consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

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

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

- the protection of pupils;
- the maintenance of public confidence in the profession; and
- declaring and upholding proper standards of conduct; the interest of retaining the teacher in the profession.

In the light of the panel's findings against Mr Thompson, which involved his use of sexual language and innuendo during an assessment and instructing and encouraging pupils to undertake inappropriate and sexual actions, there was a strong public interest consideration in respect of the protection of pupils.

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

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

Weighed against these matters, the panel also considered whether there was a public interest in retaining Mr Thompson in the profession, should he choose to return to teaching.

Mr Thompson is an experienced practitioner. He has an otherwise good record and there was some information about Mr Thompson's prior practice within the evidence. His competence had not been called into question outside of these proceedings. However, in all the circumstances, the panel was not persuaded that there was a particularly strong public interest in retaining Mr Thompson in the profession. For instance, there was no evidence before the panel to suggest that Mr Thompson had demonstrated exceptionally high standards in his professional conduct or contributed significantly to the education sector.

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 Thompson.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Thompson.

The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were:

- Serious departure from the personal and professional conduct elements of the Teachers' Standards.
- Abuse of position or trust (particularly involving pupils).
- Failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE).

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

The panel considered the following mitigating factors were present in this case:

- Mr Thompson had not been subject to any previous regulatory proceedings.
- In oral evidence, Mr Thompson made reference to challenging personal circumstances at the time of the allegations, which the panel duly noted.
- This was an isolated incident in the context of Mr Thompson's career as a whole and the panel's findings concerned just a single lesson. However, the panel noted that Mr Thompson had provided very limited evidence in mitigation, and nothing by way of recent references or testimonials, which was regrettable.
- Whilst Mr Thompson was an experienced practitioner, he was not particularly experienced in teaching health and social care as a subject.
- Mr Thompson fully participated in these proceedings
- Mr Thompson had apologised for his actions. To some extent, he recognised and accepted that he had fallen short of the standards expected of him. To that extent, Mr Thompson had shown a degree of regret and remorse. He claimed to have

reflected on events and set out, albeit not entirely to the panel's satisfaction, things he would have done differently.

Weighed against these matters, the panel considered there were some aggravating factors present, including:

- Mr Thompson's actions had the potential to impact on the learners in question, albeit there was no clear evidence of significant or enduring harm.
- Mr Thompson had shown only limited insight. His insight was, at best, emerging and very far from complete. It was clear that, at the time of the assessment in question, Mr Thompson did not recognise or understand the inappropriate nature of his actions. He had continued to deny, in these proceedings, that his actions were inappropriate, although he had shifted his position a little, in a positive direction, in his oral evidence. Accordingly, the panel did have continuing concerns regarding Mr Thompson's understanding of the inappropriate nature of his conduct.
- Mr Thompson's conduct amounted to a breach of the Teachers' Standards and was deliberate. He was not acting under duress.
- As an experienced practitioner, Mr Thompson was in a position of trust and responsibility as well as a role model. The panel considered he ought to have known what was expected of him and conducted himself accordingly.

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

The panel was of the view that, applying the standard of the ordinary intelligent citizen, the recommendation of no prohibition order would be both a proportionate and an appropriate response.

The nature of the proven conduct in this case was serious for the reasons outlined. Given it occurred in the context of a formal assessment, there was a public interest in terms of maintaining public confidence in the profession. The nature of Mr Thompson's actions in the context of that assessment were such that there was also a public interest in terms of the protection of learners and the need to declare and uphold proper standards of conduct. For the reasons outlined, albeit within a single lesson, Mr Thompson's actions were highly inappropriate.

However, having considered the mitigating factors present, the panel determined that a recommendation for a prohibition order would not be appropriate in this case for the following reasons in particular.

Firstly, this was an isolated, one-off episode in the course of a single assessment.

Secondly, Mr Thompson's actions were, whilst highly inappropriate, misconceived and not malicious. This was not a pre-determined course of conduct.

Finally, the panel carefully considered whether there was a risk of repetition and concluded such risk was limited. The panel did have serious concerns regarding the level of insight and understanding shown by Mr Thompson. It was also unfortunate that Mr Thompson had provided no substantive information by way of recent references or testimonials.

However, this was an isolated incident and having gone through this experience, the panel considered it was unlikely that Mr Thompson would put himself in the same situation again. He had lost his position at the College and these proceedings had been ongoing for several years. The panel was satisfied, on balance, it was more likely than not that Mr Thompson will have learnt important lessons and his mistakes were unlikely to be repeated.

In light of all these matters and the other mitigating factors identified above, the panel determined that a recommendation for a prohibition order would not be appropriate or proportionate in this case.

Having very carefully taken account of the public interest considerations Mr Thompson's proven conduct gave rise to, the panel considered that the publication of the adverse findings it has made would be sufficient to send an appropriate message as to the standards of behaviour that were acceptable.

The panel considered this is a proportionate outcome, which struck a fair balance between the public interest and Mr Thompson's interests.

In the panel's judgment, this decision maintains public confidence and upholds professional standards in circumstances where it was satisfied there was a limited risk of repetition.

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 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, including allegations 1, 2, 3, (c) (d) (e) and 4. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Marc Thompson should not be the subject of a prohibition order. The panel has recommended that the findings of unacceptable professional conduct and conduct likely to bring the profession into disrepute and that such an action is proportionate and in the public interest.

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

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 Thompson, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect pupils. The panel has observed, "In the light of the panel's findings against Mr Thompson, which involved his use of sexual language and innuendo during an

assessment and instructing and encouraging pupils to undertake inappropriate and sexual actions, there was a strong public interest consideration in respect of the protection of pupils.” 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 Thompson had shown only limited insight. His insight was, at best, emerging and very far from complete. It was clear that, at the time of the assessment in question, Mr Thompson did not recognise or understand the inappropriate nature of his actions. He had continued to deny, in these proceedings, that his actions were inappropriate, although he had shifted his position a little, in a positive direction, in his oral evidence. Accordingly, the panel did have continuing concerns regarding Mr Thompson's understanding of the inappropriate nature of his conduct.” 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 the future wellbeing of pupils’.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Thompson were not treated with the utmost seriousness when regulating the conduct 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 Thompson himself and the panel comment “Mr Thompson is an experienced practitioner. He has an otherwise good record and there was some information about Mr Thompson's prior practice within the evidence. His competence had not been called into question outside of these proceedings. However, in all the circumstances, the panel was not persuaded that there was a particularly strong public interest in retaining Mr Thompson in the profession. For instance, there was no evidence before the panel to suggest that Mr Thompson had demonstrated exceptionally high standards in his professional conduct or contributed significantly to the education sector.”

A prohibition order would prevent Mr Thompson 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 insight or remorse. The panel has said, "Mr Thompson had apologised for his actions. To some extent, he recognised and accepted that he had fallen short of the standards expected of him. To that extent, Mr Thompson had shown a degree of regret and remorse. He claimed to have reflected on events and set out, albeit not entirely to the panel's satisfaction, things he would have done differently."

I have also placed considerable weight on the finding "the panel carefully considered whether there was a risk of repetition and concluded such risk was limited. The panel did have serious concerns regarding the level of insight and understanding shown by Mr Thompson. It was also unfortunate that Mr Thompson had provided no substantive information by way of recent references or testimonials."

The panel considered sexual motivation and I have placed weight on the following comment "The panel considered it was more likely than not that this was an occasion when Mr Thompson was not sexually motivated but rather acted as he did due to a misguided approach to the delivery of this particular assessment. This was a significant error of judgement on his part. The fact that matters of a sexual nature were introduced and the fact that Mr Thompson did not appear to appreciate the inappropriateness of his actions, at the time, were in themselves a matter of concern. Nonetheless, the panel was of the view that there was no basis for concluding that his actions, in relation to these allegations, were sexually motivated."

I have given weight in my consideration of sanction to the following comment from the panel "this was an isolated incident and having gone through this experience, the panel considered it was unlikely that Mr Thompson would put himself in the same situation again. He had lost his position at the College and these proceedings had been ongoing for several years. The panel was satisfied, on balance, it was more likely than not that Mr Thompson will have learnt important lessons and his mistakes were unlikely to be repeated."

For these reasons, I have concluded that a prohibition order is not proportionate or in the public interest. I consider that the publication of the findings made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession.



Decision maker: Sarah Buxcey

Date: 2 March 2023

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