



Teaching
Regulation
Agency

Mr James McGiveron Professional conduct panel outcome

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

July 2023

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

Teacher:	Mr James McGiveron
Teacher ref number:	1738523
Teacher date of birth:	11 November 1994
TRA reference:	20732
Date of determination:	26 July 2023
Former employer:	Denefield School, Reading

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 24 to 26 July by virtual means, to consider the case of Mr James McGiveron.

The panel members were Ms Jo Palmer-Tweed (teacher panellist – in the chair), Ms Charlotte McCallum (lay panellist) and Mr Paul Millett (lay panellist).

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

The presenting officer for the TRA was Mr Alexis Dite of Red Lion Chambers instructed by Kingsley Napley.

Mr McGiveron was not present and was not represented.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 12 May 2023.

It was alleged that Mr McGiveron was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst working as a teacher at Denefield School, he:

1. Sent inappropriate messages on social media to former Denefield students Pupil B and/or Pupil C as set out in Schedule A; and/or
2. Shared inappropriate images of an explicit sexual nature with former Denefield students Pupil B and/or Pupil C on social media.
3. His conduct at Particulars 1 and/or 2 was:
 - a. of a sexual nature and/or
 - b. sexually motivated.
4. He sent inappropriate and/or sexual messages to Pupil B and/or Pupil C;
 - a. in the knowledge that they were vulnerable pupils; and/or
 - b. because they were vulnerable pupils.

Schedule A is included within the notice of hearing but for brevity is not repeated here.

In the absence of a response from the teacher, the allegations are not admitted.

Preliminary applications

Proceeding in Absence

The panel decided to admit a supplemental bundle of 50 pages relevant to the question as to whether to proceed in the absence of Mr McGiveron. The bundle contained evidence of attempts to contact Mr McGiveron and any responses received. As such it was relevant to the question of whether Mr McGiveron was aware of the proceedings and whether he had waived his right to participate. It was fair to admit the bundle in order that the panel could determine whether or not to proceed in Mr McGiveron's absence.

The panel considered whether this hearing should continue in the absence of the teacher.

The panel was satisfied that the TRA has complied with the service requirements of paragraph 19 (1) (a) to (c) of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations") when sending the Notice of Hearing to Mr McGiveron. The notice had been sent to the teacher's last known address by first class post. The address used was

that contained on the form completed by Denefield School (“the School”) referring Mr McGiveron to the TRA.

The panel was also satisfied that the Notice of Proceedings complied with paragraphs 5.23 and 5.24 of the Teacher Misconduct: Disciplinary procedures for the teaching profession, May 2020 (the “Procedures”).

The panel determined to exercise its discretion under paragraph 5.47 of the Procedures to proceed with the hearing in the absence of the teacher.

The panel took as its starting point the principle from R v Jones that its discretion to commence a hearing in the absence of the teacher had to be exercised with the utmost care and caution, and that its discretion was a severely constrained one. In considering the question of fairness, the panel recognised that fairness to the professional is of prime importance but that it also encompasses the fair, economic, expeditious and efficient disposal of allegations against the professional, as was explained in GMC v Adeogba & Visvardis.

In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel has firstly taken account of the various factors drawn to its attention from the case of R v Jones [2003] 1 AC 1.

- The panel noted that, in December 2022, Mr McGiveron responded to emails sent to him although the last communication from Mr McGiveron was sent on 9 December 2022. The same email that Mr McGiveron had responded to was used to inform Mr McGiveron that he could access the proposed hearing bundle via a secure online document portal and to inform him that although the deadline for submitting any written representations or documents for this hearing had passed, he could still make an application to submit such representations if he wished to do so. The latter email referred to the hearing in this matter being due to take place from 24 to 26 July 2023. No response was received, and the panel could only conclude that Mr McGiveron had waived his right to participate in the hearing knowing when it was taking place. This was consistent with Mr McGiveron’s failure to participate in the School’s disciplinary hearing, which he also chose not to attend.
- No adjournment has been sought by Mr McGiveron and there was no evidence that an adjournment would result in Mr McGiveron’s attendance. The panel did not know when an adjourned hearing would be likely to be heard, but it would likely take several months to convene.

- Mr McGiveron is unrepresented, and has expressed no wish to obtain any legal representation in these proceedings.
- The panel had notes of an investigation meeting that Mr McGiveron participated in on 3 May 2022. The panel was able to ask questions regarding the accuracy of those notes given that the [REDACTED] who had asked questions of Mr McGiveron during the meeting was to be called to give oral evidence.
- The panel noted that all witnesses relied upon are to be called to give evidence and the panel can test that evidence in questioning those witnesses, considering such points as are favourable to the teacher, as are reasonably available on the evidence. The panel was also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.
- The panel recognised there was a risk of reaching an improper conclusion about Mr McGiveron's absence. He provided no reason for his non-attendance, but the panel noted that this lack of engagement was consistent with his decision not to attend the School's disciplinary investigation and the "no comment" interview he gave to the police.
- The panel recognised that the allegations against the teacher were serious and that there was a real risk that if proven, the panel would be required to consider whether to recommend that the teacher ought to be prohibited from teaching.
- The panel recognised that the efficient disposal of allegations against teachers is required to ensure the protection of pupils and to maintain confidence in the profession. The conduct alleged is said to have taken place whilst the teacher was employed at the School. It was recognised that the School had an interest in this hearing taken place in order to move forwards.
- The panel noted that there were three witnesses prepared to give evidence, and that it would be inconvenient and potentially distressing for those witnesses to have to attend at a future date. Delaying the case may impact upon the memories of those witnesses.

The panel decided to proceed with the hearing in the absence of the teacher. The panel considered that in light of:

- Mr McGiveron's waiver of his right to appear;
- the measures available to address any unfairness insofar as is possible;

- the inconvenience an adjournment would cause to the witnesses; and
- the public interest of these serious allegations proceeding within a reasonable time,

that this hearing should continue today.

Summary of evidence

Documents

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

Section 1: Chronology and list of key people – pages 4 to 5

Section 2: Initial letter to teacher – pages 6 to 11

Section 3: Teaching Regulation Agency witness statements – pages 12 to 24

Section 4: Teaching Regulation Agency documents – pages 25 to 204

Section 5: Teacher documents – pages 205 to 208

In addition, the panel agreed to accept a supplementary bundle of 50 pages at pages 209 to 259 relevant to the presenting officer's application to proceed in Mr McGiveron's absence.

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 the [REDACTED] (who also had [REDACTED] responsibilities at the relevant times) at Denefield School ("the School"), Pupil B and Pupil C, all called by the presenting officer.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr McGiveron was employed at the School from 1 September 2016. On 23 March 2022 Mr McGiveron was arrested in respect of suspected grooming. A disciplinary hearing was held by the School on 17 June 2022. On 20 June 2022 Mr McGiveron ceased to be employed by the School.

Findings of fact

The findings of fact are as follows:

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

Whilst working as a teacher at Denefield School, you:

- 1. Sent inappropriate messages on social media to former Denefield students Pupil B and/or Pupil C as set out in Schedule A; and/or**
- 2. Shared inappropriate images of an explicit sexual nature with former Denefield students Pupil B and/or Pupil C on social media.**

Pupil B stated that [REDACTED] first met Mr McGiveron in year 7, and he had never taught [REDACTED] save the occasional physical education lesson, but [REDACTED] would see him during breaktimes and lunchtimes if he was on duty and that he often supervised School trips, including two sports tour trips abroad. [REDACTED] stated that [REDACTED] had left the School during year 11 in [REDACTED] 2020 and sent a “friend request” on Facebook to Mr McGiveron at the end of September 2020. [REDACTED] described the messages from Mr McGiveron as being very frequent, and “ a constant stream of communication” and as “normal conversation”. [REDACTED] stated that the tone of the messages became “weird” prior to Mr McGiveron adding [REDACTED] on Snapchat after about two weeks of exchanging messages via Facebook. [REDACTED] stated that the messages on Snapchat “became weird straight away”. [REDACTED] stated that Mr McGiveron had asked [REDACTED] to send him nude photographs of [REDACTED] and also sent [REDACTED] explicit pictures. [REDACTED] stated that this was quite soon after Mr McGiveron had added [REDACTED] on Snapchat so that [REDACTED] would have been 16, [REDACTED] 17 years old. [REDACTED] stated that [REDACTED] blocked Mr McGiveron on Snapchat, and following this he messaged [REDACTED] straightaway on Facebook asking if everything was okay.

Pupil B provided a statement to the police on 24 November 2021. Pupil B confirmed that [REDACTED] had been aware of rumours regarding Mr McGiveron’s conduct towards underage [REDACTED] whilst [REDACTED] was at the School. [REDACTED] referred to Mr McGiveron as being relatable, and that [REDACTED] would talk with him. [REDACTED] stated that he had asked [REDACTED] not to tell anyone that they were communicating on snapchat. Pupil B stated that he complimented [REDACTED] on [REDACTED] body, asked whether [REDACTED] was with anyone, whether [REDACTED] was a virgin and whether [REDACTED] had ever “sent nudes”. [REDACTED] stated that when communicating about “sending nudes”, Mr McGiveron had said that “it wasn’t a big deal and that everyone does it”. [REDACTED] stated that there were a lot of conversations in which Mr McGiveron told [REDACTED] what he liked in pictures, for example, black underwear and “bent over poses”. [REDACTED] stated

that he had said something like that he was “horny” and that he wanted a picture “now”. Pupil B stated that, as a result of his request, [REDACTED] had sent photographs of [REDACTED] in underwear. Mr McGiveron then sent [REDACTED] a photograph of his erect penis, and a photograph that Pupil B took to mean that he had masturbated over the photograph that Pupil B had sent to him.

Pupil C stated that Mr McGiveron had been [REDACTED] geography teacher from year 10 onwards, and was occasionally [REDACTED] physical education teacher. [REDACTED] stated that [REDACTED] left the School in 2018 when [REDACTED] was 16 years old, and had received a “friend request” on Facebook from Mr McGiveron that year, around August 2018. [REDACTED] described the conversation on Facebook as “normal” and that they would exchange messages daily up to five times a week. [REDACTED] stated that, at some, point, Mr McGiveron asked [REDACTED] to add him on Snapchat. At this point, [REDACTED] stated that the tone and frequency of the messages from Mr McGiveron changed, and that he “started messaging [REDACTED] relentlessly in a day”. [REDACTED] stated that Mr McGiveron also instantly asked [REDACTED] not to tell anyone that he was talking to [REDACTED] or he would lose his job. [REDACTED] stated that within two or three days of adding him on Snapchat, Mr McGiveron began expressing his fantasies about [REDACTED]. [REDACTED] stated that he asked [REDACTED] to send him explicit photographs of [REDACTED], and they exchanged nude photographs in around October and December 2018. [REDACTED] stated that at some point, Mr McGiveron had asked [REDACTED] to meet him for sexual intercourse. [REDACTED] did not remember exactly when this occurred but believed that [REDACTED] at the time. Pupil C stated that [REDACTED] had stopped talking to Mr McGiveron in 2020, and [REDACTED] believed that it was as the New Year started that [REDACTED] had blocked his accounts.

Pupil C provided a statement to the police on 15 December 2021. In that statement, [REDACTED] stated that Mr McGiveron would send [REDACTED] pictures of the desks in the classroom with the desk at which Pupil C had sat circled, accompanied by messages to the effect of “remember when you used to sit here”, “I still think about you sat here”. [REDACTED] stated that Mr McGiveron began to express his fantasies about [REDACTED], that he imagined he was having sex with [REDACTED] in the classroom or that he would wish [REDACTED] was there “sucking his dick”. [REDACTED] stated that he would often message claiming that he was drunk, telling [REDACTED] that he was horny and asking [REDACTED] to send “naughty pictures”. Pupil C further stated that in either 2018 or 2019 Mr McGiveron went abroad on what [REDACTED] would describe as a “teachers holiday”, and whilst he was away, he told [REDACTED] about another teacher’s sex life. Pupil C stated that after a while of Mr McGiveron asking for photographs [REDACTED] sent some of [REDACTED] either naked or wearing underwear, and that Mr McGiveron sent [REDACTED] pictures of his penis. [REDACTED] stated that [REDACTED] had been at a friend’s house and sent a message to provoke Mr McGiveron, saying that the friend was [REDACTED]. Mr McGiveron responded that he wanted Pupil C to prove it and wanted [REDACTED] to send sexual

videos of them together. Additionally, Pupil C stated that Mr McGiveron asked [REDACTED] to meet with him for sexual intercourse. [REDACTED] further stated that [REDACTED] had not done so but that there was a rumour going around the School that [REDACTED] had had sex with him there.

Mr McGiveron was interviewed by the police on 23 March 2022. He responded “no comment” to all of the questions asked of him in connection with the police investigation.

Mr McGiveron was interviewed as part of the School’s disciplinary investigation on 3 May 2022. Notes of that interview have been provided to the panel although the panel noted that the notes have not been signed by Mr McGiveron to confirm that they were an accurate record. Nevertheless, the [REDACTED] who gave oral evidence to the panel confirmed that the notes were accurate. In these notes it is stated that Mr McGiveron explained that Snapchat was his main communication with everyone including family and friends. He stated that he could not recall specifically saying to Pupil B not to tell anyone that they were Snapchat “friends”, but potentially it was “to make sure not every Tom, Dick and Harry contacts me”. He could not remember how frequently he exchanged messages with Pupil B via Snapchat, but said that it was “potentially frequent”. He stated that he could not remember asking for nude photographs of Pupil B, but he could remember receiving those photographs and that he did not tell anyone that he had received them. He admitted having sent photos and could not recall if they were appropriate or inappropriate. He could not recall with certainty if he had sent [REDACTED] photographs of his erect penis, or of his penis following ejaculation, but said that it was possible as he had sent those types of photographs previously.

With regard to Pupil C, Mr McGiveron stated that he could not recall asking Pupil C not to say anything about the contact between them as he could lose his job. He confirmed that advice is routinely given to School staff not to connect with students and under 18s via social media, although he could not be certain that he had read all of the document, but assumed that this was the advice. He could not recall expressing fantasies to Pupil C such as having sexual intercourse with [REDACTED] in the classroom, or wishing that [REDACTED] was “sucking [his] dick” but stated that would be something he would probably remember. He did not recall asking Pupil C to send him “naughty pictures”. He confirmed he had sent photographs to Pupil C but could not recall any that were inappropriate. He also did not recall Pupil C sending a nude photograph of [REDACTED], and if [REDACTED] had he had not made anyone aware of this. He could not recall sending Pupil C pictures of his penis, although he had sent such photographs previously on Snapchat. He stated that he had never met Pupil C out of School, nor did he recall asking [REDACTED] to meet to have sexual intercourse.

Mr McGiveron stated during the interview that he did not believe Pupil B or C had made their accounts up, but there were some aspects of their accounts that he thought he would remember and he could not.

The panel noted that Mr McGiveron was given professional advice by letter from the School on 15 December 2020 not to message or otherwise contact a person under the age of 18, unless he also copied in their parent/carer, or if they were a relative of his. Furthermore, he was advised not to have anyone as a friend on social media who was under the age of 18, even if they were a relative of his. He was advised to ensure his privacy settings were set to private, and that only adults could access his social media. In light of this advice, Mr McGiveron ought to have had a heightened awareness of what was appropriate.

The panel has seen Facebook messages between Pupil B and Mr McGiveron after Pupil B left the School. This included a message asking Pupil B not to share anything with anyone still at the School as he did not “want dodgy pics being printed off 1000 times and stuck everywhere etc and convos etc”. Pupil B and Pupil C both referred to messages and pictures automatically being removed by Snapchat after a short period of time. No Snapchat messages were therefore made available to the panel.

Given the similarities in the accounts of Pupil B and Pupil C, the panel considered the possibility of collusion. From Pupil B’s oral evidence, it was apparent that Pupil B and Pupil C knew each other. They had spoken after Pupil C had provided [REDACTED] police statement and more recently about the prospect of attending the present hearing before the panel. Pupil B did not seek to conceal this in [REDACTED] answers to the panel, and stated that whilst Pupil C had spoken about what had happened to [REDACTED], Pupil B had not discussed [REDACTED] own evidence. The panel concluded, however, that it was unlikely that Pupil B and Pupil C had colluded in respect of the allegations given that there was no attempt to conceal this contact and since Pupil B and Pupil C’s accounts were to some extent supported by Mr McGiveron’s responses during the school’s investigation interview with him as referred to above.

In that interview, Mr McGiveron confirmed that he did not believe Pupil B or Pupil C had made their accounts up. He confirmed that he had sent photographs to Pupil B and Pupil C but could not recall if they were appropriate or not. Given that it was apparent from his interview that he was in the practice of sending explicit photographs, the panel considered that it was more likely than not that he had sent messages of the nature described by Pupil B and Pupil C and the images that they referred to. Had Mr McGiveron not sent them, the panel would have expected him to have defended his position vigorously during that interview. The panel noted that the [REDACTED] referred to his mannerism during that interview as controlled, and that he had carefully considered the answers that he was giving.

Similarly, the panel noted that Mr McGiveron had failed to provide an account in these proceedings either by way of a written statement or attendance at the hearing. He had been warned of the potential consequences of this in the notice of hearing. The panel therefore drew an adverse inference that he had no reasonable explanation in response to the allegations against him.

There did not appear to have been any malicious motive behind the allegations on the part of Pupil B or Pupil C. Pupil C was asked in oral evidence about [REDACTED] relationship with Mr McGiveron whilst [REDACTED] was at the School. [REDACTED] referred to him as someone that [REDACTED] could trust. [REDACTED] stated that if [REDACTED] was not having a good day, he would put the television on, ask [REDACTED] if [REDACTED] wanted a snack and give [REDACTED] a bag of crisps. Their relationship whilst at School appears to have been viewed by Pupil C as a positive one. [REDACTED]. Similarly Pupil B described their relationship whilst at School in fairly neutral terms, [REDACTED] had not been directly taught by him, but that he would sometimes teach physical education and supervise School trips, and that friends who had been taught by him liked him. [REDACTED] stated [REDACTED] would speak with him during break times [REDACTED].

In light of:

- the evidence of Mr McGiveron's responses during the School's investigation meeting with him;
- the apparent absence of any collusion between Pupil B and Pupil C;
- the absence of any malicious motive on the part of Pupil B and Pupil C;
- Pupil B and Pupil C were consistent during their oral evidence with their previous accounts;
- the methodology of Mr McGiveron's contact with both Pupil B and Pupil C was identical, as was much of the content of the messages; and
- Mr McGiveron's failure to engage with these proceedings,

the panel considered that it was more likely than not that Mr McGiveron had sent inappropriate messages on social media to Pupil B and/or Pupil C as set out in Schedule A; and shared inappropriate images of an explicit sexual nature with them.

The panel found allegations 1 and 2 proven.

3. Your conduct at Particulars 1 and/or 2 was:

a. of a sexual nature and/or

b. sexually motivated.

Mr McGiveron's messages included references to his sexual fantasies, and images of his penis. Messages and images of this nature described by Pupil B and Pupil C were explicitly sexual by their very nature.

Pupil B described having received images of Mr McGiveron's penis including a photograph that Pupil B took to mean that he had masturbated over a photograph that Pupil B had sent to him. Both pupils referred to Mr McGiveron having sought explicit

photographs from them. Pupil C described that Mr McGiveron had messaged [REDACTED] to ask [REDACTED] to meet for sexual intercourse. The panel considered that Mr McGiveron's conduct was in pursuit of sexual gratification or in pursuit of a sexual relationship and that his conduct was therefore sexually motivated.

The panel found allegation 3 proven.

- 4. You sent inappropriate and/or sexual messages to Pupil B and/or Pupil C;**
- a. in the knowledge that they were vulnerable pupils; and/or**
- b. because they were vulnerable pupils.**

The [REDACTED] gave evidence that Pupil B and Pupil C were 15 or 16 years old at the time and had left the School, at the end of Year 11, shortly before they received messages from Mr McGiveron. Prior to this [REDACTED] stated that they had been vulnerable [REDACTED]. [REDACTED] stated that [REDACTED] could not say for certain but that [REDACTED] believed Mr McGiveron would have been aware of both pupils' vulnerabilities. [REDACTED] referred to staff briefings held each week in which any students that there were concerns about were flagged so that all staff members were aware. [REDACTED] also stated that there was a period of time during which Mr McGiveron worked as a deputy head of house so that there would have been privy to details of particular students' vulnerabilities.

Pupil B stated that Mr McGiveron would have been aware of [REDACTED]. [REDACTED] stated that [REDACTED] also spoke to Mr McGiveron a couple of times on the trip [REDACTED].

[REDACTED]

[REDACTED]

The panel considered that Mr McGiveron would have known that Pupil B and Pupil C were both vulnerable pupils when he sent inappropriate sexual messages to them via Snapchat. It appeared to the panel that he had targeted Pupil B and Pupil C because of their vulnerabilities. The panel considered that it was telling that Pupil B described Mr McGiveron having enquired about the issues [REDACTED] had discussed with him on the School trip at the outset of his communications with [REDACTED], and that these were clearly in his mind at the time.

The panel found allegation 4a and 4b proven.

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

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

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 McGiveron, in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Mr McGiveron 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
- showing tolerance of and respect for the rights of others

Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel found that Mr McGiveron had breached his overriding responsibility to safeguard the welfare of children, in acting in the manner found proven.

The panel was satisfied that the conduct of Mr McGiveron fell significantly short of the standard of behaviour expected of a teacher.

The panel also considered whether Mr McGiveron’s conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice.

The panel found that the offences of sexual communication with a child; any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child or permitting any such activity, including one-off incidents; and controlling or coercive behaviour were relevant. With regard to the latter, the panel noted that Mr McGiveron had sought to normalise the sending of explicit photographs to encourage Pupil B and Pupil C.

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, albeit there is no conviction in this case.

The panel noted that the allegations took place outside the education setting. His conduct found proven indicated a sexual interest in children and a pattern of selecting the most vulnerable in order to pursue them after they left the School for his own sexual motivation.

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

The panel went on to consider whether Mr McGiveron was guilty of conduct that may bring the profession into disrepute.

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

The panel also considered whether Mr McGiveron's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice.

As referred to above, the panel found that the offences of sexual communication with a child; any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child or permitting any such activity, including one-off incidents; and controlling or coercive behaviour were relevant.

The Advice indicates that where behaviours associated with such offences exist, a panel is likely to conclude that an individual's conduct would amount to conduct that may bring the profession into disrepute, albeit there is no conviction in this case.

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.

The panel considered that Mr McGiveron's conduct could potentially damage the public's perception of a teacher.

The panel therefore found that Mr McGiveron's actions constituted 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 is appropriate, the panel had to consider the public interest, the seriousness of the behaviour and any mitigation offered by Mr McGiveron and whether a prohibition order is necessary and proportionate. 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 the following to be relevant in this case, namely, the safeguarding and wellbeing of pupils; the protection of other members of the public; the maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct.

There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils and former pupils, given the serious findings of Mr McGiveron having chosen to engage in sexual communications with former pupils with particular vulnerabilities.

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

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

Whilst there is evidence that Mr McGiveron had some ability as an educator as he had recently been promoted, the panel considered that the adverse public interest considerations above outweigh any interest in retaining Mr McGiveron in the profession, since his behaviour fundamentally breached the standard of conduct expected of a teacher, and he sought to exploit his position of trust.

The panel considered carefully the seriousness of the behaviour, noting that the Advice states that the expectation of both the public and pupils, is that members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times. The panel noted that a teacher's behaviour that seeks to exploit their position of trust should be viewed very seriously in terms of its potential influence on pupils and be seen as a

possible threat to the public interest. The panel considered that Mr McGiveron had seriously breached that position of trust.

The panel took further account of the Advice, which suggests that a panel will likely consider a teacher's behaviour to be incompatible with being a teacher if there is evidence of one or more of the factors that begin on page 15. In the list of such factors, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or safeguarding and well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils);
- an abuse of any trust, knowledge, or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or former pupil;
- sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, or permitting such activity, including one-off incidents;
- 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 Keeping Children Safe In Education ("KCSIE"));
- violation of the rights of pupils;
- sustained or serious bullying (including cyberbullying), or other deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- a deep-seated attitude that leads to harmful behaviour;
- ...a lack of integrity ... or involved the coercion of another person to act in a way contrary to their own interests;

The panel noted that it should attach appropriate weight and seriousness to online behaviours including, but not limited to: online misconduct; facilitating online abuse; or facilitating inappropriate relationships. Mr McGiveron had engaged in such conduct, and the panel viewed this very seriously particularly given his exploitation of those with vulnerabilities for his own gratification.

Even though the behaviour found proved in this case indicated that a prohibition order would be appropriate, taking account of the public interest and the seriousness of the

behaviour and the likely harm to the public interest were the teacher be allowed to continue to teach, the panel went on to consider the mitigation offered by the teacher and whether there were mitigating circumstances.

Mr McGiveron's actions were deliberate.

There was no evidence to suggest that Mr McGiveron was acting under extreme duress, e.g. a physical threat or significant intimidation and, in fact, the panel found his actions to be calculated and motivated.

There were no previous disciplinary orders made against Mr McGiveron but there was no evidence that he had demonstrated exceptionally high standards in both his personal and professional conduct or that he had contributed significantly to the education sector. The only evidence that the panel has of his teaching practice was that provided by the [REDACTED] that he had been promoted to lead of geography, that [REDACTED] relationship with him had been professional, and he had been "good to work with, although he sometimes questioned, and challenged senior members of staff on their decisions".

Mr McGiveron adduced no evidence in mitigation, and has not demonstrated any remorse or insight into his behaviour.

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

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

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr McGiveron. He fundamentally breached his position of trust to exploit vulnerable former pupils. 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 it to decide to recommend a review period of the order. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review

period. These cases include 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 his professional position to influence or exploit a person or persons; any sexual misconduct involving a child; any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one off incidents. The panel found that Mr McGiveron was responsible for such conduct.

No mitigation was offered by Mr McGiveron, and given the pattern of behaviour in this case, the panel was very concerned at the risk of repetition if Mr McGiveron was allowed to teach again in the future.

The panel decided that the findings indicated a situation in which a review period would not be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended without provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found all of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel has made a recommendation to the Secretary of State that Mr James McGiveron should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr McGiveron 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
- showing tolerance of and respect for the rights of others

Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Mr McGiveron involved breaches of the responsibilities and duties set out in statutory guidance Keeping children safe in education (KCSIE) and/or involved breaches of Working Together to Safeguard Children.

The panel finds that the conduct of Mr McGiveron fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding of sexual communication with former pupils, who were deemed vulnerable. This conduct was found to be sexually motivated.

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

In this case, I have considered the extent to which a prohibition order would protect children and/or safeguard pupils. The panel has observed, "There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils and former pupils, given the serious findings of Mr McGiveron having chosen to engage in sexual communications with former pupils with particular vulnerabilities." The panel also found that "Mr McGiveron had breached his overriding responsibility to safeguard the welfare of children, in acting in the manner found proven." 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 McGiveron adduced no evidence in mitigation, and has not demonstrated any remorse or insight into his behaviour." In my judgement, the lack of insight or remorse means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils. I have 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, “the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr McGiveron were not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the finding of sexually motivated communications with vulnerable former pupils 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 and conduct that may bring the professional into disrepute, 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 McGiveron himself and the panel comment “There were no previous disciplinary orders made against Mr McGiveron but there was no evidence that he had demonstrated exceptionally high standards in both his personal and professional conduct or that he had contributed significantly to the education sector. The only evidence that the panel has of his teaching practice was that provided by the [REDACTED] that he had been promoted to lead of geography, that [REDACTED] relationship with him had been professional, and he had been “good to work with, although he sometimes questioned, and challenged senior members of staff on their decisions”.

A prohibition order would prevent Mr McGiveron 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. The panel has said, “No mitigation was offered by Mr McGiveron, and given the pattern of behaviour in this case, the panel was very concerned at the risk of repetition if Mr McGiveron was allowed to teach again in the future.”

I have also placed considerable weight on the finding that “The panel noted that it should attach appropriate weight and seriousness to online behaviours including, but not limited to: online misconduct; facilitating online abuse; or facilitating inappropriate relationships. Mr McGiveron had engaged in such conduct, and the panel viewed this very seriously particularly given his exploitation of those with vulnerabilities for his own gratification.”

In addition, I have given considerable weight to the following finding “Whilst there is evidence that Mr McGiveron had some ability as an educator as he had recently been promoted, the panel considered that the adverse public interest considerations above outweigh any interest in retaining Mr McGiveron in the profession, since his behaviour fundamentally breached the standard of conduct expected of a teacher, and he sought to exploit his position of trust.”

In reaching my decision for this case I have considered that, although the panel noted that the allegations took place outside the education setting, the “conduct found proven indicated a sexual interest in children and a pattern of selecting the most vulnerable in order to pursue them after they left the School for his own sexual motivation.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr McGiveron has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended that no provision should be made for a review period.

I have considered the panel’s comments “The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period. These cases include 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 his professional position to influence or exploit a person or persons; any sexual misconduct involving a child; any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one off incidents. The panel found that Mr McGiveron was responsible for such conduct.”

In this case, factors mean that allowing a review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the seriousness of the findings, which were found to be sexually motivated involving former pupils, and the lack of either insight or remorse.

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 James McGiveron 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 McGiveron 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 McGiveron has a right of appeal to the King'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 'S Buxcey', with a stylized, cursive script.

Decision maker: Sarah Buxcey

Date: 28 July 2023

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