



Teaching  
Regulation  
Agency

# **Mr Michael Downes: Professional conduct panel outcome**

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

**March 2024**

## Contents

Introduction	3
Allegations	4
Preliminary applications	4
Summary of evidence	6
Documents	6
Witnesses	7
Decision and reasons	7
Findings of fact	8
Panel's recommendation to the Secretary of State	18
Decision and reasons on behalf of the Secretary of State	22

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

<b>Teacher:</b>	Mr Michael Downes
<b>Teacher ref number:</b>	0331278
<b>Teacher date of birth:</b>	10 December 1957
<b>TRA reference:</b>	20925
<b>Date of determination:</b>	4 March 2024
<b>Former employer:</b>	The Emmbrook School, Berkshire

### **Introduction**

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 15 January 2024, 27 to 29 February, 1 March and 4 March 2024 by way of a virtual hearing, to consider the case of Mr Michael Downes.

The panel members were Mr Richard Young (lay panellist – in the chair), Ms Hannah Foster (teacher panellist) and Ms Nicola Anderson (teacher panellist).

The legal adviser to the panel was Mr Nicholas West of Birketts LLP solicitors.

The presenting officer for the TRA was Mr Andrew Cullen of Browne Jacobson LLP solicitors.

On 15 January 2024, Mr Downes was not present and was represented by Ms Lizzy Bowman of the NASUWT, the Teachers' Union.

Between 27 February and 4 March 2024, Mr Downes was present and was represented by Mr Mark Rose of the NASUWT, the Teacher's Union.

The hearing took place by way of a virtual hearing in public and was recorded.

## Allegations

The panel considered the allegations set out in the notice of proceedings dated 1 November 2023.

It was alleged that Mr Downes was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher at the Emmbrook School between September 2018 and February 2022, he:

1. Engaged in inappropriate behaviour and/or placed pupils at risk in or around December 2021 in that he:
  - a) Brought alcohol onto the school's premises;
  - b) Consumed alcohol whilst on the school's premises and/or during school hours;
  - c) Stored prescribed medication in an unlocked drawer.

Mr Downes made no admission of fact regarding the allegations.

## Preliminary applications

### Day one

#### Application to adjourn the hearing

The teacher's representative made an application to adjourn the hearing for at least four weeks [REDACTED].

The presenting officer confirmed that the application was not opposed but sought a direction from the panel for the hearing to be rescheduled for the first available date after four weeks.

The panel was advised that it had the power to adjourn a professional conduct panel hearing at any time for such period as it thinks fit if it is in the interests of justice to do so in accordance with paragraph 5.51 of the Teacher misconduct: Disciplinary procedures for the teaching profession May 2020 (the '2020 Procedures').

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it.

The panel granted the application. The panel considered paragraph 5.52(ii) of the 2020 Procedures was relevant in these circumstances as the teacher's representative was unable to attend the hearing for a reason beyond his control.

The panel agreed with the presenting officer's submissions that it was in the public interest for the hearing to be listed as soon as possible to avoid any undue delay which may impact on the quality of available witness evidence, the ability to hear the allegations fairly and to ensure a determination on whether Mr Downes will be subject to a prohibition order is made within a reasonable period of time.

The panel therefore made the following case management directions:

1. The hearing to be adjourned to the first available date in four weeks' time.
2. The panel confirmed it had no objection to a different panel being appointed to hear the rescheduled hearing if its availability would cause undue delay. The panel had not heard any evidence and did not consider any prejudice would be caused to either party if a new panel was appointed.
3. The panel confirmed its availability in the week commencing 26 February 2024, ideally to be listed virtually for four days commencing on 27 February 2024 to 1 March 2024.

All panel members respectfully requested for the rescheduled hearing dates to be confirmed by the TRA as soon as possible to avoid diary clashes.

## **Day two**

### **Application to adopt measures for vulnerable witness**

On 27 February 2024, the panel considered an application from the presenting officer that one of the TRA's witnesses should be permitted to be accompanied by a witness supporter.

The panel heard submissions from the presenting officer on the application before reaching its decision. The presenting officer explained that one of the TRA's witnesses, Pupil A, [REDACTED] when they gave a written statement for these proceedings and although they were now [REDACTED], they had requested to be accompanied by [REDACTED]. The teacher's representative did not have an objection to the application.

The panel considered Pupil A was a vulnerable witness in accordance with paragraph 5.102 of the 2020 Procedures. The panel accepted the presenting officer's concerns that the quality of Pupil A's evidence was likely to be adversely affected at the hearing if they were not permitted to be accompanied by a witness supporter, namely [REDACTED].

The panel concluded the attendance of a witness supporter was an appropriate measure to adopt in order to safeguard the interests of Pupil A in accordance with paragraph 5.103 of the 2020 Procedures. The panel was also satisfied that no unfairness would result by Pupil A having a witness supporter present.

The panel therefore granted the application.

### **Day three**

#### **Application to admit an additional document**

On 28 February 2024, during [REDACTED] witness evidence, the panel considered a preliminary application from the teacher's representative for the admission of an additional document, namely a letter confirming Mr Downes' dismissal dated 27 February 2022.

The document subject to the application had not been served in accordance with the requirements of paragraph 5.37 of the 2020 Procedures. Therefore, the panel was required to decide whether the document should be admitted under paragraph 5.34 of the 2020 Procedures.

The panel heard representations from the presenting officer and the teacher's representative in respect of the application. The teacher's representative confirmed the document was key to Mr Downes' defence as he wanted to refer to the dismissal letter in respect of certain allegations that were not upheld during his cross examination of [REDACTED]. The teacher's representative confirmed that the omission of this document from the bundle was an accidental oversight.

The presenting officer confirmed that the dismissal letter had been deliberately omitted from the bundle as it would not be usual to include findings of another panel's determination in case this influenced the TRA panel's decision. The presenting officer suggested that the dismissal letter may contain information that is prejudicial to Mr Downes' case.

The panel considered the additional document was relevant. The panel noted the teacher's representative's submissions and considered that the admission of the document would be appropriate and in the interests of a fair hearing. The document had been available to both parties in advance of the hearing and did not raise any new factual matters. Notwithstanding the document's late provision, the panel had regard to the effect of the document not being admitted as regards fairness and the interests of justice.

Accordingly, the document was admitted and added to the bundle at pages 311 to 318.

## **Summary of evidence**

### **Documents**

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

- Section 1: Key people and anonymised pupil list – pages 6 and 7

- Section 2: Notice of proceedings and response – pages 9 to 20
- Section 3: TRA witness statements – pages 22 to 51
- Section 4: TRA documents – pages 53 to 298
- Section 5: Teacher documents – pages 300 to 310.

In addition, the panel agreed to accept the following:

- Dismissal letter dated 27 February 2022 – pages 311 to 318.

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

## **Witnesses**

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

- Pupil A
- Witness A [REDACTED]
- Witness B [REDACTED]
- Witness C [REDACTED]
- Witness D [REDACTED]
- Witness E [REDACTED]
- Witness F [REDACTED]
- Witness G [REDACTED]

The panel heard oral evidence from Mr Downes.

## **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 Downes commenced employment as a teacher at the Emmbrook School ('the School') on 12 September 2018.

On 16 December 2021 staff and pupils raised concerns that Mr Downes had been acting in an unusual way and there was a suggestion that he might have been under the influence of alcohol. The same day, an alcohol test was conducted by the [REDACTED] on a cup found in Mr Downes' classroom. The test found that alcohol was present.

On 17 December 2021, Mr Downes was suspended and Witness G was appointed as [REDACTED] by the [REDACTED].

On 5 January 2022, Mr Downes was invited to attend an investigation meeting in the School. This was held the following day.

On 26 January 2022, a further investigation meeting was held to investigate further lines of enquiry with Mr Downes.

On 15 February 2022, a stage 2 local advisory board disciplinary hearing was held, and on 27 February 2022, a letter was issued to Mr Downes advising him of the outcome, which was to dismiss him.

On 3 March 2022, a notice of appeal against the panel's decision was lodged with the trust's company secretary.

On 7 April 2022, an appeal hearing was held. On 28 April 2022, a letter was issued to Mr Downes advising the appeal panel's decision not to uphold the appeal.

## **Findings of fact**

The findings of fact are as follows:

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

### **1. Engaged in inappropriate behaviour and/or placed pupils at risk in or around December 2021, in that you:**

#### **a) Brought alcohol onto the school's premises;**

The panel considered the opening statement that was made by the teacher's representative on behalf of Mr Downes at the start of the hearing which confirmed that it was not denied alcohol was present in one cup that had been found in Mr Downes' classroom. The teacher's representative went on to confirm that there was a plausible explanation as to why alcohol had been brought onto the School's premises in that it was inadvertent or in the form of mouthwash.

The panel considered the witness statement of Witness B, who stated that Witness E asked her to conduct an alcohol test, on some liquid in the bottom of a reusable coffee cup found in Mr Downes' classroom. Witness B explained that any science teacher is



capable of conducting an alcohol test as it is straightforward. Witness B stated that she also prepared a comparative sample using distilled water.

Witness B submitted that, during the afternoon of 16 December 2021, there had been a slight colour change which would indicate alcohol, but she wasn't sure how much of a colour change was required to confirm a positive test. She stated that she asked the [REDACTED] if she could leave it overnight, and the following morning the [REDACTED] confirmed the test was positive.

The panel accepted the oral evidence of Witness B who confirmed that she '*couldn't smell or see mouthwash*' when she handled the cup for alcohol testing on 16 December 2021.

During questioning by the presenting officer, Mr Downes accepted that the two cups that were found on his desk on 16 December 2021 belonged to him. Mr Downes stated that he accumulated cups in his car as he was '*not the best at bringing them in or taking them home*' and he brought them into the School to wash them.

The panel considered the witness statement of Witness G, the [REDACTED] at the School. Witness G explained that Mr Downes was alerted to the fact there was liquid in the cups on his desk which smelt like alcohol. He stated that Mr Downes' response was that he '*may have had an Irish coffee*', but he then suggested that they were his [REDACTED] or that he may have left them in the car for the weekend, then his bag, and forgotten to wash them. Mr Downes accepted in his oral evidence that there '*could have been a bit of alcohol in them*' when asked about the cups that were found in his classroom.

In light of Mr Downes' acceptance that the cups that were tested belonged to him and that the undisputed alcohol test confirmed the presence of alcohol, the panel found allegation 1(a) proven.

#### **b) Consumed alcohol whilst on the school's premises and/or during school hours;**

The panel considered the closing statement submitted by the teacher's representative on behalf of Mr Downes at the disciplinary hearing. [REDACTED] stated that Mr Downes expressly denied he was in any way intoxicated or under the influence of alcohol in School on 16 December 2021.

When responding to concerns that had been raised about Mr Downes' behaviour on this day, [REDACTED] offered a number of explanations for his actions. [REDACTED] stated that Mr Downes accepted that he was playing the guitar, which was not in keeping with the [REDACTED] instructions but explained that other teachers were undertaking similar '*non-teaching*' lessons, as it was the last day of term.

[REDACTED] submitted that the blinds in Mr Downes' classroom were down as he was showing a film to the class, and that he had asked some pupils to exit the classroom and then come back in to reset their behaviour.

[REDACTED] stated that Mr Downes admitted he was tired as it was the end of the term, which may have made him seem drowsy. He stated that he had also not slept well the night before as [REDACTED].

The panel considered the written and oral evidence of Pupil A, who was in Mr Downes' maths lesson on the day of the incident. The panel accepted Pupil A's evidence that Mr Downes acted differently as to how he would normally act on this day as they had been in his maths class for a number of years.

Pupil A explained in their witness statement that they noticed Mr Downes was '*acting strangely*', '*looked pale in the face*' and '*couldn't walk properly*' as he was '*swaying from side to side*'. Pupil A also stated that he was '*slurring and mumbling*' his words and not '*speaking very clearly*', as well as '*slouching in his chair*'.

Pupil A submitted in their witness statement that at one point in the lesson, Mr Downes took his guitar out and started singing and asked the class to join in. Pupil A accepted in oral evidence that they had never seen Mr Downes play guitar previously but admitted they got sent out of class a lot so they didn't know if he had got his guitar out for others or because it was '*towards Christmas*'.

Pupil A also explained in their witness statement that during the lesson they opened the window next to them as they were hot but Mr Downes shouted at them so they shut it. Pupil A submitted that they then went to open the window again so Mr Downes put them '*on call*'. Pupil A stated that to be put '*on call*' pupils needed two warnings, but they did not get any. Pupil A stated that they asked Mr Downes why they were put '*on call*', and he told them to get out of his classroom.

Pupil A explained in their witness statement that they left the classroom and went down to the student reception to speak to one of the staff members there. Pupil A submitted that they told the student reception that Mr Downes had sent them out of class but that he was acting strangely and seemed like he was on something or drinking. The panel noted the contemporaneous Reflection Form that had been completed by Pupil A on 16 December 2021 which stated, '*Everyone in the lesson was saying sir is on something and he looks like it*'.

Pupil A provided further oral evidence that Mr Downes was not using '*real proper words*', he was '*slurring and mumbling*' and when he stood up, he was '*swaying and wobbling*' and '*he couldn't really walk straight*'.

Pupil A stated that on the day in question they didn't see Mr Downes drinking any alcohol out of an alcohol bottle, but he did have drinks in some reusable coffee cups which he

was drinking out of. Pupil A stated that they were not sure what these had in them and that he would often have drinks in mugs or cups. Pupil A confirmed in oral evidence that they thought he was drinking out of a reusable cup on this day.

The panel considered the oral and written evidence of Witness A, a [REDACTED], who explained that part of her role is to walk around the School throughout the day and visit classrooms.

Witness A submitted in her witness statement that on this particular day she was called to Mr Downes' classroom to support a particular pupil. Witness A explained that the pupil looked like she was concerned and told her that Mr Downes seemed to '*be on something*', and that he didn't seem well. She stated that after the pupil mentioned this, she tried to observe Mr Downes from outside the classroom through the window in the door.

The panel noted an email Witness A had sent to [REDACTED] on 17 December 2021 referring to Mr Downes' different behaviour but gave limited weight to her evidence as she only observed Mr Downes from outside of the classroom.

During oral evidence, when Witness A was questioned about how long she had observed Mr Downes for, she confirmed '*not long to be fair*' and '*maximum 10 minutes*'. Witness A also confirmed that it was '*not very clear from outside*' and she '*couldn't hear clearly*' as she had never gone into the lesson.

The panel considered the written and oral evidence of Witness E and accepted that she had seen Mr Downes on a number of occasions on the day in question. Witness E stated in her witness statement and oral evidence that she saw Mr Downes earlier in the day and he '*seemed quite jolly*' as he had opened his Secret Santa present early and was waving it about in the staff kitchen.

Witness E stated in an email to [REDACTED] on 17 December 2021 that later in the day during period five, she had seen a statement from a student that had been '*on call*' which said they thought '*sir was on something*' so she headed to Mr Downes' classroom to ensure all was ok.

Witness E stated that when checking Mr Downes' classroom, she thought it was odd as all the blinds were down, the lights were turned off so she asked him to put them up and turn the lights on, to which he abruptly replied "*what*". She stated that she found this reaction unusual. In oral evidence, Witness E confirmed that Mr Downes would normally tell her what students were doing or carry on teaching or carry on in a normal manner.

Witness E explained that she went back to Mr Downes' classroom around 10 minutes later and saw the blinds were still down so she asked more firmly for him to put them up, to which his reaction was '*dismissive*'. Witness E confirmed in her oral evidence that

there was no change in his attitude that she had come back and there was no real interaction which was not a normal reaction from Mr Downes.

Witness E was questioned about her assessment of Mr Downes and confirmed she returned to the classroom to investigate further as she considered he was '*disoriented*' but she was confident the children were not in any danger and she had spoken to Witness F, a [REDACTED] who was teaching next door and asked her to keep an eye.

Witness E written and oral evidence confirmed that she contacted [REDACTED] to come and provide a second opinion but they were diverted to another more pressing incident.

The panel accepted Witness E evidence that her actions supported the fact that she had concerns about Mr Downes' behaviour and that he may not have been in full control of his classroom.

Witness E confirmed in written evidence that Witness F had raised a concern that Mr Downes was '*under the influence of a substance*' and she asked a colleague, [REDACTED], to come and visit the classroom with her, as Mr Downes' possessions were in the room so she wanted him to be present. Witness E stated in her written evidence that they found a mug and a reusable coffee cup on Mr Downes' desk, and she noticed the coffee cup had some liquid in it. She stated that she smelt the liquid and it smelt like alcohol to which [REDACTED] agreed.

Witness E stated that she alerted Witness G of these findings and arranged for the science department to test the cups for alcohol. She stated that the alcohol test of the liquid in the coffee cup came back positive for alcohol.

The panel considered the written and oral evidence of Witness F. Witness F explained in her witness statement that on the day in question, during period 3, at around 11:20am she was walking through the department upstairs and she saw that Mr Downes was playing the guitar and singing loudly. Witness F submitted that she could hear that the classroom was getting loud and excitable.

Witness F stated that during period 5, it '*almost sounded like a party was going on*', and that she could hear Mr Downes was singing very loudly and playing the guitar, which she could hear despite his door being shut. In her oral evidence, Witness F confirmed that Mr Downes' actions during period 5 were a safeguarding concern in her eyes as children were on the tables and chairs, the lights were completely off, the door was closed, blinds were down and the noise was extremely loud at that point.

Witness F stated that her classroom door was open whilst she was teaching, and so Witness E came in and asked her what was going on in Mr Downes' classroom. Witness F submitted that she told Witness E that she did not know what was going on, but she could hear noise from his classroom. Witness F explained that she went outside to speak

to Witness E, and she mentioned to her that the lights were off in his class, and that the blinds were down which was a safeguarding issue.

Witness F submitted in her witness statement that after period 5 she went to another colleague's classroom, and whilst they were talking Mr Downes came into the room and said, *'I hope I haven't disturbed your lesson ladies, I know it got loud'*. Witness F described that Mr Downes was very loud and came across as abrupt, and that he was also slurring his words which made her feel like something wasn't right. She stated that Mr Downes was normally quite abrupt and direct with his tone and manner, but on this day, it was even more the case and was very emphasised in his behaviour.

When Witness F was questioned on whether Mr Downes was slurring in her oral evidence, she stated the words weren't clear, they had a slur to them and it was not what they would normally sound like.

Witness F explained that the plan for the end of the day was to go to the staff room where all the department would do Secret Santa. She stated that when Mr Downes came up, he stood next to her and started speaking to her. Witness F submitted in her witness statement that she did not recall the conversation because she was attentive to the fact that he wasn't behaving normally and that she could smell alcohol on him.

Witness F stated that during the Secret Santa Mr Downes was generally very aggressive and behaving in a way that would not be expected at work. She stated that she was concerned at this point so left the staffroom to find Witness E and inform her that she believed Mr Downes potentially could have been drinking.

The panel noted Mr Downes' oral evidence that he had a good relationship with Witness F.

The panel considered the written and oral evidence of Witness G, the [REDACTED].

Witness G stated in his witness statement that on the day of the incident he was off with Covid and received a phone call from Witness E, the [REDACTED], regarding Mr Downes. In his oral evidence, Witness G confirmed that he had notified staff members that he would be available.

Witness G stated that concerns had been raised by pupils and staff regarding Mr Downes' conduct on that particular day. Witness G stated that there was a report from a pupil saying that Mr Downes was *'acting strangely in a lesson'*, and the pupil seemed to suggest that Mr Downes was *'on something'*, and staff had reported the smell of alcohol on him. Witness G oral evidence and witness statement also noted that one pupil advised that Mr Downes had called him *'a little bastard'*.

Witness G stated that he immediately alerted the LADO, and he was appointed [REDACTED].

Witness G submitted that the following day [REDACTED], had a meeting with Mr Downes, where she informed him of his suspension. Witness G stated that it was raised to Mr Downes that there had been concerns reported by staff members and pupils regarding his behaviour the day before. He stated that Mr Downes shared that he didn't sleep well the night before [REDACTED], and that he probably shouldn't have come into School that day.

During oral evidence, Witness G confirmed that he shared classes with Mr Downes, including the challenging class that Mr Downes was teaching during period 4 which included Pupil A. Witness G stated that this particular class needed very clear instruction and routine and playing guitar for up to 25 minutes would have been '*poor judgement*' in his opinion.

The panel considered the written and oral evidence of Witness C, an [REDACTED] at the School. Witness C explained that on the day in question, he saw Mr Downes after work at the end of the School day in the pub. He stated that when he arrived Mr Downes was already at the pub and started calling out to bar staff in a demanding and loud way. Witness C submitted that it was clear Mr Downes had already had a few drinks, from the way he was acting. During oral evidence, Witness C suggested he arrived at the pub at 4.30pm.

Witness C evidence was consistent that Mr Downes bought him a drink and so he sat with him for a short while. Witness C stated that he could tell Mr Downes was drunk as the conversation wasn't making sense. He stated that he thought other staff members were trying to keep their distance, probably because they were embarrassed of how Mr Downes was acting.

Witness C explained that he had previously had drinks at the pub with Mr Downes, but he had never seen him in the state he was before and he had never seen him drunk.

The panel considered the oral and written evidence of Witness D, [REDACTED]. Witness D explained that when they would go to the pub, Mr Downes would handle himself and his drink well, so he had never seen him very intoxicated.

Witness D submitted that on the day in question, the first time he saw Mr Downes was whilst he was leaving the School in his car to go to the pub at the end of the day. He stated that he was walking outside and Mr Downes cracked his car window down and asked if he would be joining them at the pub. Witness D stated that at this point Mr Downes did not seem noticeably drunk.

The panel accepted Witness D oral evidence that he arrived at the pub around 15 minutes later and Mr Downes was already very intoxicated. Witness D submitted in his witness statement that he had been to the pub with Mr Downes on multiple occasions, he knew that he could handle his drink and would not have been intoxicated from one beer.

Witness D submitted in his witness statement that it was clear Mr Downes was drunk from his face and the fact he was being loud and shouting at people. The panel noted Witness D oral evidence was consistent with his witness statement in that Mr Downes' words were slurred and incoherent.

The panel considered the oral evidence of Mr Downes. The panel accepted Mr Downes' oral evidence that he had brought his guitar in from home as he had promised some of the children in his class that he would play them some music as a reward for a particularly long and challenging term, especially in the context of the Covid-19 Pandemic. However, the panel accepted the evidence of Witness F and Pupil A that on this occasion, there were concerns in the way in which Mr Downes was playing his guitar and the response from the pupils.

The panel also accepted the evidence of Witness G that one of the classes was particularly challenging and to play guitar to them for up to 25 minutes would have been poor judgement and unusual behaviour for Mr Downes. The panel also noted Mr Downes' oral evidence that he accepted some students were sitting on tables.

The panel accepted that no witnesses saw Mr Downes drinking alcohol on 16 December 2021. However, the panel noted that Pupil A did see Mr Downes drinking out of a reusable cup on his desk in their lesson and this is likely to be the same cup that was tested for alcohol by Witness B.

The panel also accepted the evidence of Witness D and Witness C that Mr Downes appeared to be intoxicated at the pub at the end of the School day. Mr Downes accepted in his oral evidence that he was friends with Witness D and the panel considered Witness D evidence to be credible and consistent.

The panel considered it was not plausible that Mr Downes could have reached the level of intoxication described by Witness D unless he had been consuming alcohol on the School's premises before going to the pub. This is supported by Witness D oral evidence that he only arrived at the pub approximately 15 minutes after Mr Downes.

[REDACTED] repeatedly asserted that the School's investigation into the allegations was biased and unfairly subjective. The panel took account of the legal advice provided regarding the weight to be given to the School's investigation findings and was conscious not to be unduly influenced by the investigation report or any findings reached by the disciplinary panel. Accordingly, the panel placed no weight on the disciplinary panel's findings.

The panel took into account all of the evidence before it, the panel found allegation 1(b) proven.

**c) Stored prescribed medication in an unlocked drawer.**

The panel considered the closing statement submitted by [REDACTED] on behalf of Mr Downes at the disciplinary hearing. [REDACTED] stated that Mr Downes accepted this is a serious allegation and confirmed that he brings in his [REDACTED] from home to School daily and then takes it home at the end of the day.

In oral evidence, Mr Downes confirmed that he brought medication into School and took it home every day in a shaving gear box which he would place in a drawer with books in his classroom. Mr Downes confirmed he would take tablets at around 10.00am and after lunch and then put the medication back into the drawer. During questioning, Mr Downes accepted in oral evidence that he could not lock the drawer and there was '*no way of locking it*'.

[REDACTED] explained that Mr Downes denied ever leaving his medication unattended in the classroom at any time, and that as it was found the day after he had been suspended and accompanied from the premises, there was a lapse in maintaining the security of the medication.

The panel did not accept Mr Downes' oral evidence that he did not leave the tablets unattended. Mr Downes confirmed in oral evidence that on 16 December 2021 he left his classroom during period 3 to eat a sandwich in the staff kitchen and then took a stroll around the School. The panel noted that this was consistent with Witness E evidence that she saw Mr Downes in the staff kitchen during period 3 and Witness F evidence that she saw Mr Downes playing guitar in an upstairs classroom during this free period.

The panel considered Witness G evidence that he routinely shares a classroom with Mr Downes, and that this was the first and only occasion that he had discovered prescription medication in his desk drawer. During oral evidence, Witness G confirmed that he had never opened that drawer previously as he had never had any need to.

Witness G written evidence submitted that the prescribed medication he found in Mr Downes' classroom was a safeguarding concern as it was accessible to pupils. He stated that the medication itself was [REDACTED] and was not in a locked cupboard.

The panel accepted that Mr Downes' suspension on 17 December 2021 would have likely been a shock to him and this is why he forgot to take the medication home with him on this occasion. However, the panel considered that there would have still been instances on previous days, either between lessons or when Mr Downes and Witness G were both absent from the classroom, when pupils could have potentially accessed this medication.

The panel accepted Witness G oral evidence that staff were expected to store medication or personal documents away from pupils so they cannot gain access and these personal items should be locked away as they would be from any children under 18. The panel accepted Witness G oral evidence that Mr Downes could have requested a cupboard



with a lock and although Mr Downes suggested he had requested this on a number of occasions, there was no evidence before the panel to support this suggestion. The panel determined that even if Mr Downes had requested a locked cupboard, it was still his responsibility to maintain the security of the medication in the interim in order to safeguard pupils.

The panel also noted Mr Downes' oral evidence that he placed the medication in the bottom of the drawer underneath past papers and '*loads of stuff*' which suggested to the panel that he knew that pupils shouldn't have been able to access this.

Taking into account all of the evidence before it, the panel found allegation 1(c) proven.

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

Having found a number 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 Downes, in relation to the facts found proved, involved breaches of the Teachers' 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 and maintain high standards in their own attendance and punctuality.
- 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 Downes amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Downes' conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice. The panel found that none of these offences was relevant.

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

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 Downes' actions constituted conduct that may bring the profession into disrepute.

Having found the facts of allegations 1(a), 1(b) and 1(c) proved, the panel further found that Mr Downes' 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.

The panel was aware that 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 safeguarding and wellbeing of pupils and the protection of other members of the public/the maintenance of public confidence in the profession/declaring and upholding

proper standards of conduct; that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In light of the panel's findings against Mr Downes, which involved bringing alcohol onto the school premises, consuming alcohol whilst on the school premises and/or during school hours and storing prescribed medication in an unlocked drawer, there was a strong public interest consideration in declaring and upholding proper standards of conduct.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Downes was 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 Downes was outside that which could reasonably be tolerated.

The panel considered the public interest consideration in retaining the teacher in the profession, noting the teacher's representative's submissions that Mr Downes teaches across a number of different subjects which are all underrepresented and has no prior history of disciplinary concern.

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 Downes. The panel was mindful of the need to strike the right balance between the rights of the teacher and the public interest.

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 Downes. 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of a position of 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 concluded that Mr Downes bringing alcohol onto the School's premises was deliberate as he acknowledged in evidence that there could have been some alcohol in the cups he brought into School on numerous occasions. The panel also concluded that Mr Downes repeatedly stored prescribed medication in an unlocked drawer and, again, this was accepted in his own evidence.

There was no evidence to suggest that Mr Downes was acting under extreme duress. However, the panel took account of the personal circumstances of Mr Downes at the time the incidents took place, as outlined below. The panel considered that some of these circumstances may have impacted on his reasoning at that time.

No evidence was submitted to attest to Mr Downes' ability as a teacher. Nor was there any evidence that Mr Downes demonstrated exceptionally high standards in both personal and professional conduct and has contributed significantly to the education sector. It was accepted that Mr Downes is a teacher who has been in the profession a significant amount of time, with a substantial period of his teaching career spent overseas.

There was limited evidence of insight and/or remorse on behalf of Mr Downes.

The panel considered the submissions in the bundle with Mr Downes' responses to the allegations. Mr Downes stated he has never had a complaint made against him in any school where he has worked in 28 years. He submitted that in the three and a half years he worked at the School he never had a complaint made against him.

[REDACTED] explained on behalf of Mr Downes that he had not slept well the night before 16 December 2021 [REDACTED]. The panel has also taken into account the fact that all of the incidents occurred in the middle of the global Covid-19 Pandemic which had a significant adverse impact on all those working in the education sector.

[REDACTED] submitted that Mr Downes' medication was only discovered the day after he had been suspended and accompanied from the premises in a state of shock, therefore creating a lapse in maintaining the security of his prescription medication.

The panel took into account Mr Downes' oral evidence that he had asked for a locked cupboard to store the medication safely. However, the panel remained concerned with Mr Downes' actions and noted that Mr Downes remained responsible for the safe storage of medication whilst he did not have access to a locked cupboard.

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 Downes 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 Downes. The panel noted that the safeguarding and wellbeing of pupils was a significant factor in forming that opinion. Although the panel accepted that the inappropriate behaviour they found to have happened had all occurred on one day, this behaviour was sufficiently concerning to pose a serious risk to the safeguarding and wellbeing of pupils. The panel accepted witness evidence that Mr Downes' actions on 16 December 2021 in teaching with the blinds down, lights off and allowing students to sit on tables was poor judgement and increased the risk of escalating pupils' behaviour which was contrary to safeguarding principles.

The panel took the legal advice they received into consideration, that denial of misconduct is not an absolute bar to a finding of insight nor does it provide a reason to increase sanction and maintenance of innocence does not equate to a lack of insight. However, the panel did not consider that there was sufficient acknowledgment of responsibility by Mr Downes in respect of his conduct, especially in respect of his lack of understanding of keeping children safe. Mr Downes accepted in evidence that he had deliberately brought alcohol onto the School's premises and stored prescribed medication in an unlocked drawer, and the panel was concerned that there was a concerning lack of regard which could have seriously affected the safeguarding and wellbeing of 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 behaviours that, if proved, would militate against the recommendation of a review period. The panel found none of these behaviours relevant.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. The panel found none of these behaviours relevant.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a 2 year 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 Michael Downes should be the subject of a prohibition order, with a review period of two years.

In particular, the panel has found that Mr Downes 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 and maintain high standards in their own attendance and punctuality.
- 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 Downes, involved breaches of the responsibilities and duties set out in statutory guidance Keeping children safe in education (KCSIE).

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

The findings of misconduct are serious as they include bringing and consuming alcohol on school premises and storing prescribed medication in an unlocked drawer.

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 or conduct likely to 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 Downes, 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/safeguard pupils. In relation to the allegation of medication storage the panel has observed, "The panel determined that even if Mr Downes had requested a locked cupboard, it was still his responsibility to maintain the security of the medication in the interim in order to safeguard 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, "There was limited evidence of insight and/or remorse on behalf of Mr Downes." In my judgement, the lack of full 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, "In light of the panel's findings against Mr Downes, which involved bringing alcohol onto the school premises, consuming alcohol whilst on the school premises and/or during school hours and storing prescribed medication in an unlocked drawer, there was a strong public interest consideration in declaring and upholding proper standards of conduct." The panel also said, "that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Downes was 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 and conduct likely to bring the profession 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 Downes himself the panel comment “No evidence was submitted to attest to Mr Downes’ ability as a teacher. Nor was there any evidence that Mr Downes demonstrated exceptionally high standards in both personal and professional conduct and has contributed significantly to the education sector. It was accepted that Mr Downes is a teacher who has been in the profession a significant amount of time, with a substantial period of his teaching career spent overseas.”

A prohibition order would prevent Mr Downes 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, “The panel took the legal advice they received into consideration, that denial of misconduct is not an absolute bar to a finding of insight nor does it provide a reason to increase sanction and maintenance of innocence does not equate to a lack of insight. However, the panel did not consider that there was sufficient acknowledgment of responsibility by Mr Downes in respect of his conduct, especially in respect of his lack of understanding of keeping children safe. Mr Downes accepted in evidence that he had deliberately brought alcohol onto the School’s premises and stored prescribed medication in an unlocked drawer, and the panel was concerned that there was a concerning lack of regard which could have seriously affected the safeguarding and wellbeing of pupils.”

I have also placed considerable weight on the finding “The panel decided that the public interest considerations outweighed the interests of Mr Downes. The panel noted that the safeguarding and wellbeing of pupils was a significant factor in forming that opinion. Although the panel accepted that the inappropriate behaviour they found to have happened had all occurred on one day, this behaviour was sufficiently concerning to pose a serious risk to the safeguarding and wellbeing of pupils. The panel accepted witness evidence that Mr Downes’ actions on 16 December 2021 in teaching with the blinds down, lights off and allowing students to sit on tables was poor judgement and increased the risk of escalating pupils’ behaviour which was contrary to safeguarding principles. I have given less weight in my consideration of sanction therefore, to the contribution that Mr Downes has made to the profession.”



In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by full remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

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

I have gone on to consider the matter of a review period. In this case, the panel has recommended a 2 year review period.

I have considered the panel's comments "The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. The panel found none of these behaviours relevant."

The panel has also said that "the findings indicated a situation in which a review period would be appropriate."

I agree with the panel that a 2 year review period is relevant and proportionate in this case.

**This means that Mr Michael Downes is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England.** He may apply for the prohibition order to be set aside, but not until 07 March 2026, 2 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Downes remains prohibited from teaching indefinitely.

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

Mr Downes 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.



**Decision maker: Sarah Buxcey**

**Date: 7 March 2024**

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