



Teaching
Regulation
Agency

Mr Ian Marcus: Professional conduct panel outcome

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

February 2024

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

Teacher:	Mr Ian Marcus
Teacher ref number:	3341984
Teacher date of birth:	22 July 1962
TRA reference:	19554
Date of determination:	29 February 2024
Former employer:	St, Helen's School, Northwood ("the School")

Introduction

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("the TRA") convened on 26 February 2024 to 29 February 2024 by virtual means, to consider the case of Mr Ian Marcus.

The panel members were Ms Laura Flynn (teacher panellist – in the chair), Mr Nick Watkiss (teacher panellist), Mrs Kristen Hughes (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 Felix Keating of 3 Raymond Buildings instructed by Kingsley Napley Solicitors.

Mr Marcus was not present but was represented by Mr David Barnard and Mr Chris Walters of the Musician's Union who alternated in providing representation on each day of the hearing.

The hearing took place in public space for various portions of the hearing relating to confidential health matters that were heard in private. The hearing was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 31 January 2024.

It was alleged that Mr Marcus was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that while employed as a Teacher at St Helen's School:

1. Between September 2016 and March 2019, on one or more occasions during one-to-one private music lessons at his home, he:
 - a. engaged in inappropriate and unprofessional discussions with Pupil A, in that he:
 - i. asked Pupil A if she liked anyone and/or had a crush on anyone; and/or
 - ii. asked Pupil A if Pupil B was in a relationship or liked anyone and/or if anyone in her class was in a relationship or words to that effect;
 - iii. asked Pupil A if she was going through puberty or words to that effect;
 - iv. told Pupil A she was "beautiful" and/or has really nice eyes" or words to that effect;
 - v. complimented Pupil A on her clothes;
 - vi. told Pupil A that if she did an incorrect note he would pick her up and put her over his shoulder or words to that effect;
 - b. engaged in inappropriate and/or unnecessary physical contact with Pupil A in that he:
 - i. asked and/or allowed Pupil A to sit on his knee; and/or
 - ii. massaged Pupil A's hand and/or wrist and/or
 - iii. tickled Pupil A under her armpits; and/or
 - iv. held Pupil A's foot and/or leg on his lap and/or
 - v. placed his hands on Pupil A's ribs and/or stomach and/or chest during breathing exercises; and/or
 - vi. massaged Pupil A's neck and/or back; and/or
 - vii. removed Pupil A's socks; and/or
 - viii. massaged Pupil A's feet and/or
 - ix. played a "trust exercise" with Pupil A, where she fell back into his arms and he caught her, and/or
 - x. hugged Pupil A;

2. Between September 2013 and March 2019, on one or more occasions during one-to-one private music lessons at his home, he:
 - a. engaged in inappropriate and/or unprofessional discussions with Pupil B, whereby he:
 - i. asked Pupil B whether he thought Pupil C was pretty and/or whether there were any girls that he fancied; and/or
 - ii. asked Pupil B if he liked girls and/or if he liked boys; and/or
 - iii. asked Pupil B to lift up his [Pupil B's] top; and/or
 - iv. told Pupil B that he [Pupil A] had a nice tummy and/or good physique; and/or
 - v. discussed the information set out in Schedule A;
 - b. engaged in inappropriate and/or unnecessary physical contact with Pupil B in that he:
 - i. touched Pupil B's stomach and/or chest and/or ribs during breathing exercises; and/or
 - ii. massaged Pupil B's feet; and/or
 - iii. touched and/or tapped Pupil B's stomach; and/or
 - iv. hugged Pupil B;
3. Between August 2015 and March 2019, on one or more occasions during private music lessons at his home; he:
 - a. engaged in inappropriate and/or unprofessional conversations with Pupil C, whereby he:
 - i. commented that Pupil C looked beautiful and/or had a beautiful body and/or beautiful feet; and/or
 - ii. asked Pupil C if she had "abs", and/or
 - iii. told Pupil C about his first crush and/or
 - iv. asked Pupil C what sexuality she is and/or whether she was interested in boys or girls; and/or
 - v. told Pupil C about his sexuality; and/or
 - vi. spoke about Pupil C's friends and/or commented on their looks;
 - b. engaged in inappropriate and unnecessary physical contact with Pupil C in that he:
 - i. placed his hands under Pupil C's top; and/or
 - ii. massaged Pupil C's shoulders and/or neck under her clothes; and/or

- iii. placed his hands on Pupil C's stomach and/or chest and/or ribs during breathing exercises; and/or
 - iv. made Pupil C sit on his knee or lap; and/or
 - v. held Pupil C's foot and/or leg on his lap; and/or
 - vi. removed Pupil C's shoes and/or socks; and/or
 - vii. massaged Pupil C's feet; and/or
 - viii. allowed Pupil C to massage his feet and/or back; and/or
 - ix. took hold of Pupil C and slung her over his shoulder; and/or
 - x. kissed Pupil C's head; and/or
 - xi. tickled Pupil C on her sides; and/or
 - xii. rested his forehead on Pupil C's forehead;
4. His conduct as set out in allegation 1 and/or 2 and/or 3 was:
- a. sexually motivated and/or
 - b. sexual in nature.

[REDACTED]

- i. [REDACTED].

Mr Marcus has not admitted the allegations and has not admitted that he is guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Case Management Hearing

Before the hearing commenced, the panel was asked to consider an application from the presenting officer based on the papers alone. On 22 January 2024, the presenting officer applied for the following directions:

1. Special measures in respect of Pupil A, Pupil B and Pupil C, namely:
 - a. that they give evidence virtually should the case be listed for an in-person hearing;
 - b. should the whole hearing take place virtually, that the teacher turn off his camera for the duration of the evidence of Pupil A, Pupil B and Pupil C or if it is in-person for the teacher to sit behind a screen;
 - c. that Pupil A, Pupil B and Pupil C be permitted a witness supporter;

2. That Pupil C's [REDACTED] should give her evidence virtually, should the whole hearing take place virtually that the teacher turn off his camera for the duration of her evidence or sit behind a screen if in in-person and that she be permitted a witness supporter; and
3. That the teacher should not be entitled to cross-examine Pupil A, Pupil B, Pupil C and Pupil C's [REDACTED] but only through a representative (either instructed by himself or instructed by the TRA on his behalf).

The panel was provided with an email from Mr Marcus's representative confirming there were no objections to the proposed directions.

The panel considered the provisions governing child and vulnerable witnesses set out at paragraphs 5.101 to 5.106 of the Teacher misconduct: Disciplinary procedures for the teaching profession, May 2020 ("the Procedures").

The panel was satisfied that Pupil A was a child witness being under the age of 18 at the start of the professional conduct panel hearing.

Pupil B and Pupil C were over the age of 18 but the panel was satisfied that they were vulnerable witnesses, given the quality of their evidence was likely to be adversely affected at the hearing, since they are alleged victims of conduct which is the subject of allegations against the teacher of a sexual nature.

The panel was satisfied that Pupil C's [REDACTED] was a vulnerable witness. Her [REDACTED] is the alleged victim of conduct which is the subject of an allegation against the teacher of a sexual nature. As such the panel considered the quality of her evidence was likely to be adversely affected at the hearing given the impact of such allegations on [REDACTED].

The panel considered that all of the measures proposed by the presenting officer were appropriate to safeguard the interests of Pupil A, Pupil B, Pupil C.

The panel also considered that the measure proposed numbered 2. above was also appropriate to safeguard the interests of Pupil C's [REDACTED].

With regard to the measure proposed numbered 3. above, the panel noted that paragraph 5.106 of the Procedures did not specifically apply to Pupil C's [REDACTED] given that she is neither the alleged victim of an allegation against the teacher concerning conduct of a sexual nature, nor a child witness. However, the panel noted that the special measures in paragraph 5.103 of the Procedures are not exhaustive and in the circumstances of this case, the panel considered it would be appropriate to safeguard the interests of Pupil C's [REDACTED] that it make the direction sought numbered 3. above.

With regard to the presence of witness supporters, the panel directed that this was permitted subject to the condition that no witness supporter attend the hearing until after the witness they were supporting had given evidence, and that they played no part in the hearing.

Subject to this caveat, the application was granted and the proposed directions were made.

Preliminary applications

Proceeding in Absence

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

The panel was satisfied that TRA complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations"). The panel noted that Mr Marcus completed the correspondence request form. He was asked to indicate, by deleting as appropriate in the box provided, how he would like the TRA and anyone acting on their behalf, including the presenting officer/ investigating law firm, to send all future correspondence relating to his case. Mr Marcus deleted the words "To me (copied to my representative)" and therefore selected the option for correspondence to be sent "To my representative only". Within the form Mr Marcus had also provided the email address of his representative. The panel therefore considered that Mr Marcus had requested in writing that documents be served by email upon the email address he had provided for his representative. The panel noted that paragraph 1.4 (iv) of the Procedures states that a reference to a teacher includes, where appropriate the person representing him in the course of misconduct proceedings. The panel was therefore satisfied that service upon Mr Marcus's representative was effective.

The panel considered whether the Notice of Hearing complied with paragraphs 5.23 of the Procedures. In particular, the panel noted that the teacher had been provided with less than 10 weeks' notice of the hearing, as usually required by paragraph 5.23 of the Procedures, albeit noticed that this requirement is subject to having been "otherwise agreed with the teacher". The panel saw an exchange between Mr Marcus's representative and the TRA in which proposed hearing dates were considered and it was stated "Otherwise our member is willing to waive any notice period as he will not be in attendance at the hearing". The panel was therefore satisfied that a shorter notice period had been agreed by Mr Marcus.

The panel was satisfied that paragraph 5.24 of the Procedures had been complied with.

Having been satisfied that the notice of hearing had been served, the panel moved on to consider whether 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 has to be exercised with the utmost care and caution, and that its discretion is 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 took account of the various factors drawn to its attention from the case of *R v Jones*.

The panel was satisfied that Mr Marcus was aware of the proceedings since his representative was in attendance, albeit had no instructions to question witnesses. The panel noted that Mr Marcus's representatives had communicated on several occasions to the TRA that Mr Marcus would not be in attendance at the hearing whenever it was listed. The panel therefore considered that Mr Marcus had waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

There was no indication that an adjournment might result in Mr Marcus attending, and his representative's correspondence indicated that he would never attend the hearing. Mr Marcus took that decision with the benefit of representation, and there has been no indication that an adjournment was needed in order to instruct his representative to respond to the allegations. Mr Marcus will have a representative present throughout the hearing, albeit was not instructed to ask questions of any witnesses and was to primarily be present to observe the hearing and report back to Mr Marcus.

The panel had transcripts of Mr Marcus's police interview and a note of the School's investigatory meeting with him. The panel would also be 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 was given no reason for Mr Marcus's non-attendance. There was no suggestion by his representative that he was in any way unfit to attend.

The panel recognised that the allegations against the teacher are 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 allegations include reference to three pupils who are the alleged victims of the conduct that is the subject of the allegations. They and their families will have an interest in having the allegations determined within a reasonable time. The conduct alleged is said to have taken place whilst the teacher was employed at the School, albeit the allegations are said to have taken place during private music lessons at Mr Marcus's home. There were no allegations regarding Mr Marcus's conduct at the School. Nevertheless, the School will have an interest in this hearing taken place in order to move forwards.

The panel also noted that there were three vulnerable witnesses and one child witness who were prepared to give evidence, and that it would likely be inconvenient and distressing for them to have to prepare themselves again. Delaying the case may impact upon the memories of those witnesses.

. The panel considered that since:

- Mr Marcus had waived his right to appear;
- there was no suggestion that an adjournment might facilitate his attendance;
- that the panel could exercise vigilance in making its decisions;
- an adjournment would likely cause vulnerable and/or young witnesses inconvenience and distress; and
- the public interest in this hearing proceeding within a reasonable time was in favour of this hearing continuing today,

the panel decided to proceed with the hearing in the absence of the teacher.

Summary of evidence

Documents

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

Section 1: Chronology, key people and anonymised pupil list – pages 4 to 6

Section 2: Notice of proceedings and response – pages 7 to 22

Section 3: Teaching Regulation Agency witness statements – pages 23 to 60

Section 4: Teaching Regulation Agency documents – pages 61 to 399

In addition, the panel agreed to accept the following:

Documents relevant to the TRA's application for special measures consisting of:

- Application on behalf of the TRA – 11 pages
- Bundles of appendices to the application – 79 pages
- Update to the special measures application dated 23 February 2024 – 1 page
- Email chain between presenting officer's firm and Mr Marcus's representative dated 22 January 2024 and 31 January 2024 and email from the presenting officer to the TRA dated 31 January 2024 – 7 pages

Documents relevant to the TRA's application to proceed in absence consisting of:

- Service bundle – 56 pages
- Email entitled representative attendance information

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

Witnesses

The panel heard oral evidence from:

Witness E - [REDACTED];

Witness F – [REDACTED]

Pupil A

Pupil B

Pupil C

Pupil C's [REDACTED]

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 Marcus worked at the School on a self-employed basis from 1991 to 2006. Mr Marcus was subsequently employed from 1 September 2006 at the School as a music teacher working 6.5 hours per week. On 9 March 2019, the Metropolitan Police notified the

School that Mr Marcus had been arrested on 8 March 2019 in relation to alleged conduct during private music lessons. The School suspended Mr Marcus upon receipt of this notification. The criminal case was closed with no further action. Mr Marcus tendered his resignation on 17 August 2020. The School held a disciplinary hearing in Mr Marcus's absence on 26 August 2020. Mr Marcus was referred to the TRA on 5 October 2020.

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:

The panel heard oral evidence from Pupil A, Pupil B and Pupil C who provided first hand evidence of Mr Marcus's conduct. The panel had transcripts of their interviews with the police, witness statements prepared for the purpose of the present proceedings and noted their evidence had remained largely consistent throughout.

The panel was able to test their evidence by asking questions of each of them. The panel noted the balanced way in which each of the pupils gave their evidence, and reflected on the lines of defence put to them before answering their questions. They were also clear where they no longer remembered certain aspects of the allegations and could not now confirm if they had happened. By way of example:

- Pupil A stated that the foot massages appeared to have been associated with Pupil A having said to Mr Marcus that she felt tired and "stressed" after her day in school, and that the massage "was to do with relaxing". Nevertheless, she still queried what reason Mr Marcus could have had to massage her feet.
- Pupil B was asked whether Mr Marcus could have discussed the information set out in Schedule A as a means of enquiring whether Pupil B was comfortable with playing his instrument. Pupil B paused to consider this, and responded that had that been the case Mr Marcus could have just asked whether he was comfortable. Instead, he confirmed that Mr Marcus's remark was more along the lines of [REDACTED]", seemingly drawing connections between them.
- Pupil B queried whether massage appropriately described the conduct set out in 1.b.ii.
- Pupil C stated that she could not remember Mr Marcus saying that she had "beautiful feet" as alleged at allegation 3.a.i.

The panel also tested whether there had been any collusion between the pupils when the concerns were raised. Pupil A and Pupil B were [REDACTED]. Pupil C had [REDACTED] with them but had not had contact with Pupil A and Pupil B after they attended different secondary schools. Pupil A confirmed that she had not discussed her music lessons or how she was feeling about them with any of her friends. Pupil B stated that after Pupil A

had made her disclosure to their [REDACTED], it had been a “lightbulb” moment in which he suddenly realised what had been happening. He referred to having recognised “this is what he does, he does that to me”.

Pupil C’s [REDACTED] stated that Pupil A’s [REDACTED] had mentioned that Pupil A had been saying that things were happening that Pupil A felt uncomfortable with regarding breathing exercises and sitting on Mr Marcus’s lap. Pupil C’s [REDACTED] explained that she waited for the right moment and asked Pupil C about this, and Pupil C’s reaction was that Pupil C’s [REDACTED] should tell Pupil A’s [REDACTED] that Pupil A had to be believed, and that they had to keep her safe. Pupil C’s [REDACTED] confirmed that nothing had been said by Pupil A’s [REDACTED] regarding massage, so this was not conveyed to Pupil C. Pupil C stated that those things had been happening to her, and others that were much worse. Pupil C referred to Mr Marcus massaging her feet and back, touching her and speaking to her in a sexualised way. Pupil C’s [REDACTED] explained that the children had not discussed this subsequently, given the police investigation had then been afoot. The panel was satisfied that there had been no collusion. It was unlikely that either Pupil A or Pupil C knew that the other had reported the foot massages.

Furthermore, the panel heard about the impact on all three of the children’s lives. Significant evidence was provided by Pupil C’s [REDACTED] about this and it was clear that the effects have been profound and long lasting.

The panel considered that the common themes of conduct reported by the pupils corroborated each of their accounts. The panel was satisfied that the pupils accounts were credible.

In contrast, Mr Marcus has not attended this hearing, nor provided any explanation for the purpose of the present proceedings. The panel was not able to test his evidence. The panel, however, noted that Mr Marcus has taught for over 30 years, and exercised caution given that there was no evidence that Mr Marcus had any previous propensity towards such conduct. A teacher with that experience would usually be expected to be credible in their responses to questions asked of them by the police and by those conducting a disciplinary investigation at the School.

The panel noted that in response to the notice of referral in this case, Mr Marcus admitted placing his hands on Pupil A’s ribs, and/or stomach during breathing exercises and admitted playing a trust exercise with her where she fell back into his arms and he caught her. He admitted having told Pupil C about his sexuality, admitted having touched Pupil C’s stomach during breathing exercises and admitted massaging Pupil C’s feet.

Mr Marcus was interviewed as part of the School’s investigation on 9 July 2020. Mr Marcus was given the opportunity to check the accuracy of the transcript made of this meeting, and the panel had a marked up version containing Mr Marcus’s comments. The panel noted that Mr Marcus denied having taken off a child’s shoes and socks and

touched/massaged their feet during a lesson. He referred to “kids muck around and they have put their feet up and then I have removed them.” and “I’ve never stroked or massaged their feet.” This is despite having subsequently admitted in the present proceedings that he massaged Pupil C’s feet. Prior to this he had also accepted in his police interview regarding allegations made by Pupil C that she used to put her foot on his knee and then “I’d maybe just press underneath her toes as well, because the whole thing is trying to relax her all the time.” He admitted this happened quite often but that he “wouldn’t call it massage.”

The panel heard evidence from Witness E that Mr Marcus attended training in September 2018 delivered by the School tailored to a group of Instrumental Teachers. The panel accepted that Mr Marcus was instructed that teachers should always try to use their own body or instrument to demonstrate a technique and try not to touch the pupil if at all possible. Witness E gave evidence that Mr Marcus had been advised that it was not necessary to touch the students for breathing exercises. Instead, the teacher should put their hand on their own diaphragm and describe what they feel, and ask the student to mimic this on their own body and ask the student if they could feel what had been described. Witness E had given oral evidence that Mr Marcus had been provided with training using the analogy of a swimsuit; that is “don’t touch anywhere a swimsuit would be.” Having been given that instruction, the panel did not consider that Mr Marcus’s accounts of the breathing exercises that he provided to the police was credible.

Furthermore, the panel noted that advice from the Musician’s Union was that any physical contact with pupils can be potentially subject to misinterpretation or even malicious allegations and that “the best advice is to avoid touching your pupils and to develop strategies for teaching through demonstration and modelling”. The panel would have expected Mr Marcus to follow that advice given the correlation with the guidance given by the School, and the consequences of failing to do so.

Furthermore, the panel noted points that were not credible in Mr Marcus’s explanation of the breathing exercises during the School’s investigation. An example of this included Mr Marcus’s reference to having attended a staff meeting at the School with the Director of Music when a singing teacher brought up the issue. He stated that he was told that breathing exercises were “ok” to do with students and “you could also touch your own diaphragm and have the child touch your diaphragm – but I was never comfortable with that”. The panel could not understand how Mr Marcus could have thought it was acceptable to touch a child during breathing exercises, when he would have felt uncomfortable for a child to touch him.

He also stated that that in the School he had only used touch to show breathing a couple of times, and he had not wanted to do this in the School as it was “more formal”. Logically, undertaking such physical contact at home in a private setting created a greater risk of allegations being made. The panel did not consider Mr Marcus’s position to be credible. He also stated he would keep the breathing exercises to a minimum at

home as well. However, in his police interview discussing the allegations made by Pupil C, he referred to these as “pretty normal”.

The panel noted that when Pupil C’s [REDACTED] sent an email to Mr Marcus to inform him they were stopping Pupil C’s lessons immediately, she stated in her email that “we do not consider it appropriate that she either sit on your knees or be massaged during flute lessons.” Nowhere in the email did Pupil C’s [REDACTED] refer to the breathing exercises. Despite this, Mr Marcus’s response was “I do breathing exercises with Pupil C but that’s it. When she said she had a pain in the neck I squeezed her neck to relieve the tension. I think we have discussed this before.” The panel heard evidence from Pupil C’s [REDACTED] that she had never discussed any pain in Pupil C’s neck with Mr Marcus. It seemed apparent that Mr Marcus had been referring in his email to aspects of his conduct that he anticipated might give rise to complaint.

Given the inconsistencies in Mr Marcus’s accounts, and that some of his responses provided to the police and the School to questions asked of him did not appear rational, the panel did not consider Mr Marcus’s explanations to be credible. Mr Marcus did not provide any written statement for these proceedings nor did the panel have the opportunity to test his evidence.

1. Between September 2016 and March 2019, on one or more occasions during one-to-one private music lessons at your home, you:

a. engaged in inappropriate and unprofessional discussions with Pupil A, in that you:

- i. asked Pupil A if she liked anyone and/or had a crush on anyone; and/or**
- ii. asked Pupil A if Pupil B was in a relationship or liked anyone and/or if anyone in her class was in a relationship or words to that effect;**
- iii. asked Pupil A if she was going through puberty or words to that effect;**
- iv. told Pupil A she was “beautiful” and/or has really nice eyes” or words to that effect;**
- v. complimented Pupil A on her clothes;**
- vi. told Pupil A that if she did an incorrect note he would pick her up and put her over his shoulder or words to that effect;**

b. engaged in inappropriate and/or unnecessary physical contact with Pupil A in that you:

- i. asked and/or allowed Pupil A to sit on your knee; and/or**
- ii. massaged Pupil A's hand and/or wrist and/or**
- iii. tickled Pupil A under her armpits; and/or**
- iv. held Pupil A's foot and/or leg on your lap and/or**
- v. placed your hands on Pupil A's ribs and/or stomach and/or chest during breathing exercises and/or**
- vi. massaged Pupil A's neck and/or back; and/or**
- vii. removed Pupil A's socks; and/or**
- viii. massaged Pupil A's feet and/or**
- ix. played a "trust exercise" with Pupil A, where she fell back into his arms and you caught her, and/or**
- x. hugged Pupil A;**

The panel was satisfied that Pupil A had during her police interview and/or her witness statement for these proceedings referred to all of the matters complained of in allegation 1a. and 1.b. Furthermore, Pupil A confirmed that each of these matters were true when she gave oral evidence to the panel.

Pupil A referred to the lessons having become uncomfortable around the end of year 5, although she stated she did not realise it at that point, and it was only when she had a lesson in school about child safety that she thought that maybe Mr Marcus should not be doing things that made her feel uncomfortable.

The panel noted that Mr Marcus had completed a form responding to the notice of referral. In this form completed on 19 August 2022, Mr Marcus denied allegations to the effect of those set out at allegation 1.a.ii to 1.a.v above. Allegation 1.a.i and 1.a.vi had not been formulated at that point for Mr Marcus to respond to.

Mr Marcus denied allegations to the effect or similar to those set out at allegation 1.b.i, 1.b.iii, 1.b.iv, 1.b.vi, 1.b.vii and 1.b.viii above. In relation to allegation to the effect of that set out in 1.b.v. Mr Marcus responded "yes" to having placed his hands on Pupil A's ribs and/or stomach during breathing exercises but denied having placed his hands on Pupil A's chest. He admitted an allegation to the effect of 1.b.ix. Allegation 1.b.ii and 1.b.x. had not been formulated at that point for Mr Marcus to respond to.

As referred to above, the panel found Pupil A's account to be credible, and that Mr Marcus's accounts lacked credibility. The panel placed significant weight on Pupil A's evidence and to the corroboration provided by the other pupils as to similarities between

the conduct they each experienced. The panel found it proven that the matters alleged at allegation 1.a and 1.b. more likely than not occurred.

Furthermore, the panel was satisfied that he engaged in inappropriate and unprofessional discussions with Pupil A who was between the ages of 8 and 11 years when this conduct occurred.

The panel was also satisfied that the physical contact was inappropriate and unnecessary. Given the training and guidance that Mr Marcus was provided with, conduct of this nature could not be justified.

2. Between September 2013 and March 2019, on one or more occasions during one-to-one private music lessons at your home, you:

a. engaged in inappropriate and/or unprofessional discussions with Pupil B, whereby you:

- i. asked Pupil B whether he thought Pupil C was pretty and/or whether there were any girls he fancied; and/or**
- ii. asked Pupil B if he liked girls and/or if he liked boys; and/or**
- iii. asked Pupil B to lift up his top; and/or**
- iv. told Pupil B that he had a nice tummy and/or good physique; and/or**
- v. discussed the information set out in Schedule A;**

b. engaged in inappropriate and/or unnecessary physical contact with Pupil B in that you:

- i. touched Pupil B's stomach and/or chest and/or ribs during breathing exercises; and/or**
- iii. touched and/or tapped Pupil B's stomach; and/or**
- iv. hugged Pupil B;**

The panel was satisfied that Pupil B had during his police interview and/or his witness statement for these proceedings referred to all of the matters complained of in allegation 2.a. and 2.b. as referred to above. Furthermore, Pupil B confirmed that each of these matters were true when he gave oral evidence to the panel.

In his response to the notice of referral of 19 August 2022, Mr Marcus denied allegations to the effect of those set out at allegation 2.a.ii, 2.a.iii, 2.a.iv and 2.a.v. Allegation 2.a.i had not been formulated at that point for Mr Marcus to respond to.

Mr Marcus denied allegations to the effect of those set out at allegation 2.b.i Allegations 2.b.ii, 2.b.iii and 2.b.iv had not been formulated, or were not as presently alleged for Mr Marcus to respond to at that stage.

As referred to above, the panel found Pupil B's account to be credible, and that Mr Marcus's accounts lacked credibility. The panel placed significant weight on Pupil B's evidence and to the corroboration provided by the other pupils as to similarities between the conduct they each experienced. The panel found it proven that the matters alleged at allegation 2.a and 2.b. more likely than not occurred.

Furthermore, the panel was satisfied that he engaged in inappropriate and unprofessional discussions with Pupil B who was between the ages of 7 and 13 years when this conduct occurred.

The panel was also satisfied that the physical contact was inappropriate and unnecessary. Given the training and guidance that Mr Marcus was provided with, conduct of this nature could not be justified.

3. Between August 2015 and March 2019, on one or more occasions during private music lessons at your home; you:

a. engaged in inappropriate and/or unnecessary conversations with Pupil C, whereby you:

- i. commented that Pupil C looked beautiful and/or had a beautiful body and/or beautiful feet; and/or**
- ii. asked Pupil C if she had "abs", and/or**
- iii. told Pupil C about your first crush and/or**
- iv. asked Pupil C what sexuality she is and/or whether she was interested in boys or girls; and/or**
- v. told Pupil C about your sexuality; and/or**
- vi. spoke about Pupil C's friends and/or commented on their looks;**

b. engaged in inappropriate and unnecessary physical contact with Pupil C in that you:

- i. placed your hands under Pupil C's top; and/or**
- ii. massaged Pupil C's shoulders and/or neck under her clothes; and/or**
- iii. placed your hands on Pupil C's stomach and/or chest and/or ribs during breathing exercises; and/or**

- iv. made Pupil C sit on your knee or lap; and/or**
- v. held Pupil C's foot and/or leg on your lap; and/or**
- vi. removed Pupil C's shoes and/or socks; and/or**
- vii. massaged Pupil C's feet; and/or**
- viii. allowed Pupil C to massage your feet and/or back; and/or**
- ix. took hold of Pupil C and slung her over your shoulder; and/or**
- x. kissed Pupil C's head; and/or**
- xi. tickled Pupil C on her sides; and/or**
- xii. rested your forehead on Pupil C's forehead.**

The panel was satisfied that Pupil C had during her police interview and/or her witness statement for these proceedings referred to all of the matters complained of in allegation 3.a. and 3.b. Furthermore, Pupil C confirmed that each of these matters were true when she gave oral evidence to the panel, save that she could not now remember Mr Marcus making a comment that she had beautiful feet.

In his response to the notice of referral of 19 August 2022, Mr Marcus denied allegations to the effect of those set out at allegation 3.a.i, 3.a.ii, 3.a.iii, 3.a.iv and 3.a.vi. Mr Marcus responded "yes" to an having told Pupil C about his sexuality as alleged at 3.a.v.

Mr Marcus denied allegations to the effect of those set out at allegation 3.b.i, 3.b.ii, 3b.iv, 3.b.ix and 3.b.x . Allegations 3.b.v, 3.b.vi, 3.b.viii, 3.b.xi and 3.b.xii had not been formulated at that point for Mr Marcus to respond to. Mr Marcus responded "yes" to having touched Pupil C's stomach during breathing exercises but denied having touched her chest. He also responded "yes" to having massaged Pupil C's feet as alleged at 3.b.vii.

As referred to above, the panel found Pupil C's account to be credible, and that Mr Marcus's accounts lacked credibility. The panel placed significant weight on Pupil C's evidence and to the corroboration provided by the other pupils as to similarities between the conduct they each experienced. The panel found it proven that the matters alleged at allegation 3.a and 3.b. more likely than not occurred.

Furthermore, the panel was satisfied that he engaged in inappropriate and unprofessional discussions with Pupil C who was between the ages of 9 and 13 years when this conduct occurred.

The panel was also satisfied that the physical contact was inappropriate and unnecessary. Given the training that Mr Marcus was provided with, conduct of this nature could not be justified.

4. Your conduct as set out in allegation 1 and/or 2 and/or 3 was:

a. sexually motivated and/or

b. sexual in nature.

The panel noted that the activity in this case was not inherently sexual.

The panel therefore considered whether on the balance of probabilities reasonable persons would think the discussions and physical contact could be sexual.

The panel noted that physical contact included having Pupil A and Pupil C sit on his lap and having Pupil A and C's foot on his lap. The panel noted that Mr Marcus's actions had resulted in contact being made by the children in areas that were close to those which would be considered sexual. Contact was made with all three pupil's chest and stomach areas; there was skin to skin contact with Pupil B's stomach and Pupil C's shoulders and neck; those being all intimate areas of the body that Mr Marcus had been instructed in School never to touch. Witness E had given oral evidence that Mr Marcus had been provided with training using the analogy of a swimsuit; that is "don't touch anywhere a swimsuit would be." Mr Marcus's conduct also entailed touching of sensitive areas such as Pupil A and Pupil C's feet, Pupil C's sides and Pupil A's armpits. The panel also found proven that Mr Marcus had rested his forehead on her forehead and kissed her on her forehead.

The panel considered that reasonable persons would consider holding sexualised conversations with children and engaging in physical contact of an intimate nature with them could be sexual.

The panel then considered whether, in all the circumstances of the conduct in the case, it was more likely than not that Mr Marcus's purpose of such conversations and contact was sexual.

The panel considered whether Mr Marcus's purpose had been to develop techniques and skills that would have assisted with the pupils' progress in the playing of their instruments, for example by developing their breathing and relaxing. The evidence heard by the panel pointed towards this not being the case:

- Mr Marcus attended training in September 2018 delivered by the School tailored to a group of Instrumental Teachers. The panel accepted that Mr Marcus was instructed that teachers should always try to use their own body or instrument to demonstrate a technique and try not to touch the pupil if at all possible. Witness E gave evidence that Mr Marcus had been advised that it was not necessary to

touch the students for breathing exercises. Instead the teacher should put their hand on their own diaphragm and describe what they feel, and ask the student to mimic this on their own body and ask the student if they could feel what had been described.

- The contact described by Mr Marcus as breathing exercises were being conducted with pupils without being shared with their parents, as might have been expected if practising these was beneficial to their musical progress. A breathing exercise was demonstrated to Pupil C's [REDACTED] on one occasion, but Mr Marcus did not disclose that he had been undertaking breathing exercises with Pupil C for some time, and Pupil C stated that the demonstration that Mr Marcus gave in front of her [REDACTED] was quite different from the contact that Mr Marcus usually made in their lessons. In particular this demonstration was conducted standing up, whereas both Pupil A and Pupil C had experienced Mr Marcus requiring them to sit on his lap whilst conducting the exercise. Similarly, Pupil C's [REDACTED] had no awareness of any massage having been carried out by Mr Marcus on Pupil C.
- The "breathing exercises" were unique to Mr Marcus's lessons. When the children were taught by other teachers, they would not conduct "breathing exercises" in the manner Mr Marcus deployed. Pupil B could not understand why the breathing exercises increased, as he would have expected the need for them to reduce as his ability developed.
- Pupil B recalled seeing Mr Marcus conducting a "breathing exercise" with Pupil A and thought it appeared "odd". Mr Marcus then decided that Pupil A and Pupil B should have lessons separately.
- Undertaking foot massages brought no apparent musical benefits. Pupil A associated the foot massages with Mr Marcus understanding her to have been stressed following a day in school, but given the clear instruction not to touch a pupil if at all possible, the panel considered that Mr Marcus deployed physical contact using excuses that he considered plausible.
- The pupils described the inappropriate conversations as uncomfortable, rather than relaxing them. Pupil B stated that Mr Marcus was not a close friend or relative, yet he was asking questions that he would expect a father to ask, and he did not consider it the "job of a teacher to behave in that kind of way." Pupil C stated that usually the conversations would take place when she was most focussed on her playing, and he would initiate a break and discuss matters unrelated to her music tuition.
- The lessons were conducted on a one to one basis with the pupils alone in Mr Marcus's room in the lower ground floor. Pupil C's [REDACTED] explained that there was a small room at the bottom of a staircase that only led to the music room. She went into the room when dropping off Pupil C or collecting her. She stated that she would ring the door bell and Mr Marcus would come up to let her in. She stated that around half way through the time that Pupil C was undertaking

lessons, there were renovations and the room was soundproofed and the window was covered over or removed. Previously the aspect of the window had not looked out onto anything, it being in the basement. Pupil C's [REDACTED] stated that an extra door was also added, so there were two doors to go through before reaching the room. She stated that the room had felt small and private before the renovation, but afterwards, this was even more the case. Pupil C stated that it may have been coincidence but the inappropriate conduct escalated after the renovations had been made.

- Pupil C's [REDACTED] stated that the lessons with Mr Marcus became longer at his instigation, whereas she wanted to reduce the time spent given other demands already on her [REDACTED] time. Pupil C described that in a lot of her lessons only 50% of her time was spent playing her instrument, and the remainder was taken up with the conversations and physical contact that the panel has found proven.
- Various methods to coerce the pupils to comply or engage in the contact appear to have been deployed by Mr Marcus. Pupil A described that Mr Marcus gave the impression he was disappointed with her playing, comparing her with other pupils that she knew, when he would get "a little angry". She stated that she didn't want to disappoint him further and "treat [her] a little bit worse". Pupil B described occasions when Mr Marcus tried to draw parallels and connections between them, [REDACTED]. Pupil C gave examples of two anecdotes that left her with the impression that Mr Marcus had told her these to convey his power and his willingness to cross boundaries in different ways. Pupil C described feeling uneasy when she attended her lessons and finding ways to distance herself, for example saying that she had done her "breathing exercises" before attending. She described his reaction to this as having made her nervous. She stated that given that Mr Marcus appeared to be willing to cross boundaries in so many ways, she could not predict how he was going to react and that she felt "quite unsafe".
- Pupil C stated that every few weeks Mr Marcus measured her height by pushing a pencil into the wall next to the door and that she did not know why he did this. She also stated that on a few occasions, Mr Marcus measured her ear by holding it between his thumb and index finger and then he would measure it against his. The panel was perplexed by this conduct, but it too appeared to have no innocent explanation associated with the music tuition of Pupil C.

In the circumstances, given that the conversations and physical contact appeared to have no reasonable justification, the panel considered they could not reach any other conclusion than that Mr Marcus's purpose had been a sexual one. The panel considered that it could be inferred or deducted from the surrounding evidence that Mr Marcus had acted in pursuit of sexual gratification or a future sexual relationship.

The panel found Mr Marcus's conduct as set out in allegation 1 and 2 and 3 was sexually motivated and sexual in nature.

The panel found the following particulars of the allegation against you not proved, for these reasons:

2. Between September 2013 and March 2019, on one or more occasions during one-to-one private music lessons at his home, you:

b. engaged in inappropriate and/or unnecessary physical contact with Pupil B in that you:

ii. massaged Pupil B's feet;

In oral evidence, Pupil B clarified that, rather than performing what Pupil B would call a massage, Mr Marcus stood on Pupil B's feet. Pupil B stated that Mr Marcus called this a massage, and had asked Pupil B to take his shoes off beforehand. Pupil B stated that when Mr Marcus stood on his feet, he said something to the effect of "that feels kind of nice doesn't it". Pupil B stated that he had been standing up at the time, and he did not have any sense that there was any musical purpose to the contact. Pupil B could only remember this occurring on one occasion, that it may have happened more but that it was not a regular occurrence.

Whilst this contact appeared to have been inappropriate and unnecessary, the panel found this particular sub-sub allegation not proven, since the contact described did not appear to have been a massage in the ordinary sense of the word.

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 Marcus, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Marcus 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 an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Mr Marcus failed to show tolerance and respect the rights of others. He touched pupils either without their consent, or a parent's consent, or presumed that consent on one occasion gave him licence to continue such contact repeatedly over a prolonged period of time. The pupils and their parents had the right to expect that their music teacher would not use their private music lessons as a cloak for touching them for his own sexual motivation.

The panel was satisfied that the conduct of Mr Marcus in relation to the facts found proved, involved breaches of Keeping Children Safe In Education ("KCSIE"). The panel considered that Mr Marcus failed to have regard to the requirement to safeguard and promote the welfare of children and to act in the best interests of the children. Mr Marcus not only failed to have regard for the need to safeguard pupils' well-being, he caused harm to them himself. In his police interview he referred to his concerns regarding the welfare of Pupil A and Pupil B, apparently as a means of seeking to divert attention away from his own conduct towards them and without any evidence of having raised those concerns with a third party promptly.

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

The panel also considered whether Mr Marcus's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice. Whilst there were similarities with, for example the offence of sexual communication with a child; the panel noted that the list was not an exhaustive one. In any event, the panel considered that the Mr Marcus's conduct was so serious, by its very nature it constituted unacceptable professional conduct.

The panel noted that the allegations found proven took place outside the education setting of a school, albeit Mr Marcus was undertaking to provide the pupils with music tuition on a private basis. Mr Marcus exposed the children to his harmful behaviour and it has had a profound and ongoing impact on their lives, and the lives of their families.

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

The panel went on to consider whether Mr Marcus 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.

In considering the issue of disrepute, the panel also considered whether Mr Marcus's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice. Whilst there were similarities with, for example the offence of sexual communication with a child; the panel noted that the list was not an exhaustive one. In any event, the panel considered that the Mr Marcus's conduct was so reprehensible, by its very nature it constituted conduct that may bring the profession into disrepute.

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

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

The panel therefore found that Mr Marcus'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 Marcus 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 a number of them 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, given the serious findings of acting in a sexually motivated manner towards three children.

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

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

Whilst there is evidence that Mr Marcus had ability and experience as an educator, the panel considered that the adverse public interest considerations above outweigh any interest in retaining Mr Marcus 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 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;

- 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)

- violation of the rights of pupils;

- a deep-seated attitude that leads to harmful behaviour;

dishonesty or a lack of integrity, including the deliberate concealment of their actions..., especially where these behaviours have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests;

collusion or concealment including: ..., defending inappropriate actions or concealing inappropriate actions;... lying to prevent the identification of wrongdoing;

Even though some of 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.

There was no evidence that Mr Marcus's actions were not deliberate.

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

Mr Marcus had significant experience as a teacher but there was no evidence that he had demonstrated exceptionally high standards in both his personal and professional conduct and or of having contributed significantly to the education sector. The panel did not consider that the duration of his teaching experience could mitigate his conduct given the severity of the conduct found proven. Mr Marcus offered no mitigation nor did he produce any testimonial statements attesting to character.

Mr Marcus expressed no remorse nor any insight of the continuous impact of his actions on the pupils and their families. He did not participate in the hearing beyond having a representative attend to report back to him, and did not hear the anguish of Pupil C's [REDACTED] in explaining the impact his actions had on her [REDACTED]. The effect of Mr Marcus's actions on the three children's lives continuing into their adulthoods cannot be overstated. The panel found Mr Marcus's attempt during his police interview to divert attention away from his own conduct towards Pupil A and Pupil B by suggesting he had safeguarding concerns regarding their welfare to be particularly odorous and underlined his contempt for the safeguarding of children.

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 Marcus 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 Marcus given the egregious nature of the conduct and the significance of the impact on the children. 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; and any sexual misconduct involving a child. The panel found that Mr Marcus was responsible for such conduct. Mr Marcus has demonstrated no insight or remorse.

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 some of the allegations proven and found that those proven facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In this case, the panel has also found one of the allegations not proven (allegation 2.b(ii)). I have therefore put those matters entirely from my mind.

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

In particular, the panel has found that Mr Marcus 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 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 Marcus, involved breaches of the responsibilities and duties set out in statutory guidance 'Keeping children safe in education'.

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

The findings of misconduct are particularly serious as they include a finding of sexually motivated behaviour towards children.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In assessing 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 Marcus, 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 safeguard pupils. The panel has observed, "Mr Marcus failed to show tolerance and respect the rights of others. He touched pupils either without their consent, or a parent's consent, or presumed that consent on one occasion gave him licence to continue such contact repeatedly over a prolonged period of time. The pupils and their parents had the right to expect that their music teacher would not use their private music lessons as a cloak for touching them for his own sexual motivation." 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 it set out as follows:

"Mr Marcus expressed no remorse nor any insight of the continuous impact of his actions on the pupils and their families. He did not participate in the hearing beyond having a representative attend to report back to him, and did not hear the anguish of Pupil C's [REDACTED] in explaining the impact his actions had on her [REDACTED]. The effect of Mr Marcus's actions on the three children's lives continuing into their adulthoods cannot be overstated. The panel found Mr Marcus's attempt during his police interview to divert attention away from his own conduct towards Pupil A and Pupil B by suggesting he had safeguarding concerns regarding their welfare to be particularly odorous and underlined his contempt for the safeguarding of children."

In my judgement, the lack of insight and/or remorse demonstrated by Mr Marcus 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 records that it, "...considered that Mr Marcus's conduct could potentially damage the public's perception of a teacher." I am particularly mindful of the finding of sexually motivated behaviour towards children in this case, as well as the significant breach of trust inherent in that behaviour, and the very serious negative impact that such a finding could have 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 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 Marcus himself. The panel notes that:

"Mr Marcus had significant experience as a teacher but there was no evidence that he had demonstrated exceptionally high standards in both his personal and professional conduct and or of having contributed significantly to the education sector. The panel did not consider that the duration of his teaching experience could mitigate his conduct given the severity of the conduct found proven. Mr Marcus offered no mitigation nor did he produce any testimonial statements attesting to character."

A prohibition order would prevent Mr Marcus 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 serious nature of the misconduct found which included sexually motivated behaviour toward children. I have also taken into account the lack of evidence that Mr Marcus has attained any degree of insight and/or remorse.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Marcus 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 very serious misconduct found in this case, 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.

In doing so, the panel has referred to the Advice which 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; and any sexual misconduct involving a child. The panel found that Mr Marcus was responsible for such conduct.

I have considered the panel's conclusion:

"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."

I have considered whether not allowing a review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, 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 very serious nature of the misconduct found and the lack of evidence of either insight and/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 Ian Marcus 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 Marcus 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 Ian Marcus 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 'M Cavey', with a long horizontal stroke extending to the right.

Decision maker: Marc Cavey

Date: 8 March 2024

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