



Teaching
Regulation
Agency

Mr Austin Whiting: Professional conduct panel outcome

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

May 2024

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

Teacher: Mr Austin Whiting
Teacher ref number: 0359392
Teacher date of birth: 22 July 1977
TRA reference: 21828
Date of determination: 10 May 2024
Former employer: Borden Grammar School, Kent

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 7 to 10 May 2024, in person at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Austin Whiting.

The panel members were Mr Stephen Chappell (lay panellist– in the chair), Mrs Natalie Moore (teacher panellist) and Dr Louise Wallace (lay panellist).

The legal adviser to the panel was Miss Tania Dosoruth of Blake Morgan LLP solicitors.

The presenting officer for the TRA was Mr Mark Millin a consultant of Kingsley Napley LLP solicitors.

Mr Whiting was present and not represented.

The hearing took place in public save for certain parts of the hearing during which medical matters were addressed which were heard in private. The hearing was recorded.

Allegations

The panel considered the allegations set out in the notice of hearing dated 26 February 2024.

It was alleged that Mr Whiting was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that, whilst working as a Teacher of Geography and Head of Year 13 at Borden Grammar School (“the School”):

1. On 10 March 2022 he had an inappropriate conversation with Student A as set out in Schedule 1
2. He had the conversation with Student A referred to in Allegation 1, when he knew that she was vulnerable as set out in Schedule 2.
3. On one or more unknown dates between around May 2022 and March 2023 he
 - a. Used cocaine, a Class A drug;
 - b. Had cocaine in his car on the School site;
 - c. Used cocaine on the School site; and /or
 - d. Drove [redacted] when there was cocaine in his car.
4. On one or more occasions in around March 2023 he used social media inappropriately as set out in Schedule 3.

Schedule 1

- i. You told Student A that [redacted]; and/or
- ii. You offered to arrange for Student A to speak to [redacted].

Schedule 2

- i. Student A disclosed to you that she had [redacted]; and/or
- ii. Student A had [redacted] the week before your conversation.

Schedule 3

- i. You posted about your addiction to cocaine;
- ii. You posted that you planned to write a book called “The Man Who Sniffed A House Up His Nose”;
- iii. You posted about your [redacted] or words to that effect.

Mr Whiting made partial admissions to the allegations.

Mr Whiting indicated that he admitted allegation 1 in its entirety. In respect of allegation 2, Mr Whiting accepted that he had become aware that Student A was vulnerable during the conversation but did not have prior knowledge of Student A's specific vulnerabilities as set out in the Schedule.

Mr Whiting accepted allegation 3 a. namely that he had used cocaine on one or more occasions between May 2022 and March 2023. Mr Whiting however denied allegations 3 b, c and d in their entirety.

Mr Whiting partially accepted allegation 4. Mr Whiting accepted that he had used social media inappropriately but only accepted in part one of the particulars of the allegation listed in the schedule. Mr Whiting did not accept that in relation to allegation 4(iii) that he had posted about [redacted] but did admit posting about [redacted] which was charged in the alternative.

Preliminary applications

Amendment to charge

Mr Millin on behalf of the TRA made an application to amend allegation 1 by changing the date from 2022 to 2023. It was indicated that the date 2022 was a typographical error and that it was clear from the evidence that the correct date of the incident was 2023 and not 2022.

Mr Whiting did not oppose the application to amend the allegation.

In determining the application, the panel considered that it had a discretion to amend the allegation at any stage before making a decision provided that it was in the interests of justice to do so. The panel was of the view that it was clear from the evidence that the correct date was 2023 and not 2022 and that the amendment would not cause any prejudice to Mr Whiting who did not object to the application. The application was therefore granted, and the charge was amended.

Application for the hearing to be held in private

An application was made on behalf of the TRA for the parts of the hearing which related to [redacted] to be heard in private in line with paragraph 5.85 of the Teacher misconduct: Disciplinary procedures for the teaching profession ("the Procedures"). The TRA indicated that there was no public interest in members of the public hearing details of Mr Whiting's health in circumstances where the allegations and findings would be published. It was also stated that it would be possible for the panel to easily move between the private and public parts of the hearing with the correct signposting.

Mr Whiting made an application for the entirety of the hearing to be heard in private on the basis that it was necessary to protect the interests of third parties. Mr Whiting stated that it was necessary for the hearing to be heard entirely in private to protect [redacted] from the impact of the details of the case being made public which could [redacted]. Mr Whiting also indicated that it was necessary for the protection of [redacted].

The panel accepted the advice of the legal adviser.

In determining the issue, the panel first considered that the starting point was that hearings should be in public and that it could only hold a hearing or parts of a hearing in private if it did not consider it would be contrary to the public interest or the interests of justice.

The panel considered that it was not contrary to the interests of justice for the parts of the hearing which related to Mr Whiting's health to be heard in private. The panel was of the view that this was necessary to safeguard Mr Whiting's interests given the sensitive nature of the matters that were likely to arise during the course of the hearing. The panel did not consider that hearing these parts of the hearing in private would undermine the interests of justice in circumstances where other parts of the hearing would remain in public and where there would be published allegations and findings. The panel also agreed that it would be possible and practicable to hear only parts of the hearing in private as outlined on behalf of the TRA. The panel therefore concluded that it was necessary, in the interests of justice and to protect the interests of Mr Whiting and to exclude the public from the parts of the hearing that were concerned with his health.

In determining whether the entirety of the hearing should be held in private for the reasons set out by Mr Whiting the panel considered that whilst the nature of the case could mean that there was an adverse effect on Mr Whiting's family and their privacy, it had to balance this against the principle of open justice. The panel took account of the fact that there is a presumption that hearings of this nature will take place in public and there is a legitimate public interest in the openness and transparency of the TRA's disciplinary procedures.

The panel considered that any case heard by the TRA had the potential to engage the rights of third parties and/or to have an adverse effect on their right to privacy but that there had to be something which made the effect on Mr Whiting's family exceptional and/or which distinguished this hearing from any other in order to justify the hearing taking place entirely in private.

After carefully considering the circumstances of this case, the panel was of the view that there was nothing to mark out the effect of the hearing being heard in public on third parties in this case as being exceptional or distinguishable from any other case. The panel considered that whilst the case involved sensitive issues, these were related to Mr Whiting's health and were not directly concerned with Mr Whiting's family. In particular,

the panel also noted that it would not be hearing any evidence from any members of Mr Whiting's family.

The panel therefore decided that on balance it would be contrary to the interests of justice for the entirety of the hearing to be held entirely private in order to protect the interests of a third parties and did not therefore accept Mr Whiting's application.

Application for admission of hearsay evidence

An application was made on behalf of the TRA to admit hearsay evidence in respect of allegation 3.d. The evidence which the TRA sought to admit consisted of a conversation which Witness D had had with Individual E in which she disclosed that she had been told that Mr Whiting had allegedly driven [redacted] when there was cocaine in the car.

The TRA relied on the panel's discretion to admit hearsay evidence in the TRA procedural rules where it was relevant and fair to do so.

In terms of relevance, it was indicated that this was the only evidence in respect of allegation 3.d. albeit that there was wider evidence which supported the allegations of Mr Whiting's cocaine use at the time.

The TRA outlined that a witness statement had originally been obtained from Individual E, but that she had withdrawn her statement and that in the circumstances the TRA did not consider it appropriate to compel her to provide evidence.

In relation to fairness, it was submitted that any potential prejudice to Mr Whiting could be alleviated through the cross examination of Witness D who was attending as a witness and through the weight that the panel placed on that evidence. The TRA also submitted that given the investigative and inquisitorial nature of the proceedings, this was an allegation that should be ventilated and decided on without this evidence being excluded.

Mr Whiting objected to application. Mr Whiting indicated that the hearsay evidence was inherently unreliable, as it had come from Individual E, she having relayed to Witness D a conversation that she had had with another individual, in the context of [redacted].

Mr Whiting indicated that he strongly denied this allegation and that it would be unfair for the evidence to be admitted.

The panel accepted the advice of the legal advisor in making its determination.

The panel considered that the hearsay evidence in fact consisted of "double hearsay" as the source of the alleged information was not Individual E herself, but another unknown individual who had relayed the information to her. The panel considered that in effect the hearsay evidence was therefore anonymous hearsay.

The panel considered that this hearsay evidence was the sole and decisive evidence in respect of the allegation 3.d. which was strongly disputed by Mr Whiting. The hearsay evidence of itself consisted only of a few lines in Witness D's witness statement without any further information regarding its provenance.

The panel considered that it should bear in mind that the account relayed by Witness D had come from Individual E in the context of [redacted]. In addition to this the panel was of the view that where the original source of the evidence was not known it would not be possible to explore the inherent reliability of the hearsay evidence as Witness D was unlikely to be able to provide any further information in relation to the matter. In these circumstances the panel was of the view that the potential unfairness to Mr Whiting could not be addressed solely through the panel considering what weight to attach to the evidence and that it should therefore be excluded.

The panel therefore decided to reject the application to admit the hearsay evidence.

Application to discontinue allegation 3.d.

In light of the panel's decision to reject the application for the admission of the hearsay evidence which was the sole and decisive evidence for allegation 3.d, an application was made on behalf of the TRA to discontinue this allegation.

The application was not opposed by Mr Whiting.

The panel agreed to the application as it considered that it was not in the interests of justice to adjudicate on the allegation any further where there was no evidence which was capable of supporting the allegation.

The panel also considered that as a professional panel it would not be prejudiced through having seen details of this allegation which had now been discontinued given that the details of this matter were so minimal. Accordingly, the panel decided that it would be able to put this matter out of its mind and continue to hear the case without any prejudice being caused to Mr Whiting.

Panel's direction for further documents to be obtained

During the course of Witness D's evidence, it became clear that the Witness D was referring to a number of documents which had not been gathered as part of the investigation and which none of the parties or the panel had seen. The panel considered that the evidence was potentially relevant to some of the matters that had been raised in the course of the hearing.

In particular the panel was of the view that the documents were likely to contain information about the support that had been offered to Mr Whiting, including the reasonable adjustments that had been made as part of his phased return to work in

December 2023 as well as records of some of the meetings that had occurred between Witness D, Human Resources (“HR”) and Mr Whiting.

The panel was of the view that its role was not confined to a purely adjudicative role and that it should play a more pro-active and inquisitorial role. The panel also considered that where there were documents that could be of some relevance to its consideration and possibly to Mr Whiting’s case that it was in the interests of justice for those documents to be obtained.

Neither the TRA nor Mr Whiting objected to the panel’s proposed course of the action.

After a brief adjournment, the documents were obtained on behalf of the TRA and provided to the parties.

Summary of evidence

Documents

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

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

Section 2: Teaching Regulation Agency witness statements – pages 8 to 19

Section 2: Notice of hearing and response – pages 20 to 27

Section 4: Teaching Regulation Agency documents – pages 28 to 215

Section 5: Teacher documents – pages 216 to 277

The panel also received additional documents from Witness D which it requested as set out above. This additional documentation consisted of a bundle of 27 pages.

Witnesses

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

- Witness B – [redacted];
- Witness C – [redacted];
- Witness D – [redacted].

Mr Whiting also gave evidence to the panel.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Introduction

Mr Whiting commenced employment at Borden Grammar School ("the School") on 1 September 2004 and was employed as a teacher of geography.

Between 2022 and 2023, Mr Whiting was signed off sick from work as a result of [redacted]. Mr Whiting was signed off as sick from work between 6 July 2022 and 20 July 2022.

Mr Whiting initially handed in his resignation in July 2022 but was persuaded by the School to reconsider his position over the summer as he had been a good member of staff. Mr Whiting retracted his resignation in September 2022.

Mr Whiting was offered [redacted] by the School to support him.

Mr Whiting was again signed off in October 2022 for a period of one month and again between 8 and 30 November 2022. Following an occupational health assessment, Mr Whiting returned to the School for an 8-week phased return from December/January 2023. It was also agreed that from January 2023 he would no longer have Head of Year responsibilities. Mr Whiting was signed off again between 21 February 2023 and 3 March 2023.

Upon returning to work after this period, Mr Whiting handed in his resignation on 8 March 2023. Mr Whiting indicated that he wished to continue to work until May 2023 as this would enable him to stay until Year 13's final day at school and would enable him to support the two exam year groups of Year 11 and 13.

On 10 March 2023, whilst Mr Whiting was working his notice period, he revealed that he had had a conversation with Student A, during which he disclosed personal information, to Witness C and then to Witness B.

Mr Whiting had passed Student A on the stairs and noticed that they were upset which then resulted in Mr Whiting speaking to Student A in private. During this conversation, Student A disclosed that they had recently [redacted] and that they had [redacted]. Mr Whiting then disclosed to Student A that [redacted] and also offered Student A the chance to speak to [redacted].

After the disclosure to Witness C and Witness B, Mr Whiting sent an email on 12 March 2023 which was over the weekend in which he revealed that he had been using cocaine

but was now in recovery. The email contained details of his addiction and on how he was now on the road to recovery.

Following the receipt of this email Witness D arranged a meeting for the following Monday which was 13 March 2023. At this meeting, which Witness B also attended, Mr Whiting is alleged to have disclosed that he had cocaine in his car which was on the school site and that he had on occasions used cocaine before he left school for the day.

Following on from this meeting Witness B contacted Local Authority Designated Officer (“LADO”) and informed them what had taken place.

On 15 March 2023 a further meeting took place between Mr Whiting, Witness D and HR. At this meeting Witness D indicated that there would need to be a formal investigation as a result of the disclosures that Mr Whiting had made. At this meeting it was agreed that Mr Whiting would formally tender his resignation in writing.

Later, on the same day, concerns were raised to Witness D about the inappropriate nature of Mr Whiting’s social media posts by Individual F, [redacted]. These posts contained details of Mr Whiting’s addiction and recovery as well as pictures of the School. It was alleged that some of these posts had been shared with ex-students and seen by current students at the School, although it did not appear as though Mr Whiting had sent or shared any videos or posts with current students directly.

Following advice from LADO, a referral was made to the TRA on 18 April 2023. LADO also recommended that an internal investigation take place which was then instigated by Witness D but completed by [redacted] (Individual G) who had not been previously involved in the events. This investigation was completed on 31 March 2023.

On 31 March 2023 Witness D was contacted by Individual E. She indicated that she had only become aware that Mr Whiting was using illegal drugs in December 2022 and indicated that [redacted] as she had been told that empty wraps had been found in his car which had been used to carry drugs.

Evidence

The panel had careful regard to the oral and documentary evidence presented and the parties' submissions.

It accepted the legal advice provided.

TRA evidence

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

- Witness B – [redacted];

- Witness C – [redacted];
- Witness D – [redacted].

Hearsay evidence

The panel was presented with additional hearsay evidence from individuals who were involved in these events which included statements provided by members of staff that were interviewed as part of the investigation that was instigated on the recommendation of LADO.

In addition to this the panel also had sight of hearsay evidence presented by Mr Whiting which consisted of medical reports.

The panel was satisfied that the admission of such evidence did not give rise to any unfairness in the specific circumstances of this case. It was presented with an agreed bundle and neither party objected to any of this evidence being presented on the grounds of admissibility.

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

Mr Whiting's evidence

Mr Whiting indicated that he admitted allegations 1, and 3.a. in full.

Mr Whiting indicated that he denied allegation 2, allegations 3.b. and 3.c. In relation to allegation 2, Mr Whiting conceded in the hearing that he had become aware that Student A was vulnerable as particularised in the schedule to the allegation. He said that his awareness was as a result of what Student A said to him during the conversation itself on 10 March 2023. However, he maintained that he had no prior knowledge of their vulnerability.

In relation to allegation 4, Mr Whiting accepted the allegation save for the references to posting about [redacted] which had been pleaded in the alternative to [redacted] which was admitted by Mr Whiting.

Irrelevant material/evidence

The panel formed its own, independent view of the allegations based on the evidence presented to it.

This was an important factor in these proceedings.

The panel was aware, of the LADO Investigation Report which was concluded on 31 March 2023 and its recommendations. The panel was aware that the matter had been referred to the Disclosure and Barring Service ('DBS').

Whilst the panel took due note of this evidence, the panel was mindful of the need to exercise its own independent judgment and not rely wholesale upon the opinion of any person, whatever their professional credentials, who was not engaged as an independent expert with a corresponding duty to the panel.

In determining the allegations, the panel was mindful that it was for this panel and not anyone else, to draw inferences and conclusions from proven facts in this case.

Finally, insofar as there were references, within the evidence, to other matters alleged against Mr Whiting, which did not relate to the specific allegations before this panel, these were disregarded other than to the extent they were contextually relevant.

Findings of fact

The findings of fact are as follows:

1. On 10 March 2023 you had an inappropriate conversation with Student A as set out in Schedule 1

With the panel's preliminary observations in mind, it proceeded to consider the facts of the allegations.

The TRA's case was based primarily on the evidence from the TRA witnesses: Witness B and Witness C, although Witness D also provided some evidence as regards the background and context of the allegation.

The panel summarises the evidence below from Witness B

- On Friday 10 March 2023, Mr Whiting knocked on Witness B's door during the last period of the day and asked for a chat.
- Mr Whiting related that he had spoken to Student A that day and during this conversation this student disclosed some personal issues [redacted].
- Mr Whiting explained that he had passed Student A whilst walking up the stairs and he had asked them if they were having a good week, because they appeared upset to which they replied that they were not. Following this they then went into a small room where the rest of the conversation took place.
- Mr Whiting then informed Witness B, following a conversation with Witness C, that he had spoken to Student A [redacted].

- Witness B became concerned that Mr Whiting had overshared very personal information to a student who was vulnerable and escalated her concerns to Witness D [redacted].
- Witness B indicated that the conversation was inappropriate as staff should not share personal details of their experiences. This was because there were more appropriate and recognised packages of support available for Student A for example through CAMHS and other official channels.
- Witness B was however of the view that whilst the actions of Mr Whiting were inappropriate, they were motivated by empathy on his part and a desire to help Student A.

The panel also heard from Witness C and summarises his evidence as follows:

- On 10 March 2023, Mr Whiting came to speak to Witness C and disclosed details of a conversation that he had with Student A.
- Mr Whiting informed Witness C that Student A had confided in him about [redacted].
- Witness C felt uncomfortable that this conversation had taken place as it was not appropriate to offer a student the support of [redacted]. He advised that Mr Whiting needed to speak to Witness B [redacted] and provide her with details of his conversation.
- A welfare check on Student A was performed by Witness C following the conversation. Student A confirmed that they had no concerns about what had happened.
- Witness C was of the view that whilst Mr Whiting's actions were ill-advised his actions were aimed at helping Student A and that he did not have any bad intentions.

The panel also summarised Witness D's evidence as follows:

- Witness D was informed by Witness B of the conversation that had taken place between Mr Whiting and Student A.
- In Witness D's view, Mr Whiting had always been a very compassionate caring and thoughtful member of staff and he was of the view that the conversation had only taken place as a result of Mr Whiting wanting to help Student A.
- Witness D confirmed that Student A had volunteered the information regarding their recent issues and that they had no concerns about the conversation which had taken place between them and Mr Whiting. As a result of this Witness D was of the

view that there had been no detrimental impact on Student A's wellbeing and conceded that it was possible that the conversation may have actually had a positive impact on Student A.

- The issue that Witness D had was that a conversation of this nature between a member of staff and a student had the potential to have a detrimental impact on a vulnerable student. This was why it was important to ensure that the right procedures were followed where a student required help and for them to be referred to officially vetted organisations for support.
- Witness D stated that he was convinced that Mr Whiting would not have approached the conversation with Student A in the same manner had he not been unwell.

Mr Whiting in his evidence indicated that he accepted that incident with Student A had taken place as described by Witness B and Witness C and that the nature of the conversation was inappropriate. He apologised for any impact that the conversation may have had on Student A and expressed his remorse for his conduct.

As a starting point, the panel accepted Mr Whiting's admissions to this allegation which was consistent with the evidence from the TRA's witnesses and the relevant documentary evidence, it therefore concluded that Mr Whiting had had an inappropriate conversation with Student A on 10 March 2023 during which he had disclosed that he had had plans [redacted] and during which he offered to arrange for Student A to speak to [redacted].

The panel therefore found allegation 1 proved in its entirety.

2. You had the conversation with Student A referred to in Allegation 1, when you knew that she was vulnerable as set out in Schedule 2

The TRA's case was based on the evidence from Witness B, Witness C and Witness D.

The panel summarises the evidence below of Witness B:

- Witness B outlined that Student A had joined the School [redacted]. Witness B said that Mr Whiting would have been aware of Student A's vulnerabilities which would have been apparent when they joined the School, as result of his role as Head of Year. Witness B also outlined that as a result of sharing an office with Witness C she would have expected Mr Whiting to know that Student A was vulnerable as Witness C was [redacted].
- Witness B did however outline that Mr Whiting would not necessarily have known about the extent to which [redacted]. This was because Mr Whiting had been signed off from work at this time.

- The panel also heard from Witness C whose evidence is summarised below:
- Student A had been [redacted] and as a result of both him and Mr Whiting dealing [redacted] as a team.
- Due to the absences that Mr Whiting had undergone over the previous year, Witness C confirmed that Mr Whiting would not have been aware of Student A's recent [redacted] or any recent disclosures prior to the conversation which took place.

Witness D also gave evidence to the panel who summarised his evidence as follows:

- Witness D confirmed that Mr Whiting would not have been aware of Student A's [redacted] and what had occurred in relation to this as he had been absent at the time and that he was unlikely to have known anything that had occurred in relation to Student A over the last two months.
- During the time that Mr Whiting was on a phased return and had stepped down from being Student A's Head of Year, so Mr Whiting would not have been privy to this specific information.
- Notwithstanding the above, Witness D was of the view that Student A had been vulnerable throughout [redacted] and that Mr Whiting would have been aware of this in general terms.

Mr Whiting gave evidence that he had not been previously aware that Student A was vulnerable. This was due to Student A having [redacted]. Mr Whiting explained that when teaching Student A online at this time cameras would have been turned off and he was not therefore aware of any specific vulnerability. Mr Whiting explained that he was not aware of any of the support measures that had been put in place for Student A or of [redacted] as he had not been teaching in School during this time. Mr Whiting explained that the fact he shared an office with Witness C would not have meant that he would have seen Student A's file and that he received no staff briefing in respect of Student A's likely vulnerabilities.

The panel noted that the evidence from the TRA's witnesses was consistent in that all of the witnesses provided evidence that Mr Whiting would have been aware of Student A's general vulnerability by virtue of his previous role as Head of Year and as a result of Student A [redacted] when Mr Whiting would have been present. However, the TRA witnesses were also clear that Mr Whiting would not have known about Student A's [redacted].

The panel considered that it was more likely than not that Mr Whiting would have been aware in general terms that Student A was vulnerable but that he may not have been aware of the specific nature or extent of their vulnerabilities or decline prior to the

conversation which took place on 10 March 2023 due to his absence but also as he played no pastoral role at the time.

The panel noted that there were two ways in which the TRA could put their case and indeed did put their case to Mr Whiting when he answered questions. Either Mr Whiting was fixed with the knowledge of [redacted] before the conversation started or alternatively became aware of these matters as Student A engaged in conversation.

The panel further noted that it was not in dispute that Mr Whiting became aware of the matters which are the subject of allegation 2 when during this conversation Student A disclosed the matters as alleged in the schedule to allegation 2. However, given the doubt as to the extent of Mr Whiting's pre-existing knowledge of Student A's vulnerabilities the allegation was proved on the basis that the disclosures were made during the conversation itself.

The panel therefore found this allegation proved in its entirety.

3. On one or more dates between around May 2022 and March 2023 you

- a. Used cocaine, a Class A drug;**
- b. Had cocaine in your car on the School site;**
- c. Used cocaine on the School site.**

The TRA's case was based on the contents of the email which had been sent to Witness B, Witness C and Witness D by Mr Whiting on 12 March 2023 and the evidence of Witness B and Witness D as regards the follow up meeting which took place on 13 March 2023 with Mr Whiting.

The panel summarised Witness B's evidence as follows:

- Over the weekend following the incident with Student A, Witness C contacted Witness B to see if she had received an email from Mr Whiting. In the email Mr Whiting disclosed that he had been using cocaine and had suffered from an addiction but that he was now on step 4 of 12 of his recovery.
- A meeting took place on 13 March 2023 arranged by Witness D which Witness B and Witness D attended. During this meeting Mr Whiting mainly spoke of his history of drug use but emphasised that he was now in recovery. Mr Whiting stated that he wanted to be honest and that he would be prepared to face the consequences as this was "God's will".
- Witness B described that Mr Whiting's demeanour at this meeting was different to his usual demeanour and how Mr Whiting had presented on 10 March 2023 when she had the conversation with him regarding the incident with Student A. Witness B

described Mr Whiting as ordinarily quiet and calm but said that at the meeting on 13 March, Mr Whiting had a “buzz” or a level of energy that she was not familiar with. Witness B described Mr Whiting as saying that he wished to be honest with a sense of fervour or release that she was not familiar with.

- At this meeting Witness B gave evidence that Mr Whiting had also disclosed that he had taken cocaine before going home from work but that he didn’t disclose where he had taken the cocaine on the school site. Witness B confirmed in evidence that she did not know whether this had occurred routinely or whether it was on one occasion but stated that this disclosure was definitely made in the course of the meeting.

The panel also heard from Witness D whose evidence is summarised below:

- Witness D explained that he received an email from Mr Whiting on 12 March 2023 in which Mr Whiting divulged that he was currently in recovery from taking illegal drugs and that he had had [redacted]. Up until receiving this email Witness D confirmed that whilst he had been aware of [redacted] which had resulted in periods of sickness absence, he had not been aware that Mr Whiting had been using illegal drugs.
- Witness D sought advice from HR and then arranged a meeting on 13 March 2023 the following day. Witness D, Witness B, and Mr Whiting were present at this meeting.
- Witness D gave evidence that during the meeting Mr Whiting had emphasised that he wished to be honest as he had felt that he had been living a lie and that he was ready to face the consequences of his actions as this was “God’s will”.
- Witness D confirmed that Mr Whiting had said that he had taken cocaine in his car on site of the school before he went home for the day but that he had never taken cocaine before teaching.
- Although no formal minutes of the meeting were taken, Witness D made handwritten notes as best he could during the meeting in his notebook which he exhibited as part of his evidence. Within this notebook Witness D recorded “taken leaving for the day – addict so couldn’t help – gave example of taking morphine + 2mgs of cocaine”.
- Witness D explained that as a result of this disclosure, he needed to separate his “humane feelings” from the safety protocols, as Mr Whiting’s disclosures meant that he had to take the matter further. Witness D confirmed that he had breached several codes in the School’s Code of Conduct and the School’s Safeguarding and Child Protection Policy.

- Witness D confirmed that he couldn't be sure that Mr Whiting had fully recovered at this stage although Mr Whiting had explained that he had been sober for 15 days and was on step 4 of his recovery. Witness D said that he considered Mr Whiting's presentation to be unusual as he did not seem upset or worried about the potential consequences of his actions and that he talked a lot about finding God which he had not previously done. Witness D confirmed that he could only relay what he was told by Mr Whiting at the meeting and could not say whether or not what was being said was truthful. Witness D also confirmed that at no stage had anyone seen cocaine in Mr Whiting's possession and/or seen him using it on the school site.
- Witness D confirmed that Mr Whiting went home following this meeting and did not teach any further classes. A further meeting took place online on 15 March 2023 with Witness D, HR and Mr Whiting. Witness D explained in his evidence that during this meeting that the matter would need to proceed to a formal investigation and that Mr Whiting agreed to formally tender a written resignation that day.
- Witness D provided evidence of the support that the School had provided to Mr Whiting from 2022. Witness D explained that Mr Whiting had been provided with ample support from the School. This involved regular meetings and personal support, an occupational health referral which had resulted in [redacted] being offered to Mr Whiting. Witness D also provided details of Mr Whiting's 8-week phased return which had been planned in December 2022. He produced an email dated 2 December 2022 in which it was confirmed the details of the phased return as follows:
 - 4 December 2022 – Mr Whiting would pick up Year 13 classes (4 lessons and 5 hours per week)
 - 9 January 2023 – Year 11 classes (2 lessons and 2.5 hours making 6 hours per week)
 - 23 January 2023 – Year 12 timetable (4 lessons and 5 hours making 11.5 hours a week)
 - 6 February 2023 – Year 10 subject to review (2 lessons and 2.5 hours making 14 hours)
 - 13 February 2023 – finance subject review (2 lessons 2.5 hours making 16.5 hours)
 - 20 February 2023 Year 9 subject to review (1 lesson and 1 hour 15 mins making a total of 18 hours which was 72% of timetable)
- The phased return also included meetings and reviews. It had also been decided in January 2023 that Mr Whiting would no longer have Head of Year responsibilities.
- Witness D confirmed that Mr Whiting had been asked to cover exam classes for Year 11 and Year 13 as part of his phased return and stated that Mr Whiting had

agreed to this. Witness D also confirmed that Mr Whiting had a further period of absence from 21 February to 6 March 2023 due to [redacted] which would have been just after the planned phased return.

Mr Whiting gave evidence that he accepted that he had used cocaine from around June/July 2022. Mr Whiting indicated that he had started to use cocaine as a mechanism for coping following a series of traumatic personal events which included [redacted].

Mr Whiting denied that he had made any disclosures to Witness B or Witness D in the meeting of 13 March 2023 in which he had accepted that he had had cocaine in his car on the school site and/or used cocaine on the school site and indicated that both witnesses were incorrect in their memory of this conversation.

Mr Whiting stated that he could not recollect making these disclosures during the meeting of 13 March 2023, but that even if he had, he had clearly been described as acting out of character at the time by the witnesses who had also conceded that they could not necessarily know if what he was saying was true. Mr Whiting asserted that what he was saying in these disclosures was inherently unreliable and what he said could not be trusted. He was not a well man at the time.

3. On one or more dates between around May 2022 and March 2023 you

a. Used cocaine, a Class A drug;

The panel accepted Mr Whiting's admissions to this allegation which were consistent with the evidence from the TRA's witnesses and the documentary evidence regarding Mr Whiting's disclosures. The panel also accepted the advice of the legal advisor that cocaine was a Class A drug in accordance with Schedule 2 of the Misuse of Drugs Act 1971 and therefore found this allegation proved.

3. On one or more dates between around May 2022 and March 2023 you

b. Had cocaine in your car on the School site;

The panel considered that the only evidence for this allegation was the disclosure which Mr Whiting had allegedly made to Witness B and Witness D during the meeting which took place on 13 March 2023.

The panel noted that the only contemporaneous record of the meeting was the manuscript note made by Witness D at the time of the meeting in his notebook and that this only contained one line entry referred to above. Witness D never intended for his notes to be a verbatim or comprehensive account of everything said in the meeting. It was a summary. Witness D was conducting the meeting and making notes at the same time.

The panel also had sight of Witness B's email to LADO on 13 March 2023 which summarised what had been disclosed in the meeting, but Witness B acknowledged that she did not take her own notes of the meeting and relied on Witness D's manuscript entry in his notebook. The panel noted that in her evidence Witness B had also initially indicated that Mr Whiting had said that he had cocaine in his car on multiple occasions but then conceded that she had no notes to this effect and that this could be incorrect.

Likewise, the panel noted that Witness D had accepted that there were matters which had been noted down in other contexts during the meeting which were not quite accurate for example there had been reference to Mr Whiting [redacted] when neither were the case. The panel also took account of Witness D's evidence that it had been difficult to take notes whilst holding the meeting. As a result of these discrepancies the panel was of the view that it could not discount the possibility that the witnesses may have been mistaken in their recollections and that the note had been incorrectly recorded. In addition, the panel acknowledged that there was an issue with the reliability of what Mr Whiting was saying in the meeting when on the face of it he was incriminating himself.

The panel was also mindful that the allegation was not that Mr Whiting had disclosed that he had cocaine in his car on the school site but that he had in fact had cocaine in his car. The panel in determining the issues noted that there was no direct evidence to support this as no witnesses had observed cocaine being in the car. The panel also had regard to both Witness D and Witness B's evidence which was that they had no way of knowing whether what Mr Whiting had said in the meeting was true or not.

The panel therefore decided that the TRA had not discharged its burden of proof and that it was unable to find this allegation proved on the balance of probabilities.

This allegation was therefore found not proved.

3. On one or more dates between around May 2022 and March 2023 you

c. Used cocaine in your car on the School site.

The panel carefully considered the evidence in respect of this particular and noted that as with allegation 3.b. the only evidence in respect of this allegation was the alleged disclosure that had been made by Mr Whiting during the meeting on 13 March 2023 and the copy of Witness D's notes from that meeting.

For all of the reasons set above in relation to allegation 3 b. the panel was unable to discount the possibility that the note by Witness D had been incorrectly recorded and/or that the witnesses' recollection of the meeting may not have been correct.

As with allegation 3.b above the panel also noted that there was no direct evidence of Mr Whiting having used cocaine in his car on the school site. The panel considered that it

could not fairly draw any inference that just because Mr Whiting was using cocaine during May 2002 and March 2023 that he must have done so on the school site.

Accordingly, the panel decided that the TRA had not discharged its burden of proof and that it was unable to find this allegation proved on the balance of probabilities.

This allegation was therefore found not proved.

4. On one or more occasions in around March 2023 you used social media inappropriately as set out in Schedule 3

The TRA's case was based on the evidence from Witness D and Witness B and the supporting screenshots of some of the social media posts made by Mr Whiting.

The panel summarised Witness D's evidence as follows:

- On 15 March 2023, Witness D received a message from Individual F which raised some concerns regarding Mr Whiting's use of social media. Mr Whiting's social media posts on Snapchat had been shared with ex-students of the school but as some of those ex-pupils had siblings at the School it was reported that current students had also seen the posts.
- The posts referenced Mr Whiting's addiction to cocaine. One of the posts also mentioned that Mr Whiting wanted to write a book called "The Man Who Sniffed A House Up His Nose" and another referenced Mr Whiting's [redacted].
- Witness D's evidence was that in relation to social media, teachers were always encouraged to have strict settings on their social media which meant that only friends and family could see their information and profiles. In respect of ex-students Witness D stated that the context would matter and where for example a student had left 10 years ago there might not be an issue with a teacher being friends with them on social media, but that in this case the ex-students were in university and had only recently left the School.
- Witness D also outlined that whilst the posts were not encouraging drug use, they still had the potential to bring the School into disrepute given the contents and that this was particularly so in a small community where people were known to one another. Witness D took the step of contacting the press office of Kent County Council.
- In relation to the date on which Mr Whiting resigned, Witness D confirmed that this was 15 March 2023 following the meeting with HR as this was the date that Mr Whiting submitted his formal written resignation.
- The panel summarised Witness B's evidence as follows:

- Witness B have evidence that Mr Whiting had missed safeguarding training due to absence in 2022/23 academic year but that all teachers were aware to ensure that they used social media appropriately. Witness B confirmed that teachers were always told to ensure that they had strict privacy settings on social media.
- In relation to former students, Witness B accepted that there may be occasions when ex-students were friends with a teacher on social media for example if they happened to be friends with the teacher's own children or where there was some other connection. Witness B also confirmed that whether this was appropriate would depend on factors such as the passage of time between the student leaving the school and the contact but where students had only recently left the school it might not be advisable.

Mr Whiting gave evidence that he accepted the posts were made by him and they contained the details which were the subject of schedule 3 to the allegation save for one [redacted]. Mr Whiting accepted that this constituted an inappropriate use of social media.

In his evidence, Mr Whiting considered that he had in fact left the school on 13 March 2023 and not 15 March 2023 and stated that he had only attended an HR meeting online and written his resignation on 15 March 2023 to tie up loose ends and to co-operate with Witness D's request for the resignation to be formal.

The panel considered that the social media posts that it had copies of were not dated so it was not possible to know precisely when they were posted. However, the allegation was put by the TRA on the basis that social media was used inappropriately on or around March 2023 and that as the issue came to light on 15 March 2023 it could draw a reasonable inference that the posts were made at a time when Mr Whiting was still employed at the school. The panel also considered that it was more likely than not based on the documentary evidence of the email exchanges of 15 March 2023 that Mr Whiting remained employed until that date even if he considered that he had in fact left already on 13 March 2023.

The panel therefore concluded that it could find the allegation as charged proved on the basis that Mr Whiting had used social media inappropriately whilst working as a teacher at the School. In any event that panel considered that the allegation would still be made out on the basis that social media had been used inappropriately whilst Mr Whiting was still a teacher.

The panel however accepted that Mr Whiting was correct in saying that the posts made no reference [redacted] and therefore found allegation 4 iii of schedule 3 proved on the basis that he had posted only about [redacted] or words to that effect.

The panel therefore found this allegation proved.

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

- The need to 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.

The panel also considered the Safeguarding and Child Protection Policy of the School which referenced the DfE Guidance on Keeping Children Safe.

The panel considered its findings in respect of allegations 1, 2, 3.a and 4.

In considering allegations 1 and 2 the panel accepted that Mr Whiting had at all times been acting so as to try to help Student A and to provide support to them. The panel also accepted that Student A had not raised any concerns as regards the conversation and had made no complaints. Nonetheless the panel considered that the oversharing of personal information by Mr Whiting as well as his offer to facilitate a conversation between them and [redacted], who had not been appropriately vetted, still fell far short of what would have been expected in the circumstances and that this allegation therefore amounted to unacceptable professional conduct.

In relation to allegation 3.a the panel considered that the use of cocaine, a Class A drug by a teacher amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession. The panel noted that whilst this took place outside the education setting given its findings, Mr Whiting had acted in a way that fell far

short of what was expected by teachers in the circumstances, who were to be considered as role models.

In relation to allegation 4, the panel considered that whilst the social media posts were not encouraging drug use, they were of a highly inappropriate nature in that they confirmed that as a teacher, Mr Whiting had used a Class A drug. The panel considered that this amounted to unacceptable professional conduct.

The panel was therefore satisfied that Mr Whiting's conduct in respect of each of the allegations found proved amounted to unacceptable professional conduct.

In relation to whether Mr Whiting's actions amounted to conduct that may bring the profession into disrepute, the panel took into account the way the teaching profession is viewed by others. It considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way that they behave.

The panel considered that use of a Class A drug by a teacher as well as the nature of the social media posts made by Mr Whiting which contained reference to his drug use was conduct that had the potential to impact on the reputation of the profession as whole. The panel also considered that conduct of this nature was also capable of seriously undermining the view of pupils of a teacher as a role model. The panel accordingly found that Mr Whiting's conduct had brought the profession into disrepute.

The panel went on to consider whether in light of the health conditions of Mr Whiting whether there were any factors which were capable of reducing the severity of Mr Whiting's conduct to such an extent that his conduct could not be considered as unacceptable professional conduct and/or conduct that could bring the profession into disrepute.

The panel considered that it had no medical evidence which demonstrated that Mr Whiting's [redacted] were causative factors that led to his conduct occurring and which made it clear that he could not be considered blameworthy in any way. The panel noted that the School had put in place reasonable adjustments. The panel had no medical evidence to gauge whether these were sufficient or not. Further to this the panel noted that Mr Whiting had not raised specific concerns about the phased return or the other reasonable adjustment measures that the School had put in place at the time.

Although the panel was of the view that Mr Whiting's health at the time was likely to be a mitigating feature, it did not consider that there was any evidence which meant that Mr Whiting could not be held accountable for his actions.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

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

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

- the safeguarding and wellbeing of pupils and protection of other members of the public
- maintenance of public confidence in the profession and
- declaring and upholding proper standards of conduct within the teaching profession

In the light of the panel's findings against Mr Whiting, which involved a finding that he had had an inappropriate conversation with a vulnerable pupil, used a Class A drug and posted about his illegal drug use [redacted], there was a strong public interest consideration in respect of the protection of pupils and the other members of the public.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Whiting in respect of his use of a Class A drug and his posts regarding drug use 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 Whiting was outside of what could be reasonably tolerated.

Balanced against these matters, the panel also concluded that there was an element of public interest in retaining Mr Whiting in the profession should he choose to return to teaching.

Mr Whiting was an experienced teacher who for many years was well respected by his colleagues. The panel heard evidence from staff members which confirmed that for 17.5 years whilst working at the School prior to 2023, Mr Whiting had been a good teacher who had built a good rapport with students to such an extent that newly qualified teachers would be sent to observe his classes.

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 Whiting.

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 Whiting.

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;
- failed 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;

Even though some of the behaviours 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.

In the light of the panel's findings, it considered the following mitigating factors were present in this case:

- Mr Whiting's actions in respect of Student A were not deliberate but were instead ill-advised.
- Mr Whiting had an otherwise unblemished record. There was no evidence that he had been subject to any previous regulatory proceedings.
- There was clear evidence that for many years Mr Whiting had been a good teacher who was well regarded by staff members and students.
- Mr Whiting expressed genuine remorse for his actions at an early stage.
- Mr Whiting demonstrated a high degree of insight into the gravity of the allegations that had been found proved and in relation to the impact of these on the wider reputation of the profession and the public interest overall. Mr Whiting fully recognised the potential risk that he had created in respect of Student A. In relation to his use of illegal drugs and posts on social media Mr Whiting fully recognised that as a teacher he was a role model and that his conduct in this regard was unacceptable.

The panel did not consider that there were any aggravating features to the case beyond the gravity of the allegations found proved.

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.

Having carefully considered the specific circumstances of this case and taking account of the mitigating and aggravating features present, the panel was of the view that, applying the standard of the ordinary citizen of the public, it would not be a proportionate and appropriate response to recommend no prohibition order.

The panel noted that Mr Whiting had shown a high degree of insight and had clearly reflected on events. He had also put in place some measures to ensure that he had a support network in place to prevent a repetition of his conduct. The panel noted that Mr Whiting had put in place support involving friends, a new GP and that he would seek [redacted] in the future if stressful events occur. However, the panel was of the view that whilst Mr Whiting had these support networks in place they appeared to be underdeveloped and it could not be assured that were Mr Whiting to face stressful events in the future that he would not repeat his conduct.

The panel took account of Mr Whiting having undertaken some limited, ad hoc, unpaid tutoring for friends' children who were at the GCSE and/or A Level exam stage. However, the panel was not presented with any other evidence of Mr Whiting having kept his skills up to date such as through undertaking any relevant online classes or study. The panel also received no written testimonials as to Mr Whiting's work or character over the last year or so.

As a result of the above the panel was of the view that there remained a real risk of repetition and therefore decided that a prohibition was both proportionate and appropriate.

It also decided that the public interest considerations outweighed the interests of Mr Whiting particularly where Mr Whiting had accepted using a Class A drug. Having considered Mr Whiting's actions, the panel was satisfied that Mr Whiting's actions were such that recommending that the publication of adverse findings would not be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Whiting of prohibition.

The panel then 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. None of the behaviours were relevant in this case.

The panel decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provision for a review period, for the following reasons in particular.

The panel had in mind, firstly, that prohibition orders should not be given in order to be punitive.

Mr Whiting had already been punished for his actions and these proceedings have been ongoing for a significant time. The panel's findings and decision would affect his professional reputation and future employment prospects.

Mr Whiting's conduct took place in the context of a long and otherwise unblemished career. In that context and when the other mitigating factors were taken into account regarding Mr Whiting's personal circumstances, as well as the higher degree of insight the panel concluded that recommending no review period would not be appropriate and would be disproportionate.

The panel considered that, in time, it would be possible for Mr Whiting to fully develop his support network to prevent re-occurrence and to allow him to undertake further remediation through undertaking training and study within his profession in order to maintain and continue to develop his skill set. For example, to consider completing voluntary youth work.

The panel proceeded to consider the minimum period before which an application could be made by Mr Whiting to have the prohibition order reviewed and set aside.

The Advice indicates that where a case involves certain factors, it is likely that the public interest will have greater relevance and weigh in favour of a longer period before a review is considered appropriate. Only one of these factors were relevant in this case which was a past history of possession for personal use of a Class A drug.

Taking into account the evidence that Mr Whiting had presented which demonstrated that he had not used cocaine for a significant time the panel concluded that a review period of two years was appropriate and proportionate in this case.

A period of two years will afford Mr Whiting sufficient time and opportunity, should he wish to do so, to take steps outlined above to fully rehabilitate and remediate his conduct and demonstrate.

In the view of the panel, a period beyond two years would be disproportionate.

The panel therefore concluded that the proportionate and appropriate sanction would therefore be a prohibition order with a review period of 2 years.

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 some of the allegations not proven. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Austin Whiting should be the subject of a prohibition order, with a review period of two years.

In particular, the panel has found that Mr Whiting is in breach of the following standards:

- The need to 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.

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

The findings of misconduct are serious as they include a finding of a teacher engaging in inappropriate conversations with a vulnerable pupil.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider

whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Whiting, 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 notes that:

“In the light of the panel’s findings against Mr Whiting, which involved a finding that he had had an inappropriate conversation with a vulnerable pupil, used a Class A drug and posted about his illegal drug use [redacted], there was a strong public interest consideration in respect of the protection of pupils and the other members of the public.”

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 sets out as follows:

“The panel noted that Mr Whiting had shown a high degree of insight and had clearly reflected on events. He had also put in place some measures to ensure that he had a support network in place to prevent a repetition of his conduct. The panel noted that Mr Whiting had put in place support involving friends, a new GP and that he would seek [redacted] in the future if stressful events occur. However, the panel was of the view that whilst Mr Whiting had these support networks in place they appeared to be underdeveloped and it could not be assured that were Mr Whiting to face stressful events in the future that he would not repeat his conduct.”

In particular, I have noted the panel’s comments regarding the risk of repetition and 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 use of a Class A drug by a teacher as well as the nature of the social media posts made by Mr Whiting which contained reference to his drug use was conduct that had the potential to impact on the reputation of the profession as whole. The panel also considered that conduct of this nature was also capable of seriously undermining the view of pupils of a teacher as a role model. The panel accordingly found that Mr Whiting’s conduct had brought the profession into disrepute.”

I agree with the panel and share its judgment that Mr Whiting’s behaviour has the potential to undermine the standing of the teaching profession in the eyes of the public.

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 Whiting himself. The panel notes that:

“The panel took account of Mr Whiting having undertaken some limited, ad hoc, unpaid tutoring for friends’ children who were at the GCSE and/or A Level exam stage. However, the panel was not presented with any other evidence of Mr Whiting having kept his skills up to date such as through undertaking any relevant online classes or study. The panel also received no written testimonials as to Mr Whiting’s work or character over the last year or so.”

The panels also records that “Mr Whiting’s conduct took place in the context of a long and otherwise unblemished career.”

A prohibition order would prevent Mr Whiting 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 risk of future repetition of the behaviour found against Mr Whiting.

I have also placed weight on the potential impact of Mr Whiting’s behaviour on the standing of finding of the teaching profession.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Whiting 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 two-year review period.

In doing so, the panel has referred to the Advice which 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 panel also notes that the Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. It found that none of the behaviours were relevant in this case.

I have considered the panel's comments: "A period of two years will afford Mr Whiting sufficient time and opportunity, should he wish to do so, to take steps outlined above to fully rehabilitate and remediate his conduct and demonstrate."

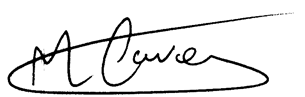
I have considered whether a two-year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In my judgment such a review period is a proportionate response to the misconduct found in this case and should provide Mr Whiting with the opportunity to continue his rehabilitation and in doing so reduce the risk of a repetition of this behaviour in the future.

I consider therefore that a two-year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Austin Whiting 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 17 May 2026, two 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 Whiting remains prohibited from teaching indefinitely.

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

Mr Whiting has a right of appeal to the High Court within 28 days from the date he is given notice of this order.



Decision maker: Marc Cavey

Date: 14 May 2024

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