



Teaching
Regulation
Agency

Mr Joe Burston: Professional conduct panel outcome

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

July 2022

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

| | |
|-------------------------------|---------------------------|
| Teacher: | Mr Joe Burston |
| Teacher ref number: | 1587884 |
| Teacher date of birth: | 10 December 1988 |
| TRA reference: | 19472 |
| Date of determination: | 14 July 2022 |
| Former employer: | Cheam High School, Sutton |

Introduction

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 11 to 14 July 2022 by way of a virtual hearing, to consider the case of Mr Joe Burston.

The panel members were Mr Clive Ruddle (lay panellist – in the chair), Ms Jane Gotschel (teacher panellist) and Mrs Bernie Whittle (teacher panellist).

The legal adviser to the panel was Ms Abigail Trencher of Birketts LLP solicitors.

The presenting officer for the TRA was Ms Kiera Riddy of Browne Jacobson solicitors.

Mr Burston was not present and was not represented.

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

Allegations

The panel considered the allegations set out in the notice of proceedings dated 12 May 2022.

It was alleged that Mr Burston was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as subject leader drama teacher at Cheam High School he:

1. On or around June 2019:
 - a) Showed a historic, obfuscated, image of himself running, partially clothed, across the grounds of the school he attended when he was a pupil to one or more pupils in his class;
 - b) Identified from the image set out in allegation 1a, one or more pupils he had 'slept with' and informed one or more pupils in his class;
2. Failed to maintain professional boundaries with Pupil A when:
 - a) Between 19 March 2020 and 8 July 2020, he exchanged in or around 2637 messages with Pupil A, which included approximately 1348 messages exchanged using Google Classroom and 1289 messages exchanged on the SMHW platform;
 - b) On or before 23 May 2020, he removed the Departmental Line Manager's access to Google Classroom which was used to communication with Pupil A;
 - c) On or around 23 May 2020, he commented ' Only I can read the comments on this group just FYI';
 - d) On one or more occasions he messaged Pupil A commenting on Pupil A's appearanceincluding:
 - i. On or around 27 April 2020, he commented, 'just know that you're smart, funny, pretty, and if anyone says otherwise they're chatting rubbish';
 - ii. On or around 5 May 2020, he commented, 'true, true, not that you need it – perfect as is!';
 - iii. On or around 20 May 2020, commented, 'you been tanning?';
 - iv. On or around 23 May 2020, commented ' sun is on its way if a tan is what you so desire (not that you need it)';

- v. On or around 29 May 2020, he commented 'Like your new priv pic – never seen you with your hair up like that?';
 - vi. On or around 2 June 2020, he commented 'Like the new priv pic';
 - vii. On or around 10 June 2020, he commented 'Do you and your sister look alike? Was she blessed with your good looks?' and 'will she mirror the Queen of Cheam?';
 - viii. On or around 10 June 2020, he commented 'you in your trackies?';
- e) On one or more occasions, messaged Pupil A asking if she was going to have a shower

including;

- i. On or around 10 June 2020, he commented to Pupil A 'shower time or you been outside?';
 - ii. On or around 24 June 2020, he commented to Pupil A, 'That shower when you get home is gonna be [emoji of praising hands suggesting 'great']; Pupil A replied 'I honestly can't wait then moisturize after', to which you replied 'OMG' and a smiley emoji with heart shaped eyes; you further replied, 'Oooh mama yes. I used to use cocoa butter';
 - iii. On or around 24 June 2020, in reply to Pupil A's comment 'just had a cold shower', you commented, 'you are winning right now, regardless of what the game is. Fresh PJs and a fresh bedsheet to top it off';
- f) Between 19 March 2020 and 8 July 2020, he engaged in comments that were personal and inappropriate, including;
- i. used unprofessional slang words to Pupil A, such as; "fam"/"lit"/"AF"/"suckkkkkkkkkks"/"daaaaaam"/"mate"/"the ends";
 - ii. Used emojis such as hearts and smileys;
 - iii. Discussed personal issues about his [REDACTED];
 - iv. On or around 22 April 2020, referred to Pupil A as 'a princess' and referred to her ex-boyfriend as 'a wasteman';
 - v. On or around 23 April 2020, commented 'have a hug', followed by 'O';
 - vi. On or around 2 June 2020, discussed work related matters with Pupil A, in that he commented 'I'm involved in a lot of stuff at school that take up a lot

of time. With the [REDACTED] coming its taking up too much time and energy and I don't have it for that anymore',

- vii. On or around 9 June 2020, discussed what would happen if he earned a million pounds, in that he commented 'mate, we'd be going on a trip, Europe then Vegas';
 - g) On or around 24 March 2020, he sent an audio and/or video message to Pupil A, as a birthday gift commenting 'I think you are fantastic and when we're out and about we'll have to celebrate properly';
 - h) On one or more occasions, asked Pupil A where she was and suggested meeting her in person, including:
 - i. On or around 9 June 2020, he said 'you never know. I might walk through the Worcester P [Park] one day and you might happen to be there', Pupil A replied 'sounds like a motive' to which you replied 'I can't possibly comment';
 - ii. On or around 9 June 2020, he discussed having a kebab with Pupil A and/or Pupil A "riding her bike to his to do so during lockdown";
 - i) On or around 30 June 2020, met Pupil A socially, after messaging he was about to visit a local shop, Pupil A later states 'it was nice seeing you';
 - j) On or around 3 July 2020, he enquired from Pupil A where Pupil C lived;
3. Between on or around 20 March 2020 and 01 July 2020, failed to maintain professional boundaries with Pupil B when he sent one or more messages that were personal and/or inappropriate, including;
- a) Used emojis such as "hot flames";
 - b) Discussed personal issues about his [REDACTED];
 - c) Used unprofessional slang words to Pupil B, such as; "fam"/"lit"/"Sick AF";
4. On one or more occasions, failed to maintain professional boundaries with Pupil C when he sent one or more messages that were personal and/or inappropriate, including:
- a) On or around 4 May 2020, he commented on Pupil C's appearance, 'Love the hair! Props to your sis for making it happen [emoji of praying hands]';
 - b) On or around 4 May 2020, he commented to Pupil C in reference to Pupil C's sister, 'If she's a sneaker head I'm going to have to drop her a follow one day';

- c) Between 01 May 2020 and 06 July 2020, you:
- i. Used emojis such as hot flames, hearts and praying hands;
 - ii. Discussed personal issues about his [REDACTED];
 - iii. Used unprofessional slang words to Pupil C such as; "fam/ lit/AF/siiiiick";
5. On or around 23 March 2020, took a screenshot of an image of ex Pupil D from their Instagram account and sent the image to ex Pupil D with the message: 'Stop it you. You're going to make the local boys (and girls) thirsty and that isn't fair at a time of social distancing', when he knew or ought to have known that this was not appropriate;
 6. On an unknown date prior to 16 May 2020, failed to maintain professional boundaries with ex Pupil D when he provided his personal contact details to ex Pupil D via social media to use when ex Pupil D visited the school to collect her A Level certificates in order for him to meet ex Pupil D at school when he knew or ought to have known that this was not appropriate;
 7. On or around 16 May 2020 sent an audio recording to ex Pupil D of song lyrics which included 'every time you get undressed I hear symphonies in my head' when he knew or ought to have known that this was not appropriate;
 8. On an unknown date after May 2020, took a screenshot of an image of ex Pupil D from their Instagram account and sent the image to ex Pupil D with the message: 'Look at that tan – absolutely bloody glowing x' when he knew or ought to have known that this was not appropriate;
 9. On more than one occasion between on or around 03 November 2019 and 16 May 2020, replied to an image on the Instagram account of ex Pupil D with a heart-eyed emoji when he knew or ought to have known that this was not appropriate;
 10. On an unknown date prior to 18 December 2019, took a screenshot of an image of ex Pupil E from their Instagram account and sent the image to ex Pupil E with the message: 'Crikey [REDACTED]. Was it cold out? X' when he knew or ought to have known that this was not appropriate;
 11. On an unknown date prior to 17 June 2020, sent a message to ex Pupil E stating: 'you still have my number right? If so, I would LOVE it if you could record yourself saying 'you stupid bitch' in the angry way that you used to. I've tried doing it several times but I essentially sound like a wife beater and I want to have it as a SFX in case the mood takes me' when he knew or ought to have known that this was not appropriate;

12. On or around 22 June 2020, replied to an image on the Instagram account of ex Pupil E with heart-eyed emojis when he knew or ought to have known that this was not appropriate;
13. On or around 23 June 2020, replied to an image on the Instagram account of ex Pupil E with a hot flame emoji when he knew or ought to have known that this was not appropriate;
14. On an unknown date prior to 20 August 2020, in response to ex Pupil F sending an image of his shaved head commented, 'time for a Grindr update', or words to that effect when he knew or ought to have known that this was not appropriate;
15. His behaviour as set out in one or more the allegations demonstrated elements of building an inappropriate relationship.
16. His conduct as set out in one or more the allegations above was sexually motivated

Mr Burston admitted allegations 1(a), 2(a), 2(b), 2(d), 2(e), 2(f), 2(g), 2(h), 2(i), 2(j), 3(a)-(c), 4(a)-(c)(i-iii), 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 as set out in the statement of agreed and disputed facts, signed by Mr Burston on 1 July 2022. Mr Burston further admitted that the facts of the admitted allegations amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute.

Mr Burston denied allegations 1(b), 15 and 16. Mr Burston neither admitted nor denied allegation 2(c).

Preliminary applications

Application to proceed in the absence of the teacher

Mr Burston was not present at the hearing nor was he represented. The presenting officer made an application to proceed in the absence of Mr Burston.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of *R v Jones [2003] 1 AC 1* (as considered and applied in subsequent cases, particularly *GMC v Adeogba*).

The panel was satisfied that the Notice of Hearing required by the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession May 2020 (the 'Procedures') had been sent to Mr Burston prior to the hearing. He had acknowledged receipt of it by his cooperation with the TRA in the preparation of the bundle of documents, including providing his own documents for inclusion within it, and his agreement to the Statement of Agreed and Disputed Facts which he signed on 1 July 2022.

The panel considered an email Mr Burston sent to the TRA on 11 July 2022 at 11:53 in which he confirmed that he was unable to attend and that his preference was for the hearing to continue in his absence, rather than for it to be adjourned. The presenting officer also confirmed that during a telephone conversation with Mr Burston on the morning of 11 July 2022 he had confirmed to the presenting officer firm, Brown Jacobson, that it was unlikely he would attend the hearing even if it were adjourned.

The panel concluded that Mr Burston's absence was voluntary and that he had requested that it proceed in his absence.

The panel noted that Mr Burston had not sought an adjournment to the hearing and the panel did not consider that an adjournment would procure his attendance at a hearing. In light of this conversation with the presenting officer firm the panel considered that it was in the public interest for the hearing to take place. It also considered the effect on the witnesses of any delay.

Having decided that it was appropriate to proceed, the panel agreed to seek to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mr Burston was neither present nor represented.

Application to admit additional documents

The panel considered a preliminary application from the teacher for the admission of additional documents.

The teacher's documents consisted of a document entitled "Contingency Document", five character references, three from former teaching colleagues and two from former students, and eleven photographs of the teacher.

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

The panel heard representations from the presenting officer in respect of the application, who confirmed there was no objection to the admission of the documents.

The panel considered the additional documents were relevant. Accordingly, the panel agreed to their admission into the bundle.

During the course of the hearing Witness A was recalled to give evidence on the initial investigation undertaken into the events of June 2019 on which Witness C had given evidence. He was recalled on 13 July 2022, and during the course of his evidence referred to additional documents which the panel considered relevant and which they admitted into evidence. These were: a copy of the powerpoint presentation on

safeguarding training delivered at the school in September 2019; a screen shot of the school's safeguarding log; the covid addendum to the school's safeguarding and child protection policy; and, ex Pupil D's statement provided to the school in July 2020.

Summary of evidence

Documents

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

- Section 1: Anonymised pupil list and list of key people – pages 6 to 7
- Section 2: Notice of referral, proceedings and response – pages 9 to 23
- Section 3: Statement of agreed and disputed facts – pages 25 to 34
- Section 4: Teaching Regulation Agency witness statements – pages 36 to 79
- Section 5: Teaching Regulation Agency documents – pages 81 to 569
- Section 5: Teacher documents – pages 571 to 615

In addition, the panel agreed to accept the following:

- Section 6: Additional documents received from the Teacher – pages 616 to 641
- Section 7: Additional documents received from the School – page 642 to 653

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

Witnesses

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

- Witness 1 [REDACTED]
- Witness 2 [REDACTED]
- Witness 3 [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 Burston commenced employment as subject leader drama teacher at Cheam High School ('the School') from 1 September 2018.

During the Covid-19 lockdown in 2020, Mr Burston allegedly engaged in extensive communication with current pupils of the School exchanged through Google Classroom and Show My Homework (SMHW) between March to July 2020. The date and time shown on the SMHW messages contained in the bundle confirmed that many of the messages had been sent both late at night and early in the morning. The majority of the messages did not relate to school/work matters.

Mr Burston also allegedly engaged in communication with former pupils via social media, specifically Instagram.

Allegations relating to Mr Burston's conduct during a final lesson with Year 13 pupils were also made in which it is alleged he shared and discussed inappropriate images with pupils.

On 14 July 2020, an investigation meeting took place at the School which concluded that communication between Mr Burston and several current pupils and former pupils was a matter which would proceed to a formal disciplinary hearing.

Mr Burston resigned the following day and the disciplinary hearing did not take place. The matter was reported to the LADO. The police were also informed but concluded that there were insufficient grounds for a criminal investigation.

The matter was referred to the TRA on 24 August 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:

It is alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as subject leader drama teacher at Cheam High School you:

1. On or around June 2019:

- a) Showed a historic, obfuscated, image of yourself running, partially clothed, across the grounds of the school you attended when you were a pupil to one or more pupils in your class;**
- b) Identified from the image set out in allegation 1a, one or more pupils you had 'slept with' and informed one or more pupils in your class;**

The panel noted that within the statement of agreed and disputed facts ('the Statement') signed by Mr Burston on 1 July 2022, Mr Burston admitted allegation 1(a) in that, during an end of year lesson, he showed a partially clothed, obfuscated, image of himself to his Year 13 pupils. Mr Burston averred that the image was taken some distance away and did not contain full frontal nudity, with Mr Burston's arm and the bottom of his legs being on show. In his statement, headed 'Contingency Document' ('Contingency Document') which was admitted on the first day of the hearing, he confirmed that sharing the image had been an attempt at humour.

The panel found the witness evidence given by Witness C during the hearing clear and cogent on allegation 1a). The evidence she gave was consistent with the statement she had first given to the School in July 2020 and in her witness statement prepared for the hearing.

The panel was satisfied allegation 1a) was proven.

In the Statement, Mr Burston denied that he informed one or more pupils who he had slept with from the image set out in allegation 1(a). The response to allegation document prepared on behalf of Mr Burston by Clifford Johnston & Co ('Response') and contained within the Teacher's Documents within the bundle, further confirms the allegation is not accepted by Mr Burston.

The panel noted the submissions Mr Burston made in his Contingency Document in which he strenuously denied having discussed who he had slept with. He seeks to discredit both Witness A and Witness C, the latter being a witness of the incident from which allegations 1 a) and b) flow. Mr Burston does not, however, give any cogent reasons as to why Witness A and Witness C would be motivated to make untrue statements against him. In the case of Witness A, in his Contingency Document Mr Burston refers to his activities as a union representative as being a reason why the School would wish to cease his employment. However the panel found Witness A's evidence on this point credible, in that he confirmed the School at that time had good, open and ongoing communications with the unions regarding the measures it was taking in response to the pandemic and there was no reason why Mr Burston would be treated differently due to his union involvement. Further, Witness A did not give direct evidence on allegation 1b), instead his evidence was that Witness C, together with ex Pupil D and ex Pupil E had come forward following a reunion event that took place in June 2020, and discussed the incident that occurred in June 2019 of their own volition. This account was consistent with that given by Witness C.

The panel found Witness C's evidence entirely convincing. It found her measured and objective. She confirmed Mr Burston had provided a PowerPoint presentation aimed at giving them an idea of what to expect from university and that it was humorous and informal, and confirmed that it was largely received, particularly by male students, in that light. It was only with the benefit of hindsight that Witness C came to appreciate that the

subject matter was not appropriate, and neither was the setting. Her evidence was that the door to the classroom was locked and the blinds drawn, which was unusual, but due to Mr Burston wanting to ensure younger students did not enter the room. Witness C was clear in her evidence that, during the course of the lesson, Mr Burston had shown other images, in addition to the one referred to in allegation 1a). One of these additional images depicted female university friends of Mr Burston and he made reference to having slept with more than one of them. Witness C was very clear on this point. When Witness C was asked to review the part of the Contingency Document in which Mr Burston asserts that the allegation that he had discussed who he had slept with was a slanderous and libellous allegation, which he strenuously denied, Witness C said it made her very angry as he had "100% said that". Witness C was asked about her relationship with another teacher, [REDACTED], and she openly accepted she was a family friend. The panel was not persuaded that the relationship Witness C had with [REDACTED] impacted upon the evidence she gave in any way.

The panel was satisfied therefore that during in or around June 2019, Mr Burston had shown an image of university students and had referred to those he had slept with. The panel does not find however that allegation 1b, as framed, is proven. In that the image referred to was not the same image as referred to in allegation 1a. Neither were those Mr Burston referred to as having slept with pupils. They were university friends and/or acquaintances.

The panel found allegation 1(b) not proven.

2. Failed to maintain professional boundaries with Pupil A when:

- a) Between 19 March 2020 and 8 July 2020, you exchanged in or around 2637 messages with Pupil A, which included approximately 1348 messages exchanged using Google Classroom and 1289 messages exchanged on the SMHW platform;**
- b) On or before 23 May 2020, you removed the Departmental Line Manager's access to Google Classroom which was used to communication with Pupil A;**
- c) On or around 23 May 2020, you commented ' Only I can read the comments on this group just FYI';**
- d) On one or more occasions you messaged Pupil A commenting on Pupil A's appearance**

including:

- i. On or around 27 April 2020, you commented, 'just know that you're smart, funny, pretty, and if anyone says otherwise they're chatting rubbish';
 - ii. On or around 5 May 2020, you commented, 'true, true, not that you need it – perfect as is!';
 - iii. On or around 20 May 2020, commented, 'you been tanning?';
 - iv. On or around 23 May 2020, commented ' sun is on its way if a tan is what you so desire (not that you need it)';
 - v. v. On or around 29 May 2020, you commented 'Like your new priv pic – never seen you with your hair up like that?';
 - vi. On or around 2 June 2020, you commented 'Like the new priv pic';
 - vii. vii. On or around 10 June 2020, you commented 'Do you and your sister look alike? Was she blessed with your good looks?' and 'will she mirror the Queen of Cheam?';
 - viii. viii. On or around 10 June 2020, you commented 'you in your trackies?';
- e) On one or more occasions, messaged Pupil A asking if she was going to have a shower
- including;
- i. On or around 10 June 2020, you commented to Pupil A 'shower time or you been outside?';
 - ii. On or around 24 June 2020, you commented to Pupil A, 'That shower when you get home is gonna be [emoji of praising hands suggesting 'great']; Pupil A replied 'I honestly can't wait then moisturize after', to which you replied 'OMG' and a smiley emoji with heart shaped eyes; you further replied, 'Oooh mama yes. I used to use cocoa butter';
 - iii. On or around 24 June 2020, in reply to Pupil A's comment 'just had a cold shower', you commented, 'you are winning right now, regardless of what the game is. Fresh PJs and a fresh bedsheet to top it off';
- f) f. Between 19 March 2020 and 8 July 2020, you engaged in comments that were personal and inappropriate, including;

- i. used unprofessional slang words to Pupil A, such as; "fam"/"lit"/"AF"/"suckkkkkkkkkkks"/"daaaaaaam"/"mate"/"the ends";
- ii. Used emojis such as hearts and smileys;
- iii. Discussed personal issues about your [REDACTED];
- iv. On or around 22 April 2020, referred to Pupil A as 'a princess' and referred to her ex-boyfriend as 'a wasteman';
- v. On or around 23 April 2020, commented 'have a hug', followed by 'O';
- vi. On or around 2 June 2020, discussed work related matters with Pupil A, in that you commented 'I'm involved in a lot of stuff at school that take up a lot of time. With the [REDACTED] coming its taking up too much time and energy and I don't have it for that anymore',
- vii. On or around 9 June 2020, discussed what would happen if you earned a million pounds, in that you commented 'mate, we'd be going on a trip, Europe then Vegas';
- g) On or around 24 March 2020, you sent an audio and/or video message to Pupil A, as a birthday gift commenting 'I think you are fantastic and when we're out and about we'll have to celebrate properly';
- h) On one or more occasions, asked Pupil A where she was and suggested meeting her in person, including:
 - i. On or around 9 June 2020, you said 'you never know. I might walk through the Worcester P [Park] one day and you might happen to be there', Pupil A replied 'sounds like a motive' to which you replied 'I can't possibly comment';
 - ii. On or around 9 June 2020, you discussed having a kebab with Pupil A and/or Pupil A "riding her bike to his to do so during lockdown";
- i) On or around 30 June 2020, met Pupil A socially, after messaging you were about to visit a local shop, Pupil A later states 'it was nice seeing you';
- j) On or around 3 July 2020, you enquired from Pupil A where Pupil C lived;

The panel noted that within the Statement, Mr Burston admitted allegations 2(a), 2(b), 2(d), 2(e), 2(f), 2(g), 2(h), 2(i) and 2(j). Mr Burston neither admitted nor denied allegation 2(c).

The panel noted the evidence contained in Witness A's witness statement and that which he gave orally, which was not challenged by Mr Burston in the Statement, Response or his Contingency Document, that Pupil A was not a drama student. Mr Burston was not her classroom teacher and neither did he have any pastoral responsibility for her.

In relation to allegation 2(a), Mr Burston states in the Statement that prior to the Covid-19 lockdown in 2020, he was given permission by his line manager to communicate with pupils via platforms such as Google Classroom. He admits in his Response to sending the messages, adding that they were sent during the worst public health crisis for over a century during which the School was concerned about the impact of the pandemic on pupils and the disconnect between them. The bundle of documents contained printed copies of a large number of the messages Mr Burston exchanged with Pupil A.

Regarding allegation 2(b), Mr Burston admitted in his Statement and Response that he removed [REDACTED], his departmental line manager's access to Google Classroom. The panel noted that Mr Burston confirms in the Statement that he removed the line manager because of professional issues that he had with her, which the School was aware of. The panel was not given any evidence on what those issues were, but in any event, is not persuaded that they would have justified blocking a manager's oversight of Mr Burston's use of the platform.

In relation to allegation 2(c), Mr Burston submitted in his Statement that he believed his communications with Pupil A on Google Classroom were monitored for safeguarding purposes. He maintained in the Response that this reference was to his being the only teacher in the chat. The panel was not persuaded by this, particularly in light of Mr Burston's comment to Pupil B on Google Classroom. On 23 May 2020 he and Pupil B exchanged messages regarding [REDACTED]'s ability to see messages posted to the group, to which Mr Burston stated: "*Fair enough, I'll boot her*". The panel considered the reference he made to Pupil A to be clear, in that it was only him who could read the comments in the group.

Mr Burston admitted allegation 2(d) i) – viii) in the Statement. He accepted that his messages were inappropriate in content and personal tone and that they crossed the professional boundary into the teacher/pupil relationship becoming inappropriate.

Mr Burston admitted allegation 2(e) i) – iii) in the Statement. He stated that he was commenting on the feeling a person may derive from showering and the feelings of being clean and in a comfortable environment. Mr Burston denied that the messages he sent could be interpreted as being sexual or inappropriate.

Mr Burston admitted allegation 2(f) i) – vii) in the Statement. Mr Burston submitted that the pupil had low self-esteem and that he made remarks such as calling her "*princess*" with the intention of making Pupil A feel better about herself. He stated in his Response that 2. f) vii) was not to be taken seriously. Mr Burston stated that these comments were

not of a sexual nature nor sexually motivated but acknowledged that the messages were inappropriate in content and tone, and they crossed the professional boundary into the teacher/pupil relationship, becoming inappropriate.

In respect of allegation 2g), Mr Burston admitted in the statement and Response that he sent an audio and/or video message to Pupil A as a birthday gift. Mr Burston submitted that the pupil's birthday was during lockdown and had it not been, he would have wished her a happy birthday, and any other pupil, in person.

Mr Burston admitted allegation 2(h), in both the Statement and Response. He submitted, however, that the messages were not intended to be taken seriously.

Mr Burston admitted allegation 2(i), and stated in the Statement that he saw Pupil A at a shop on Churchill Road, which was at the front of the School. Mr Burston asserted he had spoken to many pupils and believed that in person contact between staff and pupils was a benefit to both during an extremely worrying and trying time.

Mr Burston admitted allegation 2(j), but in the Statement denied that it constituted an issue and was simply a question asking out of general curiosity.

The panel read the multitude of screenshots of the messages exchanged between Pupil A and Mr Burston between March and July 2020 on Google Classroom and the SMHW platforms contained in the bundle.

The panel found allegations 2(a)-2(j) proven.

- 3. Between on or around 20 March 2020 and 01 July 2020, failed to maintain professional boundaries with Pupil B when you sent one or more messages that were personal and/or inappropriate, including;**
 - a) Used emojis such as "hot flames";**
 - b) Discussed personal issues about your [REDACTED];**
 - c) Used unprofessional slang words to Pupil B, such as; "fam"/"lit"/"Sick AF";**

The panel noted that within the Statement and Response, Mr Burston admitted allegations 3(a), 3(b) and 3(c).

Mr Burston acknowledged that he used unprofessional slang words and emojis when messaging Pupil B. Mr Burston further admitted that professional and personal boundaries had been blurred by the pandemic and subsequent lockdown.

Mr Burston admitted that the messages he sent were inappropriate and crossed the professional boundary into the teacher/pupil relationship becoming inappropriate.

The panel reviewed the numerous screenshots of messages exchanged between Mr Burston and Pupil B between March and July 2020 contained in the bundle.

The panel found allegations 3(a), 3(b) and 3(c) proven.

- 4. On one or more occasions, failed to maintain professional boundaries with Pupil C when you sent one or more messages that were personal and/or inappropriate, including:**
 - a) On or around 4 May 2020, you commented on Pupil C's appearance, 'Love the hair! Props to your sis for making it happen [emoji of praying hands]';**
 - b) On or around 4 May 2020, you commented to Pupil C in reference to Pupil C's sister, 'If she's a sneaker head I'm going to have to drop her a follow one day';**
 - c) Between 01 May 2020 and 06 July 2020, you:**
 - i. Used emojis such as hot flames, hearts and praying hands;**
 - ii. Discussed personal issues about your [REDACTED];**
 - iii. Used unprofessional slang words to Pupil C such as; "fam/ lit/AF/siiiiick";**

The panel noted that within the Statement and Response, Mr Burston admitted that the messages he sent to Pupil C were inappropriate in content and personal tone and that they crossed the professional boundary into the teacher/pupil relationship becoming inappropriate. Therefore, Mr Burston admitted allegations 4(a)-(c)(i-iii).

The panel noted the witness statement and oral evidence of Witness A. Witness A submitted that, following further investigation, more extensive messages on both the School's SMHW platform and Google Classroom were revealed. These included messages to Pupil C, who was a year 10 student and who was friends with Pupil A. Pupil C was not initially a drama student but was added to the Google Classroom.

The panel reviewed numerous screenshots of messages exchanged between Mr Burston and Pupil C between April and July 2020 contained in the bundle

The panel found allegations 4(a)-(c)(i-iii) proven.

- 5. On or around 23 March 2020, took a screenshot of an image of ex Pupil D from their Instagram account and sent the image to ex Pupil D with the message: 'Stop it you. You're going to make the local boys (and girls) thirsty and that isn't fair at a time of social distancing', when you knew or ought to have known that this was not appropriate;**

The panel noted that within the Statement and Response, Mr Burston admitted allegation 5 but stated that the comment was not appropriate and was intended to boost ex pupil D's confidence.

The panel noted the witness evidence of Witness A that Mr Burston had screenshotted the photo of ex Pupil D and sent her the image with a comment about her making boys "thirsty" in a private message. This satisfied the panel that he knew that what he was doing was inappropriate.

The panel saw a screenshot of what appeared to be a Whatsapp conversation, whereby Mr Burston had sent a screenshot of an image to ex Pupil D with his comment.

The panel found allegation 5 proven.

- 6. On an unknown date prior to 16 May 2020, failed to maintain professional boundaries with ex Pupil D when you provided your personal contact details to ex Pupil D via social media to use when ex Pupil D visited the school to collect her A Level certificates in order for you to meet ex Pupil D at school when you knew or ought to have known that this was not appropriate;**

The panel noted that within the Statement and Response Mr Burston admitted allegation 6. He acknowledged that the staff guidance document stated that teachers should 'avoid' providing their personal contact details to pupils. However, Mr Burston stated that there was no prohibition on doing so. Mr Burston averred that in the circumstances, it was easier for ex Pupil D to contact him directly when she attended the School to collect her A Level certificates rather than via the office.

The panel found allegation 6 proven.

- 7. On or around 16 May 2020 sent an audio recording to ex Pupil D of song lyrics which included 'every time you get undressed I hear symphonies in my head' when you knew or ought to have known that this was not appropriate;**

The panel noted that within the Statement and Response, Mr Burston admitted allegation 7. Mr Burston submitted that he and ex Pupil D had spoken about a song during general conversations and that he had forwarded this song to ex Pupil D. Mr Burston regretted sending the recording and accepted that the lyrics were inappropriate.

The panel noted a screenshot of an audio message that had been sent, followed by the message "Hard to deny its catchy though right?" although the panel was unable to hear the contents of the audio message.

The panel found allegation 7 proven.

- 8. On an unknown date after May 2020, took a screenshot of an image of ex Pupil D from their Instagram account and sent the image to ex Pupil D with**

the message: 'Look at that tan – absolutely bloody glowing x when you knew or ought to have known that this was not appropriate;

The panel noted that within the Statement and Response Mr Burston admitted allegation 8. Mr Burston stated that the comment was intended to boost ex pupil D's confidence. Mr Burston accepted, however, that it was not an appropriate comment to make.

The panel saw a screenshot of the message within the bundle.

The panel found allegation 8 proven.

9. On more than one occasion between on or around 03 November 2019 and 16 May 2020, replied to an image on the Instagram account of ex Pupil D with a heart-eyed emoji when you knew or ought to have known that this was not appropriate;

The panel noted that within the Statement and Response, Mr Burston admitted allegation 9. Mr Burston stated that he did not appreciate at the time that communicating and being friendly with former pupils was prohibited.

The panel saw a screenshot of messages exchanged between ex Pupil D and Mr Burston which contained a heart-eyed emoji.

The panel found allegation 9 proven.

10. On an unknown date prior to 18 December 2019, took a screenshot of an image of ex Pupil E from their Instagram account and sent the image to ex Pupil E with the message: 'Crikey [REDACTED]. Was it cold out? X' when you knew or ought to have known that this was not appropriate;

The panel noted that within the Statement and Response Mr Burston admitted allegation 10. Mr Burston accepted that he should not have communicated with ex Pupil E on social media and that his attempt to compliment and boost the confidence of his pupils was not appropriate.

The panel saw a screenshot of the message referred to, which had been exchanged between ex Pupil E and Mr Burston.

The panel found allegation 10 proven.

11. On an unknown date prior to 17 June 2020, sent a message to ex Pupil E stating: 'you still have my number right? If so, I would LOVE it if you could record yourself saying 'you stupid bitch' in the angry way that you used to. I've tried doing it several times but I essentially sound like a wife beater and I want to have it as a SFX in case the mood takes me' when you knew or ought to have known that this was not appropriate;

The panel noted that within the Statement and Response, Mr Burston admitted allegation 11. He commented that ex Pupil E was a robust character who often used the phrase. Mr Burston accepted that his use of language was not appropriate and overly familiar.

The panel noted the screenshot of the relevant communication in the bundle.

The panel found allegation 11 proven.

12. On or around 22 June 2020, replied to an image on the Instagram account of ex Pupil E with heart-eyed emojis when you knew or ought to have known that this was not appropriate;

The panel noted that within the Statement and Response Mr Burston admitted allegation 12. Mr Burston accepted that his language was inappropriate, overly familiar and too friendly.

The panel noted the screenshot of the relevant communication in the bundle.

The panel found allegation 12 proven.

13. On or around 23 June 2020, replied to an image on the Instagram account of ex Pupil E with a hot flame emoji when you knew or ought to have known that this was not appropriate;

The panel noted that within the Statement and Response, Mr Burston admitted allegation 13. Mr Burston accepted that his language was inappropriate, overly familiar and too friendly.

The panel noted the screenshot of the relevant communication which contained the hot flame emoji in the bundle.

The panel found allegation 13 proven.

14. On an unknown date prior to 20 August 2020, in response to ex Pupil F sending an image of his shaved head commented, 'time for a Grindr update', or words to that effect when you knew or ought to have known that this was not appropriate;

The panel noted that within the Statement and Bundle Mr Burston admitted allegation 14. Mr Burston accepted that his comment was inappropriate.

The panel also considered Witness A's written and oral evidence on the disclosure made by ex-Pupil F to the School regarding Mr Burston's comment to him.

The panel found allegation 14 proven.

15. Your behaviour as set out in one or more the allegations demonstrated elements of building an inappropriate relationship.

The panel noted that within the Statement and Response Mr Burston denied allegation 15. Mr Burston accepted, however, that the messages he had sent crossed the professional boundary of the teacher/pupil relationship becoming inappropriate.

The panel considered the witness statement and oral evidence of Witness C. Witness C stated that Mr Burston appeared very friendly, however, it took her a while to realise that sometimes it went “*a bit far*”. Witness C explained that Mr Burston was charming and that he knew a few girls at the School found him attractive and he “*revelled in this*”. Witness C believed that Mr Burston had latched on to one of her friends, ex-Pupil D, and targeted her at a time when she had fallen out with her friends.

Witness C explained that Mr Burston sent inappropriate messages to her friend, who did not tell anyone at the time. Mr Burston also followed Witness C on Instagram and would ‘react’ to her stories, shortly after she left school. Mr Burston asked Witness C and her friend to attend the School and help with the Year 11 performances. Witness C and her friend attended, but did not help as Mr Burston stated that he wanted to have a catch-up and did not really need their help.

The panel considered the pattern of behaviour demonstrated by allegations 1 – 14. In particular the times at which he sent messages to pupils, which was sometimes very late at night or early in the morning: for example, after 11.30pm to Pupil A, who was 16 at the time. The content of the messages was overwhelmingly non-school related and personal. He posted one message to Pupil A at 11.29pm informing her was going to bed and bidding her “*Sleep tight*”. Another was sent at 12.40am on 16 May 2022 in which he stated: “*Yeah, can’t stay up any later with my house as it is at the minute! Sweet dreams for later.*” He sent others first thing in the morning saying “*Wakey, wakey*”. The sheer quantity of emails, discussing insignificant day to day matters, making enquiries as to pets etc., was too familiar, personal and too extensive.

The panel was satisfied that the exchange of such a huge volume of messages sent to a number of students over a prolonged period was unusual and concerning. The panel was satisfied that a qualified teacher would understand that the volume, tone and content of such communications was wholly inappropriate, even during a pandemic. The panel was also satisfied from the evidence put forward by Witness A that the School had adequate safeguarding measures in place to support pupils who were having difficulties during lockdown. If Mr Burston had had genuine concerns relating to Pupils A, B and C, he should have reported them through the appropriate channels, such as CPOMS. The panel was content from Witness A’s evidence that Mr Burston knew when and how to raise safeguarding concerns about pupils using that platform.

The panel was also concerned that he had no specific pastoral or curriculum responsibility for Pupil A and therefore there was no reason why he should have contact with Pupil A on either Google Classroom or SMHW.

Overall, the panel concluded that the contact Mr Burston had had with Pupils A, B and C, demonstrated elements of building an inappropriate relationship. It reached this conclusion on the basis of the extensive messages sent, over a period of time, with then current pupils A, B, C, all of which were overwhelmingly unrelated to any school related matter or issue. Indeed, the panel was satisfied, when viewing all the allegations and evidence in totality, that Mr Burston had built inappropriate relationships Pupils A, B, C and D.

The panel found allegation 15 proven.

16. Your conduct as set out in one or more the allegations above was sexually motivated

The panel noted that within the Statement and Response Mr Burston explicitly denied allegation 16. Mr Burston asserted that the language he used was not sexual at all. He submitted that the language was neither overtly nor explicitly sexual.

The panel, however, found that there were sexual references and inferences in the comments he made. The panel found such to be the case in respect of the comment made to ex-Pupil D in allegation 5, the song lyrics sent to ex-Pupil D in allegation 7, the request made to ex-Pupil E in allegation 11, and the heart-eyed emoji sent to ex Pupil E in allegation 12. The panel was satisfied that Mr Burston's conduct in those allegations was sexually motivated. The messages were sexual in nature, as they related to sexual attraction, both physical and, in the case of allegation 11, aural. The panel considered what may have motivated Mr Burston to engage in such communication, including his comment that it was to help with confidence or self-esteem issues or, as he stated in his Contingency Document, "*I just wanted to make these pupils and ex-pupils feel great*"; the panel was not convinced by these reasons.

The panel was of the view that it is very difficult to justify comments of the nature made in the allegations above, by a teacher to ex pupils. The panel struggled to identify any other motivation for sending messages that crossed a line into being flirtatious.

The panel concluded that in the absence of any plausible explanation the conduct in allegations 5, 7, 11 and 12 was sexually motivated.

The panel then considered its conclusions in respect to these allegations, which concerned ex-Pupils D and E, against those allegations that related to pupils A, B and C. In light of the sexual nature of the conduct found in respect of the former pupils, the panel considered the motivation for the extensive volume of messages between Mr Burston and pupils A, B and C. It paid particular attention to the inappropriate tone, content and

language, as well as emojis, used in these messages. It also noted that Mr Burston had singled out three female pupils, one of whom he had no specific curriculum or pastoral responsibilities for. The panel concluded that in the absence of any plausible explanation, on a balance of probability, it was more likely than not that his conduct was sexually motivated.

The panel found allegation 16 proven.

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

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

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

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

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

The panel was satisfied that the conduct of Mr Burston amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

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

The panel noted that a number of the allegations, including allegations 6, 7, 8, 9, 10, 11, 12, 13, 14, took place outside the education setting in that messages were exchanged on social media platforms, including Instagram. However, the panel believed the Mr Burston's behaviour touched upon his profession as a teacher.

The panel was satisfied that the volume, content, tone and language used by Mr Burston in the messages he sent to the pupils concerned fell way short of the standards required of the profession. The panel concluded that the messages he had sent, in the form of emojis and comments on photographs posted by former students, failed to treat those former pupils with dignity or observe professional boundaries.

The extensive messages sent to then current pupils, with inappropriate language and emojis, and at very inappropriate times of the day and night, failed to observe appropriate boundaries or have regard for the need to safeguard pupils. Mr Burston's behaviour was wholly unprofessional.

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

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

The panel considered that Mr Burston should have been a role model to the pupils and former pupils but failed to conduct himself accordingly. In his messages with pupils and former pupils he persistently used slang and informal language, adopting the vernacular of those he was communicating with rather than using the tone and language expected of a teacher and a professional. Anyone observing the exchanges would have assumed it was a peer on peer exchange rather than a student/teacher exchange.

The panel was satisfied that not only did this fail to meet the standard expected of a teacher, but that also an external observer would have been shocked by the volume, timings and vernacular used in messages sent by a teacher.

The way Mr Burston was communicating and interacting with pupils and former pupils did not meet the expectations of the conduct required of the teaching profession.

In addition, the volume and timings of the messages with current pupils, and the personal nature of the communications, demonstrated that Mr Burston was not prioritising the safeguarding and welfare of the pupils concerned. Indeed, he admitted that these communications provided "refuge" for him and he was therefore prioritising his needs over those of the pupils. The interactions with the former pupils also focused heavily on their attraction or desirability, which the panel considered objectified them.

The panel was satisfied that the findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on Mr Burston's status as a teacher, potentially damaging the public perception of the teaching profession.

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

Having found the facts of allegations 1(a), 2(a)-(j), 3(a), 3(b), 3(c), 4(a), 4 (b), 4(c)(i-iii), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 proven, the panel further found that Mr Burston's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

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

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so.

The panel was aware that prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely: the safeguarding and wellbeing of pupils and the protection of other members of the public; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In the light of the panel's findings against Mr Burston, which involved failing to maintain professional boundaries and conduct that was sexually motivated, there was a strong public interest consideration in respect of the protection of pupils.

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

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

The panel considered whether there was a strong public interest consideration in retaining Mr Burston in the profession. However it was not persuaded this outweighed the other considerations identified above, as no evidence had been provided from his previous employer that attested or endorsed his abilities as an educator or that he is able to make a valuable contribution to the profession.

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 Burston.

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

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving pupils);
- any 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;

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

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

There was no evidence to suggest that Mr Burston was acting under extreme duress. Whilst Mr Burston had stated in his Contingency Statement that he had felt the effects of the Covid 19 pandemic had unsettled him greatly, the panel did not consider Mr Burston was citing having suffered with extreme stress, and there was no medical evidence supporting such a position.

No evidence was submitted to attest to Mr Burston's previous history as a teacher or which showed that Mr Burston demonstrates exceptionally high standards in both

personal and professional conduct or has contributed significantly to the education sector. Whilst Mr Burston provided five character references, these gave little information about the individual providing the reference, particularly where they had worked with Mr Burston and over what period of time.

There was also little evidence before the panel that Mr Burston had shown any insight or remorse into his actions. Whilst he had admitted the majority of the allegations against him and that his communications with the pupils and former pupils had been inappropriate and crossed professional boundaries, he failed to adequately acknowledge the safeguarding concerns and breaches his actions triggered, the pattern of behaviour that emerged and the sexual nature of some comments.

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 Burston 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 Burston.

The panel had determined that Mr Burston had not just crossed professional boundaries in his communications with the pupils and former pupils, but that he had breached fundamental safeguarding principles which the panel had no doubt he did, as a seasoned teacher and head of subject, understand. In addition to sending an extensive number of messages on various platforms at inappropriate times, of unsuitable tone and content, he had also taken the deliberate step of removing his line manager's access to one of the School's online platforms, so that he was the only teacher who could read the group messages exchanged on it.

Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend a review period of the order. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct, such as 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/her professional position to influence or exploit a person or persons.

Whilst the panel did not find Mr Burston responsible for any such behaviours, the panel struggled with its decision on whether a review period should be recommended and members of the panel were initially of the view no review period should be recommended. This was on the basis that Mr Burston had exhibited behaviours that caused serious safeguarding concerns for which they did not consider there could be a satisfactory explanation, even if Mr Burston had attended the hearing. Also members of the panel did not believe Mr Burston was capable of changing the behaviours underpinning the allegations which had been found proven, and would remain a continuing safeguarding risk, particularly as the panel was satisfied Mr Burston understood the safeguarding principles he had breached. Instead he appeared incapable of understanding the responsibilities and trust that were placed on him as a teaching professional.

The panel reflected, however, on the fact that Mr Burston had not attended the hearing and that it had not had an opportunity to hear directly from him. In addition, at the end of any review period Mr Burston would have to persuade a panel that the prohibition order should be set-aside. For these reasons the panel considered a review period should be recommended.

In considering the review period that should be recommended, the panel considered that two years would be insufficient. Its reasons were the serious behaviours Mr Burston had exhibited, as set out above. In addition, it had concerns about the lack of insight and remorse Mr Burston had demonstrated in the documents he had submitted to the panel, despite a period of two years having lapsed during which he should have had time to reflect on his actions.

The panel was concerned at the level of vitriol contained in the Contingency Document, aimed at the School, his former line manager, Witness C and Witness A. The Contingency Document was extremely damning and critical of Witness C, Witness A and [REDACTED] and failed to appreciate that they were only seeking to cooperate with the teaching profession's regulator and, in the case of Witness A and [REDACTED], comply with their own safeguarding duties. Mr Burston failed to understand and appreciate the difficult position his own actions had placed them in; in light of the serious concerns triggered by his actions anyone in their position would have been expected to have taken the same steps. Instead of acknowledging the impact his actions had had on the pupils, former pupils and his work colleagues, he sought to blame other individuals or circumstances, such as the Covid-19 pandemic and his personal circumstances at that time.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, given all the

circumstances, for the prohibition order to be recommended with provisions for a review period of four 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 conduct that may bring the profession into disrepute. In this case, the panel has 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 Joe Burston should be the subject of a prohibition order, with a review period of four years.

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

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

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

The findings of misconduct are particularly serious as they include a finding which involved failing to maintain professional boundaries with pupils, conduct found to be sexually motivated.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Burston, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect pupils. The panel has observed, "In the light of the panel's findings against Mr Burston, which involved failing to maintain professional boundaries and conduct that was sexually motivated, there was a strong public interest consideration in respect of the protection of pupils." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "There was also little evidence before the panel that Mr Burston had shown any insight or remorse into his actions. Whilst he had admitted the majority of the allegations against him and that his communications with the pupils and former pupils had been inappropriate and crossed professional boundaries, he failed to adequately acknowledge the safeguarding concerns and breaches his actions triggered, the pattern of behaviour that emerged and the sexual nature of some comments." In my judgement, the lack of insight or remorse means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils'. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Burston was not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding of sexually motivated conduct in this case and the impact that such a finding has on the reputation of the profession.

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order as a failure to uphold those high standards. In weighing these considerations, I have had to consider the matter from the point of view of an "ordinary intelligent and well-informed citizen."

I have considered whether the publication of a finding of unacceptable professional conduct, 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 Burston himself and the panel comment “No evidence was submitted to attest to Mr Burston’s previous history as a teacher or which showed that Mr Burston demonstrates exceptionally high standards in both personal and professional conduct or has contributed significantly to the education sector. Whilst Mr Burston provided five character references, these gave little information about the individual providing the reference, particularly where they had worked with Mr Burston and over what period of time.”

A prohibition order would prevent Mr Burston 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 “Mr Burston had not just crossed professional boundaries in his communications with the pupils and former pupils, but that he had breached fundamental safeguarding principles which the panel had no doubt he did, as a seasoned teacher and head of subject, understand. In addition to sending an extensive number of messages on various platforms at inappropriate times, of unsuitable tone and content, he had also taken the deliberate step of removing his line manager’s access to one of the School’s online platforms, so that he was the only teacher who could read the group messages exchanged on it.”

The findings are serious, Mr Burston failed to understand and appreciate the impact his actions had on pupils and his colleagues, he sought to blame other individuals or circumstances at the time, such as the Covid pandemic.

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

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

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

I have considered the panel’s comments “In considering the review period that should be recommended, the panel considered that two years would be insufficient. Its reasons

were the serious behaviours Mr Burston had exhibited, as set out above. In addition, it had concerns about the lack of insight and remorse Mr Burston had demonstrated in the documents he had submitted to the panel, despite a period of two years having lapsed during which he should have had time to reflect on his actions.”

The panel has also said that a four year review period would be proportionate given the circumstances.

I have considered whether a four 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 this case, factors mean that allowing a lesser review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the dishonesty found, the lack of either insight or remorse, and the pressure placed on other junior members of staff to act dishonestly.

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

This means that Mr Joe Burston 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 26 July 2026, four 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 Burston remains prohibited from teaching indefinitely.

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

Mr Burston has a right of appeal to the Queen’s Bench Division of the High Court within 28 days from the date he is given notice of this order.

A handwritten signature in black ink, appearing to read 'S Buxcey', with a horizontal line underneath.

Decision maker: Sarah Buxcey

Date: 22 July 2022

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