



Teaching  
Regulation  
Agency

# **Mr Nicholas Spink: Professional conduct panel hearing outcome**

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

**September 2024**

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

<b>Teacher:</b>	Mr Nicholas Spink
<b>Teacher ref number:</b>	1146552
<b>Teacher date of birth:</b>	13 November 1981
<b>TRA reference:</b>	19413
<b>Date of determination:</b>	18 September 2024
<b>Former employer:</b>	Outwood Academy City Fields (“the Academy”), Wakefield

### **Introduction**

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 17 September 2024 to 18 September 2024 by virtual means to consider the case of Mr Nicholas Spink.

The panel members were Mr Peter Ward (lay panellist – in the chair), Mr Nicholas Catterall (lay panellist) and Mrs Laura Flynn (teacher panellist).

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

The presenting officer for the TRA was Mr Adam Kirke, Counsel of 9BR, instructed by Capsticks LLP solicitors.

Mr Spink was not present and was not represented.

The hearing took place in public and was recorded.

## Allegations

The panel considered the allegations set out in the notice of proceedings dated 13 June 2024, as amended pursuant to the application referred to below.

It was alleged that Mr Spink was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

1. Between around September to December 2019 in relation to OCR Creative iMedia, Unit RO88 (Creating Digital Sound) he:
  - a. provided inappropriate assistance to one or more pupils;
  - b. failed to adequately or at all submit the moderation sample requested by the exam board;
2. In or around November 2019 to March 2020, in relation to Business and Enterprise Studies Course, he failed to submit one (or more) of the exam entries for Year 10;
3. In or around April 2020, he sent one (or more) messages to Child A as set out in Schedule 1;
4. His conduct at 3. above was sexually motivated;
5. In or around May 2022, he failed to report to the Academy that he had been arrested.

Schedule 1 specifies messages or messages to the effect of:

- i. commenting on Child A's appearance;
- ii. referring to sexual activity;
- iii requesting one or more photographs of Child A;
- iv. requesting sex and/or a drink with Child A.

Mr Spink responded on 1 February 2023 to the notice of referral (in which the allegations were framed slightly differently to those in the notice of proceedings, although the substance was the same). In that response, Mr Spink admitted allegations 1, 2 and 3 (in respect of Schedule 1 i, ii, iii). He denied allegation 3 in respect of Schedule 1 iv and allegation 4. Mr Spink did not respond to allegation 5. He admitted that he was guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute.

However, given Mr Spink's non-attendance at the hearing, the hearing proceeded on the basis of the case being disputed.

## Preliminary applications

### Proceeding in absence

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

The panel was satisfied that TRA has complied with the service requirements of paragraph 19(1) (a) to (c) of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

Mr Spink completed a correspondence request form in which he provided his email address, and was alerted that future correspondence including any notice of proceedings would be sent to him via email, unless he requested otherwise. Mr Spink did not indicate that he preferred to receive postal correspondence. The panel noted that communications with Mr Spink have routinely been by email via the email address specified. Mr Spink provided no indication that the postal address detailed on letters sent to him by email was incorrect.

The panel noted that an email was sent by the TRA to Mr Spink on 13 June 2024 alerting him to correspondence having been shared with him using a secure portal.

The panel noted an email from the TRA dated 24 June 2024 to Mr Spink, stating that the notice of proceedings of 13 June 2024 had also been issued by post to him, but had been returned to the TRA and enquired whether Mr Spink had received the notice of proceedings shared with him by the secure portal. Mr Spink was asked to provide an updated address if he wished to receive the notice of proceedings by post. Mr Spink responded by email to confirm that he had received the notice of proceedings.

The panel saw an email providing the notice of proceedings to the TRA postal room on 13 June 2024 requesting that it be sent to Mr Spink's last known address. The panel saw a photograph of the package returned to the TRA undelivered which had a label addressed to Mr Spink's last known address. The panel considered that the service requirements had been satisfied since there was evidence of the notice of proceedings having been sent by post to Mr Spink's last known address.

The panel was also satisfied that the notice of proceedings complied with paragraphs 5.23 and 5.24 of the Teacher misconduct: Disciplinary procedures for the teaching profession May 2020, (the "Procedures").

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

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

In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel firstly took account of the various factors drawn to its attention from the case of *R v Jones*.

Mr Spink confirmed he had received the notice of proceedings and therefore was aware of the timing and arrangements for the hearing. He made no application for an adjournment.

The panel noted that in Mr Spink's response to the notice of referral, he requested that the matter be dealt with without a hearing, which might be indicative that he did not wish to make representations or call witnesses in his defence.

Mr Spink had been engaging with correspondence sent to him by the firm instructing the presenting officer, and with the TRA, with the last response from Mr Spink on 24 June 2024. On 21 August 2024 an email was sent to Mr Spink advising him that documentation had been shared with him via a secure portal. The presenting officer provided evidence that Mr Spink had accessed that documentation. Despite this, on 27 August, 29 August, 3 September and 4 September attempts were made by telephone and email to contact Mr Spink to seek to agree the panel bundle. Voicemail messages were left. No response was received from Mr Spink.

Against a background of Mr Spink having requested the matter be dealt with without a hearing, his absence of response to recent communications and his non-attendance at the hearing, the panel considered that Mr Spink had waived his right to be present at the hearing in the knowledge of when and where the hearing was to take place.

There was no indication that an adjournment might result in Mr Spink's attendance. Any adjournment would likely be for a number of months in order to secure a panel to preside over the case.

Mr Spink was unrepresented but had not expressed any wish for there to be an adjournment in order to instruct a representative.

The panel had the benefit of Mr Spink's responses during the course of the Academy's investigation and also written representations he has made at an earlier stage of these

proceedings. The panel noted that all witnesses relied upon were to be called to give evidence and the panel could test that evidence when questioning those witnesses, considering such points as are favourable to the teacher, as was reasonably available on the evidence. The panel was able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel had regard to the risk of reaching an improper conclusion regarding Mr Spink's absence particularly given that he [REDACTED] during the Academy's investigation. The panel considered that this risk was minimal given that Mr Spink had requested that the allegations be considered without a hearing.

The panel recognised that the allegations against the teacher are serious and that there was a real risk that if proven, the panel would be required to consider whether to recommend that the teacher ought to be prohibited from teaching.

The panel recognised that the efficient disposal of allegations against teachers is required to ensure the protection of pupils and to maintain confidence in the profession. The conduct alleged was said to have taken place whilst the teacher was employed at the Academy. The Academy will have an interest in this hearing taking place in order to move forwards.

The panel also noted that there were two witnesses prepared to give evidence, and that it would be inconvenient for this to be rearranged. Delaying the case may impact upon the memories of those witnesses.

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

- the teacher's waiver of his right to appear;
- the inconvenience an adjournment would cause to the witnesses;
- the public interest in this hearing proceeding within a reasonable time;
- the measures available to address any unfairness insofar as possible; and

given that the panel has the benefit of Mr Spink's responses during the Academy's investigation, the hearing should proceed in the absence of Mr Spink.

#### Amendment of the allegations

The presenting officer applied to amend the date in allegation 5 from May 2022 to May 2020.

Pursuant to paragraph 5.83 of the Procedures, the panel has the power to, in the interests of justice, amend an allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case have been proved.

Before making an amendment, the panel was required to consider any representations by the presenting officer and by the teacher. Mr Spink had waived his right to make representations, given his non-attendance at the hearing. Nevertheless, the panel was concerned that this application was made at such a late stage in the proceedings, and exercised caution to ensure that there was no unfairness to Mr Spink, particularly since he had not been informed in advance of this application.

The amendment proposed was consistent with the evidence contained in the bundle, and it was therefore in the interests of justice that the amendment be made. The panel considered that the amendment proposed, being a correction of a typographical error, did not change the nature, scope or seriousness of the allegations. There was no prospect of Mr Spink's case being presented differently had the amendment been made at an earlier stage, and therefore no unfairness or prejudice caused to him. The panel therefore decided to amend the allegation as proposed.

## **Summary of evidence**

### **Documents**

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

Section 1: Chronology and list of key people – pages 7 to 14

Section 2: Notice of referral, response and notice of proceedings - pages 15 to 31

Section 3: Teaching Regulation Agency witness statements – pages 32 to 51

Section 4: Teaching Regulation Agency documents – pages 52 to 862

Section 5: Teacher documents – pages 863 to 864

In addition, the panel agreed to accept additional documents relevant to its consideration of whether to proceed in Mr Spink's absence. It was fair to admit these documents for the panel to assess whether the notice of proceedings had been effectively served, Mr Spink's awareness of the present hearing and whether Mr Spink was voluntarily or involuntarily absent. These documents were as follows:

- service bundle containing correspondence with Mr Spink – pages 865 to 920
- emails regarding service of the notice of hearing and tracking information – pages 921 to 925
- photograph of returned parcel and enclosures – pages 926 to 928.



- screenshot confirming access to portal in August 2024 to page 929.

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 presenting officer:

Witness A – [REDACTED]; and

Witness B – [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 Spink was employed by the Outwood Grange Academies Trust (“The Academy Trust”) from May 2019 as the Head of Department for Computer Science IT and Business Studies at Outwood Academy City Fields (“the Academy”). The Academy received a notification on 16 December 2019 from OCR that they were investigating candidates on the R088 Creating Digital Sound module. The Academy conducted an internal investigation. On 19 May 2020, the Academy was informed that sexual allegations had been made against Mr Spink and that he had been arrested on 6 May 2020. On 19 May 2020, Mr Spink was suspended from the Academy and these allegations formed part of the Academy’s internal investigation. Mr Spink was dismissed from his employment in July 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:

### **1. Between around September to December 2019 in relation to OCR Creative iMedia, Unit R088 (Creating Digital Sound), you:**

#### **a. provided inappropriate assistance to one or more pupils;**

Witness B gave evidence that Mr Spink was responsible for the delivery of computer science and the then new iMedia Course as well as having oversight of the business course. He explained that Mr Spink was responsible for teaching these courses, completing assessment and marking.

Witness B stated that he completed Mr Spink's department introduction. Mr Spink was told to focus on the iMedia course as the curriculum had been scaled back, so he would not have a computer science class. Witness B gave evidence that the induction consisted of a general Academy introduction and a specific course induction which covered an overview of the courses and provided Mr Spink with the resources and support available to reduce teacher workload. He stated that this did not replace Mr Spink's responsibility to review the specifications for each course, but did provide him with some guidance on how the Academy operated and best practice for course delivery that had been developed by the trust after working closely with the exam board.

Witness B stated that the training covered what assistance teachers could provide to pupils during controlled assessments. He explained that this was a course with increased popularity and he was aware that the exam board was keen to ensure it was completed correctly. He stated that he told Mr Spink that he should familiarise himself with the course specification so he was clear how much support he was able to provide, despite this being a basic principle of teaching that he would have expected Mr Spink to know.

To supplement this training, and since the course was being delivered within the Academy Trust for the first time, a continuing professional development "CPD" day took place on 10 June 2019, organised by Witness B and attended by Mr Spink. Witness B stated that, during this day, he provided all members of staff with additional guidance for marking coursework units, a handout on malpractice and at the end of the day the attendees agreed a list of non-negotiables and action points. He stated that the purpose of these documents was to ensure that every member of staff was aware of the expectations for the course.

Witness B stated that if Mr Spink had any concerns about the level of support he was able to offer to pupils he should have consulted the handbook for the course which made clear that the teacher should use enough checks to be confident that "the learner's work was authentic".

Witness B gave oral evidence that there were different models for teaching the content of the unit. This might include teaching the whole unit before the pupils undertook the brief to demonstrate their learning, or alternatively the skills for one of the learning objectives could be taught before the pupils undertook the brief. He stated that the latter approach was usually preferred, since those skills would be fresh in the pupils' minds. He stated that having reviewed the work that was called into scrutiny by the exam board, it was apparent that the brief had been taught rather than the skills that would have enabled pupils to complete the brief independently.

Witness B gave evidence that as a result of Mr Spink's actions, the entire class had their marks rejected, resulting in them having to recomplete 25% of the entire course qualification.

In Mr Spink's written representations at an earlier stage of the present proceedings, he stated that this issue had been looked at by the Academy and there had been an issue with training. The panel was satisfied that Mr Spink had received appropriate training, and had an obligation to ensure he was aware of his responsibilities.

The panel considered that on the balance of probabilities it had been proven that Mr Spink had provided inappropriate assistance to pupils.

**b. failed to adequately or at all submit the moderation sample requested by the exam board.**

Witness B could not recall what, if any, special training Mr Spink would have received about submitting moderated examples to the exam board. However, he stated they would have discussed this as part of their catch ups and it would have been part of the CPD day on the iMedia course. He stated that Mr Spink was a head of department and an experienced teacher so the expectation would have been that he either would know how to submit moderated samples to the exam board, that he would have asked for assistance if he did not know, or he could have consulted the course handbook.

On 16 December 2019, the exam board sent a letter to the Academy stating that the moderation sample for the iMedia Unit R088 had not been submitted within three working days, and was not finally received until 12 December at which point one candidate still had their URS form missing.

The panel saw evidence of the exam board having provided details of those candidates whose work was required for moderation on 21 November 2019 and that this was required to be provided within 3 working days. On 27 November 2019, the exam board sent an email to the exams officer asking for the moderation sample to be uploaded "asap", as it was missing. On 3 December 2019, a further email was sent by the exam board, stating that the extension granted for submission of the moderation sample would end the following day. On 9 December 2019, the exams officer emailed the exam board stating that they had returned to work and found that the iMedia course leader never uploaded the sample as requested and had not informed her, or the exam board. On 12 December 2019, the exam board sent a further email stating that the candidates work had been uploaded, but that a URS form was missing, so they could not begin the moderation process. The exam board stated that the teacher would have until 3pm the following day to upload the missing files, or the iMedia course would not be moderated for their centre.

In oral evidence Witness B confirmed that Mr Spink ought to have been aware of the dates for submissions and although a log in would need to be requested to have access to the repository to upload the moderation sample, it could be obtained within around 24 hours after being requested. The panel considered that Mr Spink ought to have known this and arranged access in good time for the moderation sample to be submitted.

Witness B gave evidence that as a result of Mr Spink's actions, the entire class had their marks rejected, resulting in them having to recomplete 25% of the entire course qualification.

In written representations at an earlier stage of the present proceedings Mr Spink referred to [REDACTED] over this period, as well as the exam officer having been absent from work as well over the same time period. The panel did not accept that this was a reasonable excuse, since the responsibility was Mr Spink's, he did not need the exam officer to be available to upload the moderation sample to the repository, and the failure to upload continued after his return to work.

The panel was satisfied that Mr Spink had failed to adequately or at all submit the moderation sample requested by the exam board.

**2. In or around November 2019 to March 2020, in relation to Business and Enterprise Studies Course, you failed to submit one (or more) of the exam entries for Year 10;**

An investigation by the Academy into this allegation was launched after it was discovered that Year 10 pupils had not been entered for the examination one week before they were due to sit it.

Witness B gave evidence that the process for submitting exam entries was that the details for each pupil that was going to be entered into an exam had to be given in advance of the exam date to ensure that the exam board was aware of who would be sitting the assessment, approximately a couple of months in advance of the submission. He explained that to do this, Mr Spink would have to contact the exam officer and provide them with details of the pupils including their names, the unit code and the date of the assessment. The exam officer would then enter the pupils for the assessment. Witness B was clear in both his written and oral evidence that submitting exam entries, or co-ordinating with an exam officer to submit entries was a fundamental expectation of a head of department. Since Mr Spink was a head of department, Witness B stated that he should have known how important it was to do this promptly. He stated that the Academy would not have provided additional training on submitting exam entries because Mr Spink was senior and would have been expected to know this. However, he confirmed that Mr Spink could have contacted his line manager, the exam officer or Witness B to request further support or advice about how to submit entries. Witness B also stated that he could have consulted the course handbook.

The panel has seen an email from the exams officer of 9 September 2019 requesting that the "Intent to Enter" form enclosed be returned to her by 18 September 2019 at the latest. Mr Spink was amongst the list of recipients of the email. On 18 September 2019, the exams officer sent a reminder that the form was required by the end of the day, as she had a deadline to meet with the exam boards so "I urgently need this information". Again, Mr Spink was amongst the list of recipients of the email. On 26 September 2019, the

exams officer asked another member of staff, Person C to provide the information as it was the only form she was missing. The exams officer forwarded this request to Mr Spink.

On 17 March 2020, Mr Spink was asked a number of questions regarding this allegation. He responded that the list of students was complete and did not need changing. He also stated that at previous schools he had worked, the exam officers completed the entries. He was asked if he recalled the exam officer asking him to provide the information, and why this was not completed. He responded that it did not need changing when he looked at it, and [REDACTED], he did not request any changes. He confirmed that he was aware that the Academy is charged for late submissions. He was asked if he would do anything differently and responded that he would do everything asap to make sure “we didn’t get lost in any confusion again” and that he had learnt “that I have to enter the students for my subjects.”

The panel found that it was more probable than not that Mr Spink had failed to submit one or more of the exam entries for Year 10 for the Business and Enterprise Studies Course and that as a Head of Department this had been his responsibility.

The panel found this allegation proven.

### **3. In or around April 2020, you sent one (or more) messages to Child A as set out in Schedule 1;**

#### **Schedule 1 – Messages or messages to the effect of:**

- i. commenting on Child A’s appearance;**
- ii. referring to sexual activity;**
- iii. requesting one or more photographs of Child A;**
- iv. requesting sex and/or a drink with Child A;**

As part of the Academy’s internal investigation, Witness A gave oral evidence that a sample of messages between Mr Spink and Child A, was provided by West Yorkshire Police.

This included messages from Mr Spink commenting on Child A’s appearance, for example, stating “You have grow [sic] in the chest area”, “them puffy pink lips”, and “you fill that t-shirt very well”.

It also included messages from Mr Spink referring to sexual activity, for example “Sucky sucky, (put me in jail)”, “Bet if I popped your bum ya would squeak” and asking Child A “If you could live out all or sexual fantasies who would you pick me or ya bf”.

There were also messages requesting one or more photographs of Child A, for example, stating “if that’s what you wanted I felt like this way is easy and just a photo” and “I wanna see Ya body lol... I’m going to hell”.

There was also a message from Mr Spink asking Child A to have sex with him, and asking for a drink, for example “Would you have sex with me? And “Are you going to a drink with me [REDACTED]? Your (bf) can watch”.

The panel questioned Witness A about the origin of these messages. Witness A confirmed that no screenshots of the messages had been provided by the police, but that the police had compiled this summary for the purpose of the Academy’s investigation. Witness A gave oral evidence that this summary was provided to Mr Spink since he had a “right of response” to the allegations against him, and various written questions were asked of him on 18 June 2020.

In Mr Spink’s response to the questions, he stated that Child A had been his pupil three years previously and he had not had contact with her outside of school, until the incident giving rise to the allegations. He stated that she had contacted him via social media over a sporadic 6 week period. He stated that he did not remember communicating with her in the evenings, as he had been drunk at the time. He referred to having had a terrible lapse in judgment [REDACTED]. He stated that he had no intention of “doing the things I put in them messages”. He accepted the allegation that he had incited sexual communications with a child was substantiated by the nature of his messages. He accepted that he had written to ask whether Child A would have sex with him.

In Mr Spink’s representations at an earlier stage of the present proceedings, Mr Spink stated that he did not instigate contact with Child A and he tried to break off contact. He referred to his judgment having been terribly off, and that the lines of reality had become blurred.

It was noted that Mr Spink did not challenge the accuracy of the summary of messages provided to him.

The panel therefore found this allegation proven.

#### **4. Your conduct at 3. above was sexually motivated;**

In Mr Spink’s responses for the disciplinary investigation, he stated that Child A had contacted him via social media over a sporadic six week period. He stated that he had not sent messages to start communications with her and that he only communicated with her in the evenings, when he was drunk. He referred to having had a terrible lapse in judgment [REDACTED]. He stated he had no intention of doing the things he put in the photographs, and that being drunk and behind the screen of a phone made her “faceless” and he “blurred the lines between who [he] was talking to.” He went on to state he would never have done what was written on the messages, that he would never have communicated with Child A if she had not messaged him [REDACTED]. He did not

accept that he sent the messages to obtain indecent photographs of Child A, stating that he did not want images of her. Whilst he accepted that he had written to ask whether Child A would have sex with him, he stated that “I do not want to have sex with her.”

In Mr Spink’s representations for these proceedings, he stated that “[REDACTED] my judgment was terribly off... and the lines of reality became blurred. I would never have meet [sic] up with the person or sent indecent images. During this time the country was in a state of full lockdown [REDACTED].”

[REDACTED]

The panel noted that the state of Mr Spink’s mind could not be proved by direct observation, and could only be proved by inference or deduction from the surrounding evidence.

The panel considered carefully the messages sent by Mr Spink to Child A. On the face of the messages, reasonable persons would consider the words used were of a sexual nature. The escalation in the nature of the messages, from testing the waters and introducing sexual innuendo, to requesting sex with Child A indicated a deliberate motive, which the panel considered was more likely than not to be either in pursuit of sexual gratification or a future sexual relationship.

The panel found it proven that Mr Spink’s conduct at allegation 3. was sexually motivated.

#### **5. In or around May 2020 he failed to report to the Academy that he had been arrested.**

Witness A gave evidence that on 19 May 2020 the Academy was made aware that Mr Spink had been arrested. She stated that the Academy was first informed about this allegation by the LADO. On 19 May 2020, Mr Spink was sent a letter notifying him of his suspension from duties due to his recent arrest by the police in relation to serious safeguarding allegations involving a minor.

Witness A stated that no note had been made of the conversation in which the Academy had been informed of the arrest by the LADO, rather than by Mr Spink. However, her account is corroborated by the minutes of a LADO strategy meeting held on 27 May 2020 between various agencies concerned with safeguarding risks. The minutes of that meeting record that Witness A and the Deputy Principal of the Academy confirmed that Mr Spink had not made the Academy aware of his arrest. It is recorded that, at that time, he had made the Academy aware that he was [REDACTED]. The minutes record that Mr Spink had been suspended following receipt of information from the LADO regarding his arrest.

The panel has seen other records indicating that at the time of his arrest, Mr Spink had been on a long term absence from the Academy since 29 January 2020 due to [REDACTED].

Witness A gave evidence that Mr Spink had called the Academy Trust on 11 May 2020 to inform them that he [REDACTED] would not be coming in, and that Mr Spink could have informed the Academy Trust about his arrest at that time, but he did not. However, she stated that there was no record of this call. Nevertheless, the panel has seen an email of 12 May 2020 to Witness A from another member of staff stating that Mr Spink had informed them that he had a “bad week” last week [REDACTED]. There was no reference in that email to Mr Spink having provided any information that he had been arrested.

In his response to questions asked during the disciplinary investigation, Mr Spink admitted he had been arrested on 6 May 2020. He was asked if he was aware that he had to report any cautions, arrests or investigations to the Principal in accordance with the Code of Conduct, and responded that he was not, but he was not in a frame of mind to think logically at the time. He confirmed that he had read and understood the Academy’s Code of Conduct and he believed he had completed safeguarding training and read Part One of KCSIE, albeit did not have access to his training records to provide a date.

In Mr Spink’s representations for the present proceedings, Mr Spink stated that unfortunately he had not informed the Academy of his arrest [REDACTED]. He explained that his support network had fallen apart and there was nobody able to contact the Academy on his behalf. Nevertheless, the panel noted that Mr Spink had been in contact with the Academy to inform them that [REDACTED].

The panel has seen the Academy Trust’s Staff Code of Conduct dated 1 July 2019. Paragraph 3.4 request that employees inform the Principal “immediately if they are subject to a criminal conviction, caution, ban, police enquiry, investigation or pending prosecution.”

The Academy Trust’s Child Safeguarding Policy does not specifically refer to the need for an employee to notify if they were arrested, but given the nature of the offence under investigation, it was implicit that an employee would be required to immediately report it given the requirement to immediately report “any behaviours which give rise to suspicions that a child may have suffered harm” and “any hint or disclosure of abuse from any person” and “any concerns regarding person(s) who may pose a risk to children”. Furthermore, this policy required any employee who had received an allegation to immediately inform the Principal.

Similarly, Guidance for safer working practice for those working with children and young people in education settings May 2019 by the Safer Recruitment Consortium required staff to immediately report any concerns about someone who works with children to the



headteacher, proprietor or senior manager in line with the setting's procedures. Keeping Children Safe in Education ("KCSIE") September 2019 also required staff with concerns about a child's welfare to follow the school's child protection policy and speak to the designated safeguarding lead, or deputy. Where an allegation is made against a member of staff posing a risk of harm to children, this should be referred to the headteacher or principal. The panel has seen confirmation from Mr Spink dated 6 November 2019 that he had read and understood KCSIE September 2019 and his training records show that he completed child protection training and training on KCSIE on the same date.

Despite Mr Spink having been provided with the relevant policies making clear his obligations to report to the Academy if he was arrested, and to report any concerns that a child may have suffered harm, Mr Spink failed to report to the Academy that he had been arrested.

The panel found this allegation 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 Spink, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Spink 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, and maintain high standards in their own attendance and punctuality.

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

The panel was satisfied that the conduct of Mr Spink in relation to the facts found proved, involved breaches of Keeping Children Safe In Education ("KCSIE"). The panel considered that Mr Spink was in breach of the requirements to consider, at all times, what was in the best interest of the child, and to safeguard and promote the welfare of children.

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

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

The panel found that the offence of sexual activity; and sexual communication with a child was relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel noted that allegation 3. took place outside the education setting. The conduct led to Child A being exposed in a harmful way to communications of a sexual nature by a person in a position of trust.

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

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

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

In considering the issue of disrepute, the panel also considered whether Mr Spink's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice.

The panel found that the offence of sexual activity and sexual communication with a child was relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to conduct that may bring the profession into disrepute.

The panel noted that the advice is not intended to be exhaustive and there may be other behaviours that panels consider to be "conduct that may bring the profession into disrepute". Providing inappropriate assistance to pupils, and failing to comply with the requirements of the examination board, jeopardised those assessments. Parents and the public would expect a teacher to act with due care and integrity in relation to assessments, given that they represent the culmination of a child's learning, and the gateway to their future academic and career aspirations.

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

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

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

## **Panel's recommendation to the Secretary of State**

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

In considering whether to recommend to the Secretary of State that a prohibition order is appropriate, the panel had to consider the public interest, the seriousness of the behaviour and any mitigation offered by Mr Spink and whether a prohibition order is necessary and proportionate. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely, the safeguarding and wellbeing of pupils; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and the interest of retaining the teacher in the profession.

There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the serious findings of inappropriate sexual communications with a former pupil.

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

The panel considered that the adverse public interest considerations above in this case outweighed any interest in retaining Mr Spink in the profession, since his behaviour fundamentally breached the standard of conduct expected of a teacher, and he exploited his position of trust.

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

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

- serious departure from the personal and professional conduct elements of the Teachers' Standards;

- misconduct seriously affecting the education and/or safeguarding and well-being of pupils, and particularly where there is a continuing risk;

- an abuse of any trust, knowledge, or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or former pupil;

- sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE);

- violation of the rights of pupils; and

- deliberate action in serious contravention of requirements for the conduct of an examination or assessment leading to an externally awarded qualification or national assessment (or deliberate collusion in or deliberate concealment of such action)

particularly where the action had, or realistically had the potential to have, a significant impact on the outcome of the examination assessment.

The panel attached appropriate weight and seriousness to Mr Spink's online behaviours which facilitated online abuse and an inappropriate relationship.

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, taking account of the public interest and the seriousness of the behaviour and the likely harm to the public interest were the teacher be allowed to continue to teach, the panel went on to consider the mitigation offered by the teacher and whether there were mitigating circumstances.

Mr Spink's actions were deliberate and the panel has found his communication with Child A to be sexually motivated.

There was no evidence to suggest that Mr Spink was acting under extreme duress, eg a physical threat or significant intimidation.

[REDACTED]

There were no previous disciplinary orders against Mr Spink but there was no evidence of him having demonstrated exceptionally high standards in both his personal and professional conduct or of having contributed significantly to the education sector.

Mr Spink has not produced any character statements attesting to either his character or his teaching ability. There were references in the bundle that the Academy obtained at the time he was employed but these were not produced for the purpose of these proceedings, nor would the referees have had any knowledge of the conduct found proven in this case.

Mr Spink has expressed remorse in stating that he was "deeply sorry for all incidents" and in relation to his communications with Child A he stated that "I fully understand the damage my behaviour and deeply regret this happening and hope that Child A is not affected by my poor behaviour".

The panel, however, did not get any sense that Mr Spink has appreciated the seriousness of his conduct. He has not attended this hearing. In relation to Child A, he provided an explanation that he had been talking with another woman and the lines of reality had become blurred. The fact that Child A was a child and that sexual contact with a child was abhorrent ought to have been readily apparent to him and it was no excuse to have confused her with another adult.

With regard to his failure to provide moderation samples, during the Academy's disciplinary investigation, Mr Spink attributed this to being stressed and rushing [REDACTED]. There appeared to be no appreciation of the impact of this failure on the students.

With regard to his failure to submit exam entries, Mr Spink stated that as a result of this, he had learned to enter the students for their assessments, again without appreciating the impact of his failure on the Academy and its students.

Mr Spink attributed his failure to inform the Academy of his arrest to the breakdown of his support network but he has not demonstrated any understanding of why the need to notify the Academy was important.

Although Mr Spink demonstrated some remorse, the panel did not consider he had demonstrated appropriate insight.

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

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Spink 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 Mr Spink. The seriousness of the conduct in his sexual communications with Child A without any assurance around the risk of repetition, indicated that prohibition was appropriate. 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 two years.

The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period. These cases include serious sexual misconduct, e.g. where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person or persons any sexual misconduct involving a child. The matters found proven included conduct of this nature.

The panel did not consider that there was sufficient evidence of insight or any evidence of rehabilitation that could provide it with sufficient assurance regarding the risk of repetition.

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

## **Decision and reasons on behalf of the Secretary of State**

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

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

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

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

In particular, the panel has found that Mr Spink 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 and maintain high standards in their own attendance and punctuality.

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

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

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

The findings of misconduct are particularly serious as they include a finding of providing inappropriate assistance to pupils, failure to submit exam entries and moderation samples, inappropriate and sexual communications with a former pupil and failure to inform the Academy of his arrest.

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

In this case, I have considered the extent to which a prohibition order would protect children/safeguard pupils. The panel has observed, "There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the serious findings of inappropriate sexual communications with a former pupil." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "Mr Spink has expressed remorse in stating that he was "deeply sorry for all incidents" and in relation to his communications with Child A he stated that "I fully understand the damage my behaviour and deeply regret this happening and hope that Child A is not affected by my poor behaviour". The panel also said "The panel, however, did not get any sense that Mr Spink has appreciated the seriousness of his conduct. He has not attended this hearing. In relation to Child A, he provided an explanation that he had been talking with another woman and the lines of reality had become blurred. The fact that Child A was a child and that sexual contact with a child was abhorrent ought to have been readily apparent to him and it was no excuse to have confused her with another adult."

In my judgement, the lack of full insight 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 Spink was not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding of sexual



communications with a former pupil in this case and the impact that such a finding has on the reputation of the profession.

I have also carefully considered that as a result of Mr Spink's actions, the entire class had their marks rejected, resulting in them having to recomplete 25% of the entire course qualification and the impact on those pupils affected.

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 or 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 Spink and the panel comment "There were no previous disciplinary orders against Mr Spink but there was no evidence of him having demonstrated exceptionally high standards in both his personal and professional conduct or of having contributed significantly to the education sector."

A prohibition order would prevent Mr Spink from teaching. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel's comments concerning the lack of insight. The panel has said, "Mr Spink attributed his failure to inform the Academy of his arrest to the breakdown of his support network but he has not demonstrated any understanding of why the need to notify the Academy was important." The panel went on to say "Although Mr Spink demonstrated some remorse, the panel did not consider he had demonstrated appropriate insight."

I have also placed considerable weight on the finding that "The panel decided that the public interest considerations outweighed the interests Mr Spink. The seriousness of the conduct in his sexual communications with Child A without any assurance around the risk of repetition, indicated that prohibition was appropriate."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Spink 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 insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

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

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

I have considered the panel's comments "The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period. These cases include serious sexual misconduct, e.g. where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person or persons any sexual misconduct involving a child. The matters found proven included conduct of this nature."

In this case, factors mean that allowing a review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the serious nature of the findings and the lack of full insight.

I consider therefore that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

**This means that Mr Nicholas Spink is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England.** Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Spink shall not be entitled to apply for restoration of his eligibility to teach.

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

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

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

**Decision maker: Sarah Buxcey**

**Date: 23 September 2024**

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