



Teaching
Regulation
Agency

Mr Richard Fitton: Professional conduct panel outcome

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

January 2025

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

Teacher: Mr Richard Fitton

TRA reference: 22518

Date of determination: 10 January 2025

Former employer: Heathside School, Hampstead, London

Introduction

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 8 to 10 January 2025 by way of a virtual hearing, to consider the case of Mr Richard Fitton.

The panel members were Mrs Anne Davis (teacher panellist), Mr Neil Hillman (teacher panellist – in the chair) and Ms Chloe Nash (lay panellist).

The legal adviser to the panel was Ms Rebecca Hughes of Birketts LLP solicitors.

The presenting officer for the TRA was Ms Matilda Hesleton of Browne Jacobson solicitors.

Mr Fitton 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 23 October 2024 and as amended by the preliminary applications referred to below.

It was alleged that Mr Fitton was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed at the Heathside School Hampstead between September 2017 and July 2023:

1. He engaged in inappropriate and/or unprofessional behaviour towards one or more female pupils, in that he;
 - a) showed favouritism towards one or more female pupils in or around 2023, by asking/allowing them to;
 - i. answer questions; and
 - ii. take on special tasks;
 - b) stood close to and/or touched/held the hand(s) of one or more female pupils in or around 2023;
 - c) gave Pupil B one or more biscuits and/or snacks when she sat by him in or around 2023;
 - d) ran his hands down Pupil A from shoulders to elbows on one or more occasions;
 - e) looked one or more female pupils up and down in or around June 2023;
 - f) stood close to Pupil C and/or looked at Pupil C's breasts at the school sports day in or around June 2023; and
 - g) maintained eye contact with Pupil C on a school trip in or around 2023;
2. His behaviour as may be found proven at:
 - a) 1 above was conduct of a sexual nature and/or was sexually motivated; and
 - b) 1 above was despite having received a written warning relating to inappropriate behaviour in or around April 2022.

Mr Fitton provided no admission of fact.

Preliminary applications

Day 1: 8 January 2025

Application to admit an additional document

The panel considered a preliminary application from the presenting officer for the admission of an additional document.

The presenting officer's document was an attendance note dated 6 January 2025 from the presenting officer's firm detailing attempts to call Mr Fitton by telephone numbers which may have been in use by Mr Fitton.

The panel heard representations from the presenting officer in respect of the application.

The panel considered the submissions to determine whether it would be fair to admit the evidence.

The panel considered that the additional document was relevant to the application to proceed in the absence of Mr Fitton. Accordingly, the document was added to the bundle.

Application to proceed in the absence of the teacher

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

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 Proceedings had been sent to Mr Fitton in accordance with the Teacher misconduct: Disciplinary procedures for the teaching profession May 2020 (the '2020 Procedures').

The panel had sight of the Notice of Hearing sent to Mr Fitton by email and post on 23 October 2024. The panel also had sight of the track and trace reports from November 2023 and May 2024 in the bundle.

The panel had sight of the various letters addressed to Mr Fitton at different addresses, and the three letters returned to the Presenting Officer's firm indicating that Mr Fitton was not at those addresses.

The panel also had sight of emails in the bundle sent to Mr Fitton on June 2024 and 16 August 2024, inviting him to provide a postal address. The panel did not see any evidence that Mr Fitton had responded to these emails.

The panel noted that Mr Fitton had not engaged with the Teaching Regulation Agency proceedings and that no response was provided.

The panel concluded that Mr Fitton's absence was voluntary.

The panel noted that Mr Fitton had not sought an adjournment to the hearing and the panel did not consider that an adjournment would procure his attendance at a hearing. There was no medical evidence before the panel that Mr Fitton was unfit to attend the hearing. 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 Fitton was neither present nor represented.

First application to amend the allegations

The presenting officer made an application to amend the allegation. The proposed amendment was:

- Adding the word "*Hampstead*" after "*Heathside School*".

The panel noted that Mr Fitton had not been informed of the proposed change to the allegations.

The panel was advised that it had the power to amend allegations in accordance with paragraph 5.83 of the 2020 Procedures.

The panel considered that the proposed amendments would not change the nature and scope of the allegations in that they would merely clarify which of the Heathside Schools Mr Fitton was employed at, as there were two Heathside Schools. As such, the panel considered that the proposed amendments did not amount to a material change to the allegations.

The legal adviser drew the panel's attention to the case of *Dr Bashir Ahmedsowida v General Medical Council [2021] EWHC 3466 (Admin), 2021 WL 06064095* which held that the lateness of amendments did not necessarily mean they were unjust, as acknowledged in the previous case of *Professional Standards Authority v Health and Care Professions Council and Doree [2017] EWCA Civ 319 at [56]*.

The panel considered whether granting the application for the proposed amendments would cause unfairness and/or prejudice to Mr Fitton on the basis that he had not been informed of the amendments, nor had he been given the opportunity to respond to the amended allegations.

The panel concluded that neither the nature nor scope of the allegations would be affected by a decision to grant the application to amend, and no unfairness or prejudice would be caused to Mr Fitton in his absence.

Accordingly, the panel granted this application and considered the amended allegations, which are set out above.

Day 2: 9 January 2024

Second application to amend the allegations

The presenting officer made an application to amend the allegation. The proposed amendment was to amend allegation 1 (e) to remove the wording relating to the stairs and to read as:

- “*looked one or more female pupils up and down in or around June 2023*”

The panel noted that Mr Fitton had not been informed of the proposed change to the allegations.

The panel was advised that it had the power to amend allegations in accordance with paragraph 5.83 of the 2020 Procedures. The panel considered that the proposed amendments would not change the nature and scope of the allegations, as the core misconduct in the allegation was that Mr Fitton had allegedly looked one or more female pupils up and down, and not that this had been done whilst they went up the stairs. As such, the panel considered that the proposed amendments did not amount to a material change to the allegations.

The panel considered the case of *Dr Bashir Ahmedsowida v General Medical Council [2021] EWHC 3466 (Admin), 2021 WL 06064095* which held that the lateness of amendments did not necessarily mean they were unjust, as acknowledged in the previous case of *Professional Standards Authority v Health and Care Professions Council and Doree [2017] EWCA Civ 319 at [56]*.

The panel considered whether granting the application for the proposed amendments may cause unfairness and/or prejudice to Mr Fitton on the basis that he had not been informed of the amendments, nor had he been given the opportunity to respond to the amended allegations.

However, the panel concluded that neither the nature nor scope of the allegations would be affected by a decision to grant the application to amend and that no unfairness or prejudice would be caused to Mr Fitton in his absence.

Accordingly, the panel granted this application and considered the amended allegations, which are as set out above.

Summary of evidence

Documents

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

- Section 1: Preliminary documents – pages 6 to 7
- Section 2: Notice of hearing and response – pages 9 to 20
- Section 3: TRA witness statements – pages 22 to 37
- Section 4: TRA documents – pages 39 to 146
- Section 5: Teacher documents – none provided.

In addition, the panel agreed to accept the following:

- An attendance note dated 6 January 2025 – page 147.

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

Witnesses

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

- Witness A, [REDACTED].
- Witness B, who at the time of the allegations [REDACTED].

Mr Fitton was not present and did not provide oral evidence. No witnesses were called on behalf of the teacher.

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 Fitton commenced employment as a teacher at the School on 7 September 2017.

A CPOMS entry was made by Witness A in respect of Mr Fitton on 15 June 2023. A further entry was made by Witness B on 16 June 2023.

On 19 June 2023, [REDACTED] of the School contacted the LADO, and was advised to complete a referral form and Mr Fitton was suspended from the School on 20 June 2023 as a neutral act pending investigation.

On 21 June 2023, the LADO reported that the police did not have enough evidence to be involved but advised speaking to pupils. Pupils were spoken with during a PSHE intervention.

Mr Fitton's employment at the School ceased on 3 July 2023, following his resignation.

A disciplinary hearing at the School was held on 17 July 2023.

Findings of fact

The findings of fact are as follows:

The panel heard from the witnesses identified above. The panel found Witness A and Witness B to be credible and honest witnesses.

Mr Fitton did not provide any evidence to this panel. The panel noted there were other possible sources in the evidence, to attempt to understand Mr Fitton's position in relation to these allegations. In particular, his responses contained within the investigation meeting notes dated 23 June 2023 and his two emails to the School on 16 July 2023 where he provided his response to the allegations for the School's consideration at the disciplinary hearing.

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

- 1. You engaged in inappropriate and/or unprofessional behaviour towards one or more female pupils, in that you;**
 - a) showed favouritism towards one or more female pupils in or around 2023, by asking/allowing them to;**
 - i. answer questions;**
 - ii. take on special tasks;**

The panel considered the oral and written evidence of Witness A, who stated that upon returning to the School after the May half term in 2023, Mr Fitton's treatment of certain pupils became more noticeable. Witness A submitted that when pupils were putting their hands up in class, Mr Fitton focused on Pupil A, Pupil D and Pupil E, who were female pupils. Witness A stated that Pupil A was always the first to be able to line up and was given "special jobs" such as ensuring everyone was in the right line order and handing out wrist bands, which indicated which pupils had food allergies. Witness A said that Mr

Fitton was very interested in sharing Pupil A's work or asking her to read things out, but that opportunities were not often provided to the other pupils. Witness A reported that on one occasion, one pupil shouted out "*it's always [Pupil A]*", and it was therefore apparent that other pupils were also noticing Mr Fitton's behaviour.

The panel considered the CPOMS entry made by Witness A dated 15 June 2023, where Witness A recorded that Mr Fitton mostly called on Pupil A to answer most questions. The panel noted it stated that Mr Fitton "*[was] focusing a lot of his attention and favouring a number of girls*" and "*despite lots of the class raising their hands to respond/share*". Further, the panel noted that the CPOMS entry recorded Witness A reporting that if Pupil A is not Mr Fitton's focus, then his focus is on Pupil D and Pupil E.

The panel considered the School's investigation meeting notes dated 23 June 2023 with Mr Fitton. The panel noted that Mr Fitton did not admit that he had favoured one or more female pupils by asking or allowing them to answer questions or take on tasks. However, Mr Fitton had said during the meeting that if he had given Pupil A additional responsibilities, it was because she needed to be "*stretched and she loves extra jobs*" and she was the one who "*really can do a job and do it well*". Mr Fitton further said the class had "*behaviour issues*" which he had raised on numerous occasions and that he thought Pupil A was the best one to do the tasks so had he asked someone else it would not be a "*good process*". Mr Fitton also stated in the meeting that [REDACTED] said to him not to be too easy on her as she wants her to go to the best schools and to give her additional work.

The panel considered the oral evidence of Witness A, who stated that she was unaware of [REDACTED] request for Mr Fitton to provide additional work for Pupil A. She also mentioned that at the School, if [REDACTED] had a specific request, the support staff needed to be informed to help advance the child's progress.

The panel also considered the email from Mr Fitton sent on 16 July 2024, whereby he provided a response to the School's allegation. Mr Fitton stated in this email that it was "*common knowledge that girls are more sociable than boys, that they mature mentally sooner, and that they seek adult approval more than boys*". Mr Fitton wrote that he does not favour the boys any more than he favours the girls. He explained that teachers should not have favourites, as it "*causes upset and division, and is not acceptable*".

Further, the panel considered the second email from Mr Fitton sent on 16 July 2024 in response to the allegations from the School. The panel noted that Mr Fitton wrote "*I do not solely ask [Pupil A] to read out her work at all, but she is an excellent writer and deserves credit*". He further wrote that he liked to run a balanced class, but exception should be made for the recognition of excellence within the group and that it felt right to allow the girls more opportunity to answer. He further explained that [REDACTED] had frequently asked him to push her in all areas, including positions of responsibility. Mr

Fitton wrote that plenty of others helped out with books, boards, pens and running messages, including male and other female pupils.

The panel considered the evidence and found that Mr Fitton had shown favouritism towards one or more female pupils in or around 2023 by asking and allowing them to answer questions and take on special tasks.

The panel found that showing favouritism towards female pupils was both inappropriate and unprofessional. Specifically, Mr Fitton did not treat all pupils equally and with mutual respect. Additionally, the panel noted that Mr Fitton himself acknowledged that teachers should not have favourites, as he had mentioned this was unacceptable. Furthermore, the panel observed that this issue had been raised by a pupil who shouted, "*It's always [Pupil A],*" indicating that Mr Fitton's behaviour had an impact on other pupils.

The panel found allegation 1 (a) (i) and 1 (a) (ii) proven.

b) stood close to and/or touched/held the hand(s) of one or more female pupils in or around 2023;

The panel considered the oral and written evidence of Witness A, who stated that she was involved in directing the School play and that Mr Fitton supervised the pupils in the hall. Witness A submitted that Mr Fitton always sat in the same place when he was supervising, and sometimes, when they needed to ask the pupils to line up or do things, Mr Fitton stood very close to Pupil A and to the side, away from others, playing "*hand games*". Witness A called out to Mr Fitton to say that it was not the time to be doing that, and Mr Fitton looked confused. Witness A reported being "*quite frustrated*" by the situation as this was not providing a good model to the other pupils. Witness A also said that she was surprised to see that Mr Fitton thought it appropriate to do that. Witness A submitted that Mr Fitton increasingly started to play such games with other pupils, including Pupil J, and the girls were keen to be near him, but she could not recall him playing games with any of the boys.

The panel considered the oral evidence of Witness A, who explained that the teachers had received training from the School, which made clear that they should not be touching children unless it was "*absolutely necessary*".

The panel also considered the oral and written evidence of Witness B, who submitted that during the academic year 2022/2023, she noticed that when they would take the pupils to [REDACTED], which they would do on most days as the School had no [REDACTED], the girls would be around Mr Fitton and he would hold their hands.

Further, the panel considered the second email from Mr Fitton sent on 16 July 2024 in response to the allegations from the School. The panel noted that Mr Fitton stated that he has "*occasionally played a hand-clap game with some of the girls,*" but if they are engaged in this, similarly, he played 'snaps' with some of the boys. Mr Fitton wrote that

this was no different from playing football, ball catch, or any other playground pastime, and is another positive way to interact with the pupils. Mr Fitton wrote that he never sought to get “*too close, and the nature of the games do not merit it.*”

The panel considered the evidence and found that Mr Fitton had, in or around 2023, stood close to, touched and held hands with at least one female pupil.

The panel did not find standing next to female pupils in a line inappropriate or unprofessional.

The panel found touching and holding hands with one or more female pupils both inappropriate and unprofessional. In particular, teachers should always maintain and observe proper boundaries, and there was no need for Mr Fitton to be holding hands and playing hand games with [REDACTED] female pupils.

The panel found allegation 1 (b) proven.

c) gave Pupil B one or more biscuits and/or snacks when she sat by you in or around 2023;

The panel considered the oral and written evidence of Witness A, who stated that Pupil B used to sit right at the back of the class but gradually moved forward and sat by Mr Fitton’s desk, where he gave her biscuits.

The panel considered the oral and written evidence of Witness B, who submitted that Mr Fitton had biscuits in his drawer and would give biscuits out during class. The panel noted that Witness B had previously done the same and given out biscuits after the pupils had been swimming. However, during her oral testimony, Witness B clarified the difference between distributing biscuits to the entire class and singling out specific pupils for biscuits and that it would be frowned upon to give biscuits solely to one pupil, as opposed to the whole class.

The panel considered the investigation meeting notes from the meeting with Mr Fitton on 23 June 2023. The panel noted that Mr Fitton stated that he had given Pupil B snacks and that he was aware it went against the School’s healthy eating policy and “*perhaps [the] treats were not needed at all*”. Mr Fitton said in the meeting that Pupil B informed him that she did not have a snack and he asked her if [REDACTED] would be annoyed with him giving her sweet things, to which she replied “*no*”. Further, Mr Fitton said he knows he shouldn’t give treats and he should stop it.

Further, the panel considered the second email from Mr Fitton sent on 16 July 2024 in response to the allegations from the School. The panel noted that Mr Fitton stated that knowing he had biscuits in his drawer, Pupil B once asked him for one as she had forgotten her snack, so he gave her a few. Pupil B then asked once again, a different week, and as it seemed such a small matter, he gave her two. Mr Fitton further stated

that *“the promise of a simple biscuit for a well-behaved class who have worked assiduously, or as a supplement to the Friday ‘golden time’, is still a powerful motivator, and when distributed gives the whole group a feel-good factor. [He awarded] them en-masse, never to individuals alone, except in the case of [Pupil B]..., and two boys who forgot their midmorning snacks.”*

Taking into account all the evidence, the panel concluded that, on the balance of probabilities, Mr Fitton had given Pupil B one or more biscuits when she sat by Mr Fitton in or around 2023.

The panel concluded that if Pupil B had forgotten her snacks, Mr. Fitton should have informed someone at the School and raised concerns about Pupil B being hungry, which could have been addressed more appropriately. Instead, he provided her with snacks on more than one occasion. The panel found this behaviour to be inappropriate and unprofessional, as it demonstrated favouritism towards Pupil B by giving her a biscuit without offering the same to the rest of the class. Therefore, the panel found that Mr Fitton had engaged in inappropriate and unprofessional behaviour towards a female pupil.

The panel found allegation 1 (c) proven.

d) ran your hands down Pupil A from shoulders to elbows on one or more occasions;

The panel also noted the witness statement of Witness B, who also provided oral evidence during the hearing. Witness B stated that Mr Fitton was always *“reading the good girls”* stories out. Once he read out Pupil A's story, which was a fantastic story, he then stood behind her *“As he walked behind his hands were at the top of her shoulders, he moved his hands from her shoulders down the outside down to her elbows twice”*.

The panel also noted the CPOMS entry completed by Witness B on 16 June 2023 which states that Mr Fitton moved his *“hands from [Pupil A's] shoulders down to her elbows (twice)”*.

The panel also considered the notes from the investigation meeting on 27 June 2023, whereby Witness B stated that Mr Fitton moved his hands from Pupil A's shoulders down the outside down to her elbows twice.

The panel noted that Witness B had been consistent in her recollection of this event, and that this is supported by the CPOMS entry.

The panel considered the investigation meeting notes from the meeting on 23 June 2023 with Mr Fitton present. The panel noted that Mr Fitton, in response to the question concerning touching Pupil A, stated that he *“may have put [his] hands on shoulders saying well done that was brilliant that is far as that would go”*. Mr Fitton said during the

meeting that he could see how it could have been seen out of context, but he was not doing anything to get contact with Pupil A and that *“if it was a couple of times saying well done, that’s it.”*

The panel also considered Mr Fitton's email of 16 July 2024, in which he responded to the allegations put to him by the School. Mr Fitton stated he *“may have put my hands on [Pupil A’s] shoulders once to say, ‘Good job, well done,’ but that would have been the sum of it”* and that he would have not done so to invade her space.

Taking into account all the evidence, the panel concluded that, on the balance of probabilities, Mr Fitton had run his hands down Pupil A from shoulders to elbow on more than one occasion following Mr Fitton reading out Pupil A’s story referred to above.

The panel found this behaviour towards a female pupil to be inappropriate and unprofessional, as it demonstrated favouritism towards Pupil A and teachers should maintain appropriate boundaries with pupils at all times and should not touch a pupil unless absolutely necessary, which in this case it was not.

The panel found allegation 1 (d) proven.

2. Your behaviour as may be found proven at;

b) 1 above was despite having received a written warning relating to inappropriate behaviour in or around April 2022.

The panel considered the letter from Individual A, [REDACTED], sent to Mr Fitton on 22 April 2022. This letter stated that Mr Fitton attended a disciplinary meeting on Friday 22 April 2022. At this meeting, he was advised that his professional conduct had been unsatisfactory, and that immediate improvement was required.

The panel noted that Mr Fitton was issued with a three-month written warning relating to inappropriate behaviour, which would be disregarded after three months for disciplinary purposes, provided his conduct improved to a satisfactory level.

The panel noted that letter was sent to Mr Fitton prior to the conduct of Mr Fitton in relation to allegations 1(a) to (d) found proven.

The panel found allegation 2 (b) proven.

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

1. You engaged in inappropriate and/or unprofessional behaviour towards one or more female pupils, in that you;

e) looked one or more female pupils up and down in or around June 2023;

The panel considered the oral and written evidence of Witness A, who stated that at the beginning of June 2023, the School was preparing for a School play and pupils from [REDACTED] were coming upstairs. She had her back to the pupils and Mr Fitton was upstairs in the corner of the hall looking at the pupils. Witness B said to her, "*Look at Mr Fitton*". Witness A turned around and saw the last girl coming up the stairs and said she recalled observing Mr Fitton "*moving his head up them, up and down*". She said that it was "*clear what he was doing and that he was doing this in a sexual manner*". As it was summer term, the girl would have been in their summer uniform, which was a skirt or shorts.

The panel noted that Witness A stated in her oral evidence that Mr Fitton began observing the pupils coming up from the other [REDACTED]. He started by looking at the feet of the last pupil walking up the stairs and then looked all the way up and down. She described his facial expression as "*unpleasant*" and not what she would expect from a teacher.

The panel noted that Witness A did not submit a CPOMS entry regarding this allegation.

The panel considered the oral and written evidence of Witness B, who stated that on 16 June 2023, she was sitting down in a rehearsal and saw Mr Fitton look at the girls as they entered.

The panel noted that during her oral testimony, Witness B clarified that she could only see Mr Fitton's side profile from where she was sat. She also mentioned that Witness A, who was seated next to her, would have had the same view and therefore would have been unable to see the expression on Mr Fitton's face.

The panel considered Witness B's CPOMS entry dated 16 June 2023, whereby she reported that she was on the stage steps when Mr Fitton was sitting to the right of her near the table behind the piano near the stairs, and she clearly saw him look at the back of each girl's legs as they came past.

The panel considered the investigation meeting notes from the meeting on 23 June 2023 with Mr Fitton present. The panel noted that Mr Fitton, in response to the question concerning looking at girls' legs and breasts and maintaining inappropriate eye contact, stated that he does not look at pupils "*like that*" and he was not "*looking at [Pupil C] in that way eyeing her up and down.*"

The panel also considered Mr Fitton's email from 16 July 2024, in which he responded to the School's allegation. Mr Fitton stated he had to escort the classes around the building every day and he would always count heads so as to not lose anybody.

The panel noted that there were discrepancies in Witness A's and Witness B's versions of events regarding the allegation that Mr Fitton had looked one or more female pupils up

and down. In particular, the view they had of Mr Fitton and the way in which his head moved.

The panel, therefore, in the absence of further evidence felt they were unable to conclude on the balance of probabilities that Mr Fitton had looked one or more pupils up and down.

The panel found that allegation 1 (e) not proved.

f) stood close to Pupil C and/or looked at Pupil C's breasts at the school sports day in or around June 2023;

The panel considered the oral and written evidence of Witness A, who stated that on sports day, around early June 2023, when lining up to bring pupils back in, she saw Mr Fitton look at Pupil C's breasts. She stated that Mr Fitton was quite close to Pupil C, asking them to line up. In doing so, he moved his head directly towards Pupil C's breasts. Pupil C's t-shirt was not see-through, but Witness A said that you could see the bumps in Pupil C's breasts. Mr Fitton was around 30cm away from Pupil C.

The panel considered that in her oral evidence, Witness A had explained that Mr Fitton had to turn his head to one side to look at Pupil C's breast. The panel concluded that it would have been unlikely that she would have been able to see his eyes and where he was looking. During her evidence, the panel asked Witness A questions to establish where everyone was standing in relation to each other and whether there was anything on Pupil C's t-shirt or person that he could have been looking at. Witness A responded when questioned that there was nothing on Pupil C's t-shirt and she assumed he was looking at Pupil C's breasts as he was looking in that direction and not looking at Pupil C's face.

The panel noted that she had not included a reference to Mr Fitton looking at Pupil C's breast at the School's sports day in her CPOMS entry, despite her stating that the sports day was around early June 2023.

The panel noted that Mr Fitton, in response to the allegation which had been put to him by the School, responded that *"there is absolutely no way that [he] would deliberately look at [Pupil C's] breasts, nor treat her, or any other child, in such an untoward fashion"*.

The panel considered the investigation meeting notes from the meeting on 23 June 2023 with Mr Fitton present. The panel noted that Mr Fitton, in response to the question concerning looking at girls' legs and breasts and maintaining inappropriate eye contact, Mr Fitton stated that he does not look at pupils *"like that"*.

The panel concluded that it had not been provided with sufficient evidence to find that on the balance of probabilities, Mr Fitton had looked at Pupil C's breasts.

The panel also considered that Mr Fitton may have stood close to Pupil C at the School sports day, but that even if he did, there was no evidence that this was inappropriate or unprofessional behaviour.

The panel found that allegation 1 (f) was not proven.

g) maintained eye contact with Pupil C on a school trip in or around 2023;

The panel considered the oral and written evidence of Witness B, who stated that she first noticed Pupil C looking at her reflection in the tube window, she was giggly and moving her hair, almost flirty. Witness B wondered who she was smiling at, and she looked back. Mr Fitton was holding onto the door, and his eyes were “*sparkling*” at Pupil C, who was smiling back.

The panel considered the CPOMS entry of 16 June 2023, which stated that she first noticed Mr Fitton was “*almost flirting*” with Pupil C when they went to the theatre, she was giggly and making eye contact with him on the tube, and he was doing the same.

The panel considered the investigation meeting notes from the meeting on 23 June 2023 with Mr Fitton present. The panel noted that Mr Fitton, in response to the question concerning Pupil C, stated that he was not trying to engage Pupil C in some “*low-down seedy level*”.

The panel also considered Mr Fitton's email from 16 July 2024, in which he responded to the School's allegation. Mr Fitton stated that if his eyes were “*sparkling*”, it would have been due to the anticipation of the day ahead, as trips were a passion of his and it would have been a sense of excitement and not because he was flirting with a pupil.

The panel felt that, even if he had been maintaining eye contact with Pupil C, there were lots of possible innocent explanations and that they could not find this behaviour inappropriate or unprofessional.

The panel concluded that it had insufficient evidence to find that, on the balance of probabilities, Mr Fitton had been maintaining eye contact with Pupil C on a school trip in or around 2023.

The panel found that allegation 1 (f) was not proven.

2. Your behaviour as may be found proven at;

a) 1 above was conduct of a sexual nature and/or was sexually motivated;

Having found allegations 1(a) to (d) proven, the panel considered this in respect of these allegations only.

The panel considered the emails from Mr Fitton and the evidence obtained from the School's disciplinary process regarding this allegation. The panel noted that Mr Fitton denied any kind of physical or sexual relationship with any pupil and stated that he had no physical or sexual interest in children.

The panel's attention was drawn to section 78 *Sexual Offences Act 2003* and to the cases of *Sait v The General Medical Council [2018]*, *Basson v General Medical Council [2018]* and *The General Medical Council v Haris [2020] EWHC 2518*.

The panel noted that in *Basson* it was stated that "A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a sexual relationship".

The panel further noted that in *General Medical Council v Haris [2021] EWCA Civ 763*, it was stated that, "In the absence of a plausible innocent explanation for what he did, the facts spoke for themselves. A sexual motive was plainly more likely than not; I would go so far as to say that that inference was overwhelming."

The panel, therefore, considered whether there was a plausible innocent explanation for Mr Fitton's conduct that it had found proven at allegations 1(a) to (d).

The panel considered that there was a "*plausible innocent explanation*" for Fitton's conduct. Mr Fitton had demonstrated a preference for female pupils as they were more compliant and better behaved.

The panel concluded that, on the balance of probabilities, it was unlikely that Mr Fitton was in pursuit of sexual gratification or in pursuit of a sexual relationship. The panel considered that there was no evidence that Mr Fitton was in pursuit of a relationship or sexual gratification and that it appeared that he preferred teaching the female pupils as the male pupils were more difficult.

Therefore, the panel found allegation 2(a) not 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 Fitton, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Fitton 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; and
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...
- 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 Fitton in relation to allegations 1(a) (i) and (ii), 1(b), 1(d) and 2(b) amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel considered the two witnesses' oral evidence regarding the fact they would not have expected Mr Fitton to have shown favouritism to female pupils, and therefore that Mr Fitton's behaviour would not have been in line with the School's policies, or practices.

In particular, with respect to allegations 1(a) (i) and (ii), the panel considered the negative impact Mr Fitton's behaviour could have on the pupils, both those favoured and those not. The panel noted that, as outlined above, at least one pupil had noticed the favouritism. The panel found this to be a serious breach of observing proper boundaries appropriate to teachers and that Mr Fitton had not treated the pupils with dignity and mutual respect.

In particular, with respect to allegations 1(b) and 1(d), the panel considered that it was inappropriate for any teacher to touch a pupil or hold a pupil's hand unless it was necessary, which in this case it was not. The panel found that in the circumstances of Mr Fitton showing favouritism to female pupils, the misconduct fell significantly short of the standard of behaviour expected of him as a teacher.

The panel further considered that Mr Fitton had done so despite previously being given a written warning relating to inappropriate behaviour.

Although the panel found Mr Fitton's conduct at 1(c) of giving Pupil B biscuits and snacks inappropriate and unprofessional, it did not find this conduct sufficiently serious to

amount to unacceptable professional conduct, as it did not fall significantly short of the standard of behaviour expected of a teacher, even in these circumstances.

The panel also considered whether Mr Fitton's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice. The Advice indicates that where behaviours associated with such an offence exist, a panel is more likely to conclude that an individual's conduct would amount to unacceptable professional conduct. The panel found that none of these offences was relevant.

The panel received legal advice as to the possibility of findings being cumulated in accordance with guidance given in the judgment of *Schodlok v General Medical Council [2015]*. However, the panel did not need to determine whether it would be appropriate to cumulate any of those allegations because it had concluded that each of the allegations found proved, save for 1(c), amounted to unacceptable professional conduct when considered in the full context.

Accordingly, the panel was satisfied that Mr Fitton 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 the duty of teachers to safeguard the welfare of pupils.

Given the seriousness of the misconduct, the panel considered whether the misconduct would have damaged the public perception of the profession.

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

The panel determined that the public would likely view a teacher showing favouritism negatively, especially if female students were allowed to ask and answer more questions, take on special tasks, and receive snacks that others did not. Additionally, the panel concluded that the public would have a negative perception of a teacher touching and holding hands with a pupil when it was not absolutely necessary.

The panel therefore found that all of Mr Fitton's actions found proved constituted conduct that may bring the profession into disrepute.

Having found the facts of allegations 1(a) to 1(d) and 2(b) proved, the panel further found that Mr Fitton's conduct at allegations 1(a) to (b), 1(d) and 2(b) amounted to

unacceptable professional conduct and that Mr Fitton's conduct at allegations 1(a) to 1(d) and 2(b) 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 Fitton, which involved engaging in inappropriate and unprofessional behaviour towards multiple female pupils, including showing favouritism and touching and holding hands with female pupils, despite having received a written warning regarding such behaviour, there was a strong public interest consideration in protecting the pupils.

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

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

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Fitton. 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; and
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk.

The panel found that Mr Fitton had departed from the personal and professional conduct elements for the reasons outlined above.

The panel found that Mr Fitton's actions amounted to a clear breach of the Teacher's Standards and Mr Fitton was in a position of trust and responsibility.

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

The panel noted that, although Mr Fitton had committed the acts of misconduct found proven, there was no evidence that his inappropriate and unprofessional behaviour towards one or more female pupils was deliberate. The panel concluded that Mr Fitton did not intend to engage in inappropriate and unprofessional behaviour but did so because he demonstrated a preference for female pupils, as they were more compliant and better behaved.

There was no evidence to suggest that Mr Fitton was acting under extreme duress.

No evidence was provided that demonstrated exceptionally high standards in both personal and professional conduct or that Mr Fitton had contributed significantly to the education sector, although the panel had evidence that he had contributed to the education sector over a number of years.

No mitigation evidence was provided by Mr Fitton and the panel was therefore unable to fully assess the extent of Mr Fitton's insight or remorse. Based on the limited evidence available to it, the panel concluded that Mr Fitton had not demonstrated insight except to the extent that he acknowledged that he should not have given biscuits to Pupil B.

By way of mitigation, the panel took into account the two references provided when Mr Fitton applied for his role at the School:

- Individual B, [REDACTED]:

- *“he is a passionate historian who needs to be given the opportunity to take control of a literary department”.*
- *“As a History teacher never any problems and would reemploy him to my department at any time”.*
- Individual C, [REDACTED]:
 - *“His manner means he is approachable to children across the prep age range, but his skills and teaching are perhaps best suited to stimulating those at the top end of the school and he brings rich contextual, broader knowledge to his teaching, as well as great quirks that endear him to the children”.*
 - *“The [REDACTED] of probably the ablest boy In [REDACTED] said that Richard was [REDACTED] ‘favourite teacher ever’.*

The panel observed that the above statements lacked a declaration of truth and were not, at the time of making the statements, informed of the specific allegations to be determined by the panel. The panel took all these factors into account when deciding how much weight to place on these.

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.

In reaching its decision the panel considered the case of *Wallace v Secretary of State for Education 2017*. The panel concluded that a less intrusive measure would be more appropriate in these circumstances, especially taking into account the consequences of Mr Fitton being prohibited. The panel found that publication would strike the correct balance between Mr Fitton’s rights and the interests of the public.

The panel found that the conduct found against Mr Fitton was at the less serious end of the scale of severity. In particular, although he had shown favouritism and played hand games and held hands with female [REDACTED] pupils, he had done so because he demonstrated a preference for female pupils as they were more compliant and better behaved. The panel noted he had done so despite the expectation that teachers should always maintain appropriate boundaries with pupils and should not touch a pupil unless absolutely necessary. The context of his behaviour felt less serious to the panel than might otherwise may be the case because it took place in a small independent primary school setting, which had some informal practices such as calling teachers by their first name.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, the recommendation of no prohibition order would be both a proportionate and an appropriate response. Given that the nature and severity of the behaviour were at the

less serious end of the possible spectrum and, having considered the mitigating factors that were present, the panel determined that a recommendation for a prohibition order would not be appropriate in this case. The panel considered that the publication of the adverse findings it had made was sufficient to send an appropriate message to the teacher as to the standards of behaviour that are not acceptable, and the publication would meet the public interest requirement of declaring proper standards of the profession.

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 sanction.

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

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

In this case, the panel has found some of the allegations not proven (including allegations 1e, 1f, 1g and 2a), and found that allegation 1c does not amount to unacceptable professional conduct. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Richard Fitton should not be the subject of a prohibition order. The panel has recommended that the findings of unacceptable professional conduct and/or conduct likely to bring the profession into disrepute should be published and that such an action is proportionate and in the public interest.

In particular, the panel has found that Mr Fitton 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; and
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

- 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 Fitton fell significantly short of the standards expected of the profession.

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 Fitton, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and safeguard pupils. The panel has observed:

“In the light of the panel’s findings against Mr Fitton, which involved engaging in inappropriate and unprofessional behaviour towards multiple female pupils, including showing favouritism and touching and holding hands with female pupils, despite having received a written warning regarding such behaviour, there was a strong public interest consideration in protecting the 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 has set out as follows:

“No mitigation evidence was provided by Mr Fitton and the panel was therefore unable to fully assess the extent of Mr Fitton’s insight or remorse. Based on the limited evidence available to it, the panel concluded that Mr Fitton had not demonstrated insight except to the extent that he acknowledged that he should not have given biscuits to Pupil B.”

I have therefore given this element 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 has observed that “public confidence in the profession could be seriously weakened if conduct such as that found against Mr Fitton was not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the finding of inappropriate and unprofessional

behaviour towards female pupils 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 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 Fitton himself. The panel has commented:

“No evidence was provided that demonstrated exceptionally high standards in both personal and professional conduct or that Mr Fitton had contributed significantly to the education sector, although the panel had evidence that he had contributed to the education sector over a number of years.”

A prohibition order would prevent Mr Fitton 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 finding that “although Mr Fitton had committed the acts of misconduct found proven, there was no evidence that his inappropriate and unprofessional behaviour towards one or more female pupils was deliberate. The panel concluded that Mr Fitton did not intend to engage in inappropriate and unprofessional behaviour but did so because he demonstrated a preference for female pupils, as they were more compliant and better behaved.”

I have also placed considerable weight on the comments of the panel about the seriousness of the misconduct found proven. The panel has said:

“The panel found that the conduct found against Mr Fitton was at the less serious end of the scale of severity. In particular, although he had shown favouritism and played hand games and held hands with female [REDACTED] pupils, he had done so because he demonstrated a preference for female pupils as they were more compliant and better behaved. The panel noted he had done so despite the expectation that teachers should always maintain appropriate boundaries with pupils and should not touch a pupil unless absolutely necessary. The context of his behaviour felt less serious to the panel than might otherwise may be the case

because it took place in a small independent primary school setting, which had some informal practices such as calling teachers by their first name.”

For these reasons, I have concluded that a prohibition order is not proportionate or in the public interest. I consider that the publication of the findings made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession.

A handwritten signature in black ink, appearing to read 'D Oatley', written in a cursive style.

Decision maker: David Oatley

Date: 14 January 2025

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