



Teaching  
Regulation  
Agency

# **Mr Philip Henderson: Professional conduct panel outcome**

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

**December 2022**

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

<b>Teacher:</b>	Mr Philip Henderson
<b>Teacher ref number:</b>	0440647
<b>Teacher date of birth:</b>	22 February 1981
<b>TRA reference:</b>	17176
<b>Date of determination:</b>	6 December 2022
<b>Former employer:</b>	Campsbourne Primary School, London

### **Introduction**

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 5 to 6 December 2022 by way of a virtual hearing, to consider the case of Mr Phillip Henderson.

The panel members were Ms Charlotte Kelly (lay panellist – in the chair), Mr Terry Hyde (former teacher panellist) and Ms Rachel Kruger (teacher panellist).

The legal adviser to the panel was Mr Tom Sharpe of Birketts LLP solicitors.

The presenting officer for the TRA was Mr Michael O'Donohoe of Browne Jacobson solicitors.

Mr Henderson 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 18 August 2022

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

1. In or around April 2018, he was in possession of a Class A drug (Methamphetamine).
2. He accepted a police caution in respect of his conduct at allegation 1 for the offence of possession of a controlled substance contrary to Section 5(1) of the Misuse of Drugs Act 1971.
3. He exchanged electronic messages with Individual A in which he stated that he had engaged in sexual activity with one or more children or used words to that effect.
4. His conduct as may be proven at allegation 3 demonstrated a sexual interest in children and/or was sexually motivated.

Mr Henderson admitted allegations 1 and 2, as set out in the response to the notice of proceedings dated 14 November 2022, and in the statement of agreed and disputed facts, signed by Mr Henderson on 14 November 2022. Mr Henderson further admitted that the facts of those admitted allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Mr Henderson denied allegations 3 and 4.

## Preliminary applications

### Application to proceed in the absence of the teacher

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

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 Henderson in accordance with the Teacher misconduct: disciplinary procedures for the teaching profession April 2018 (the '2018 Procedures').

The panel concluded that Mr Henderson's absence was voluntary and that he was aware that the matter would proceed in his absence.

The panel noted that Mr Henderson 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 Henderson was unfit to attend the hearing. The panel considered that it was in the public interest for the hearing to take place.

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 Henderson was neither present nor represented.

#### Application to admit an additional document

Although no specific application had been made by either Mr Henderson or his representative, the panel was informed by the presenting officer that Mr Henderson's representative had emailed the TRA on 1 December 2022 attaching a document entitled Representations for Professional Conduct Panel, asking that it be brought to the panel's attention at the hearing.

Accordingly, the panel considered a preliminary application in the absence of the teacher or his representative, for the admission of those written representations as an additional document.

The document subject to the application had not been served in accordance with the requirements of paragraph 4.20 of the 2018 Procedures. Therefore, the panel was required to decide whether the document should be admitted under paragraph 4.25 of the 2018 Procedures.

The presenting officer did not have an objection to the application.

The panel considered the additional document was relevant and that it was in the interests of a fair hearing to admit it. Accordingly, the document was added to the bundle.

#### Application for the hearing to be heard in private

The panel noted that, although he had indicated in his response to the Notice of Proceedings that he did intend to make an application for the hearing (or any part of it) to be held in private, Mr Henderson had not in fact formally made such an application. Furthermore, Mr Henderson had not formally provided reasons as to why he wanted the hearing to be held in private.

Nevertheless, in light of the content of Mr Henderson's response to the Notice of Proceedings, the panel determined that it should consider an application from Mr Henderson that the hearing be heard in private.

The panel heard submissions from the presenting officer on the application before reaching its decision. The presenting officer objected to the application on the grounds that no detailed reasons had been provided and no supporting medical evidence had been adduced by Mr Henderson or his representative.

The panel did not consider that there was sufficient justification to hold the hearing in private and considered that it would be contrary to the public interest to do so. The panel concluded that the hearing should proceed in public.

The panel noted that since the date of the referral to the TRA in this case, new 'Teacher misconduct: disciplinary procedures for the teaching profession' were published in May 2020 (the 'May 2020 Procedures'). The panel understands that the earlier provisions contained within the 'Teacher misconduct: disciplinary procedures for the teaching profession' updated in April 2018 apply to this case, given that those provisions applied when the referral was made. Although the panel has the power to direct that the May 2020 Procedures should apply in the interests of justice or the public interest, the panel had received no representations that this should be the case. For the avoidance of doubt, therefore, the panel confirms that it has applied the 2018 Procedures in this case.

## **Summary of evidence**

### **Documents**

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

- Section 1: Chronology – page 4
- Section 2: Notice of proceedings, response and statement of agreed and disputed facts – pages 6 to 16
- Section 3: TRA documents – pages 18 to 80
- Section 5: Teacher documents – pages 82 to 87 (the panel noted that there was no section 4 in the hearing bundle)

The panel had also been provided with an additional late evidence bundle of documents received from the teacher consisting of 96 pages.

In addition, the panel agreed to accept the following:

- The written representations for the professional conduct hearing that had been prepared by Mr Henderson's representative, and which were dated 1 December 2022.

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

## **Witnesses**

The panel noted from the Notice of Proceedings issued to Mr Henderson that the TRA had originally proposed to adduce oral evidence from Witness A [REDACTED].

However, at the outset of the hearing it was explained by the presenting officer that Witness A would not be attending the hearing. Therefore, no witnesses were called to provide oral evidence at the hearing.

As a result, the panel identified that there was hearsay evidence in the hearing bundle. The panel noted that Witness A had not provided a witness statement in connection with these proceedings, nor did he attend the hearing as a witness. The panel considered this was unfortunate.

The panel was advised that hearsay evidence is admissible in civil proceedings but that it should be recognised as hearsay and the panel should determine the weight to be placed on it.

## **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 Henderson was employed as a teacher at the Campsbourne Primary School ('the School') from September 2017.

In December 2017, Mr Henderson began speaking to Individual A on [REDACTED]. The communication then took place on WhatsApp and Wickr.

On 14 April 2018, Individual A informed the police that a male had divulged to [REDACTED] that the male had been sexually abusing children.

Mr Henderson was arrested and interviewed by the police on 15 April 2018. Mr Henderson disclosed that he had 'crystal meth' at his home address and was further arrested for possession of a Class A drug.

The Local Authority Designated Officer ('LADO') was informed by the police that Mr Henderson had been arrested for possession of a Class A drug, on 16 April 2018.

Mr Henderson's employment at the School ceased in April 2018.

On 23 October 2018, Mr Henderson accepted a caution for possession of Methylamphetamine A Class A Controlled Drug.

## **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. In or around April 2018, you were in possession of a Class A drug (Methamphetamine).**
- 2. You accepted a police caution in respect of your conduct at allegation 1 for the offence of possession of a controlled substance contrary to Section 5(1) of the Misuse of Drugs Act 1971.**

The panel noted that within the response to the notice of proceedings and in the statement of agreed and disputed facts, signed by Mr Henderson on 14 November 2022, Mr Henderson admitted allegations 1 and 2. Notwithstanding this, the panel made its own determination based on the evidence available to it.

Mr Henderson admitted that he was in possession of Methamphetamine on 11 April 2018 and 15 April 2018, the day of his arrest. Mr Henderson further admitted that he accepted a police caution in respect of his conduct at allegation 1.

The panel noted the Record of Simple Caution contained within the bundle. The panel was advised that, as set out in the Teacher Misconduct: the prohibition of teachers (February 2022) (the 'Advice'), although it could not deem evidence of a caution to be conclusive of relevant facts in the same way as a conviction, it does carry significant weight.

The panel found allegations 1 and 2 proven.

- 3. You exchanged electronic messages with Individual A in which you stated that you had engaged in sexual activity with one or more children or used words to that effect.**

The panel noted that within the response to the notice of proceedings and in the statement of agreed and disputed facts, signed by Mr Henderson on 14 November 2022, Mr Henderson denied allegation 3.



Mr Henderson denied that he exchanged electronic messages with Individual A, in which he stated that he had engaged in sexual activity with one or more children or used words to that effect. Mr Henderson could not recall specifically speaking to Individual A but accepted upon receipt of the documentation obtained by the police that he did speak to Individual A on [REDACTED], WhatsApp and Wickr in and around December 2017.

Mr Henderson admitted that an electronic message was sent from his mobile phone to Individual A in or around December 2017 and that from that message it could be inferred by Individual A that Mr Henderson had had sexual activity with a 13 year old. Mr Henderson denied actually engaging in sexual activity with any child.

Mr Henderson further denied that he sent electronic messages to Individual A in or around December 2017, appearing to suggest that he had attempted to cause / incite a [REDACTED] under 13 years old to engage in sexual activity, specifically that he had sexually touched an 11 year old, groomed a 9 year old and kissed and touched a "little [REDACTED]".

The panel noted screenshots of the messages between Mr Henderson and Individual A submitted as part of the bundle.

The panel considered there were two elements to this allegation: first whether Mr Henderson had exchanged the electronic messages in question with Individual A (i.e. those in the hearing bundle); and second (if so) whether Mr Henderson stated within those messages that he had engaged in sexual activity with one or more children or used words to that effect.

In relation to the first aspect of the allegation that the panel had to decide, it concluded on the balance of probabilities that Mr Henderson did send the messages to Individual A.

The panel noted that when he was first questioned by the Police about the messages, Mr Henderson said he had no recollection of them. However, he accepted that the mobile telephone number used was his own, and he admitted using the social media sites in question. Furthermore, when presented with the messages by the Police, Mr Henderson was readily able to put forward an explanation for the numerical references involved and the terminology used. The panel considered that it was important that he did not suggest at this point that anyone else had, or could have sent the messages instead of him. The panel would reasonably have expected him to have done so if he had felt this was a possibility.

Equally, no such alternative explanation for the origination of the messages was presented in the 11 November 2020 written response by his trade union representative to the TRA allegations. It was only within the letter from his trade union representative of 27 January 2021, that Mr Henderson first raised that he "*often invited* [REDACTED] *to his*

*house for casual sex*” and that there were occasions during these ‘hang outs’ that he let other [REDACTED] use his phone and times when others would have had access to it.

However, even at this juncture, Mr Henderson did not explicitly assert that the messages being relied on by the TRA (and which were before the panel at this hearing), were not sent by him. Instead, the panel considered that the letter merely raised this inference. However, no evidence or explanation was presented to support the inference. For example, there was no explanation for why someone else would have chosen to write the sorts of messages in question. Equally, no explanation was present for how someone else could have had consistent access to Mr Henderson’s phone during the period of time over which the messages span. Furthermore, the panel felt that the style and language used across the messaging in each of the different social media platforms was consistent, which also suggested that the author of the messages was the same person.

The panel further noted that even in the written representations lodged on behalf of Mr Henderson, there was no specific assertion that the messages in question had been written by someone else. Instead, it was merely suggested that Mr Henderson believed it was “...*entirely possible that someone other than him may have had access to his phone... and sent the messages in question*”.

In the absence of any cogent explanation to support the inference Mr Henderson had raised, and noting also its late presentation, the panel concluded that the most likely explanation was that the messages in question were sent by Mr Henderson.

Having concluded that Mr Henderson had sent the messages, the panel went on to consider whether he stated within them that he had engaged in sexual activity with one or more children or used words to that effect.

The panel considered these messages carefully and noted that they took place over a sustained period of time and involved references to “*younger* [REDACTED]”, “*teen* [REDACTED]” and multiple references to “[REDACTED]”; statements that “[REDACTED] *[being Mr Henderson’s] number one turn on*” and the “*younger I go, [the] more I want*”. In addition, Mr Henderson asked whether Individual A attended an “[REDACTED] *school*”. The panel considered that such consistent references did indicate that Mr Henderson was expressing a sexual interest in under-age [REDACTED].

However, the panel noted that Mr Henderson had asserted that he does not have any sexual attraction towards children. Instead, he asserts that, as a [REDACTED] male, he is attracted to older [REDACTED]. Mr Henderson’s evidence was that his references to ‘[REDACTED]’ arose in the context of and consistent with slang terminology used within the [REDACTED] community to refer to [REDACTED] younger than themselves (but who are aged over age 18). Furthermore, he asserted that when he referred to numbers, he was referring to [REDACTED] size.

The panel assessed this explanation with reference to the available evidence and noted that this explanation was potentially plausible. In support of this assessment, the panel placed reliance on a message from Mr Henderson where he referred to going to “*chill out with a [REDACTED] and his 7*”. Mr Henderson later referred to the individual in question having “*a lovely 7*”. The panel considered that such language and terminology could indicate that the number was being used with reference to an object, rather than a person, so could be a reference to another [REDACTED] (specifically his [REDACTED]), as Mr Henderson asserted. As a result, the panel concluded this could explain some of the messages that Mr Henderson had sent.

However, the panel also noted there were other messages that explicitly referred to age. In particular, during one exchange individual A stated that “*age is just a number*” and asked Mr Henderson how “*low*” he had been. Mr Henderson replied “*13*” before then stating he had “*touched an 11*” and had the “*hots for a 9 and a 5*”. Later in the exchange Individual A specifically asked “*how old are [your] regulars?*” and Mr Henderson answered ‘*14*’.

The panel noted the contrasting subject matter in this exchange. Mr Henderson referred to him “*touching*” an 11 and having the “*hots*” for a 9 and a 5, which the panel acknowledged (for the reasons set out above), could be references to [REDACTED] size. However, there was no similar objectification or alignment to someone/something else when Mr Henderson answered the direct questions Individual A raised of him (as described in the paragraph immediately above).

In response to those questions, Mr Henderson simply provided a number, and the answer “*14*” was given in the specific context of a question concerning the age of Mr Henderson’s “*regulars*”. Without any surrounding context (as Mr Henderson provided in his other messages), and given the specific and unambiguous nature of the question, the panel concluded that Mr Henderson’s answer was more likely than not a reference to the expressed age of his regular sexual partners.

Equally, the answer “*13*” was given in response to the question of how “*low*” Mr Henderson had gone. Even if it were to accept that Mr Henderson’s references to him “*working on a 9*” and having “*touched an 11*” were references to other [REDACTED], the panel concluded that the same explanation would not make sense in the context of Mr Henderson answering that 13 was as low as he had gone. That is because the other numerical references Mr Henderson had made were lower. As a result, the panel concluded that the answer “*13*” was more likely than not a reference to the youngest sexual partner that Mr Henderson was asserting he had had.

Finally, the Panel noted that within the police case summary there is reference to Individual A stating that he spoke with Mr Henderson using FaceTime. The panel acknowledged that (unlike the social media posts that were before it in the hearing bundle), it did not have any corresponding footage, a transcript of the conversation, or

any other means of verifying what is alleged to have been said between Mr Henderson and Individual A. As such, the panel approached this evidence with caution on the basis that it was hearsay evidence. Nevertheless, the panel concluded that it arose in the context of a police summary and, as such, it was evidence that the panel could place reliance upon. Having reached that conclusion, the panel determined that it could take into account the aspect of the case summary that reported that during this conversation Mr Henderson was alleged to have told Individual A that he had “*kissed the little [REDACTED]*” and that the “*little [REDACTED]*” had enjoyed being touched.

The panel also found it persuasive that it was Mr Henderson who repeatedly returned to the topic of age and made reference to people of a younger age. For example, the panel noted Mr Henderson asking if Individual A was “*into younger [REDACTED]*” and “*teen [REDACTED]*” and later asking “*how young [Individual A had] been*”. Mr Henderson also asked Individual A if he had attended “*an [REDACTED] school*”. Also, and in particular, Mr Henderson had stated “*I love it, younger I go, more I want*”.

Taking into account all of the available evidence, and on the balance of probabilities, the panel concluded that, although some of Mr Henderson’s messages could be explained away as references to [REDACTED], there was nevertheless evidence that Mr Henderson had sent messages in which he stated that he had engaged in sexual activity with one or more children or used words to that effect.

For the avoidance of doubt, the panel wishes to record that in reaching its conclusions it makes no finding as to whether Mr Henderson actually engaged in sexual activity with one or more children. Instead, its decision is confined to whether the messages it found he had sent provided evidence that he had asserted that he had engaged in such activity.

The panel found allegation 3 proven.

#### **4. Your conduct as may be proven at allegation 3 demonstrated a sexual interest in children and/or was sexually motivated.**

The panel noted that within the response to the notice of proceedings and in the statement of agreed and disputed facts, signed by Mr Henderson on 14 November 2022, Mr Henderson denied that his conduct at allegation 3 demonstrated a sexual interest in children and was sexually motivated.

The panel’s attention was drawn to section 78 of the *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 considered whether the conduct was sexually motivated. It 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

considered that in *Haris*, the High Court indicated that the criteria in *Basson* sets the bar too high. Foster J stated:

*“in the present case it is in my judgement clear beyond argument that the intimate touching of Patients A and B was sexual and that answering a question as to the motivation of the toucher, the only available answer, is yes, the motivation must have been sexual[...].”*

*“Of course, there are significant differences in the context and the analogy is not exact, but it does seem to me that pleading ‘sexual motivation’ is unhelpful. Similarly to look for ‘sexual gratification’ may be misleading or overcomplicating. It is irrelevant to the actions which the GMC would wish to proscribe whether or not the perpetrator was sexually “gratified” at all – whether before, after or during the act in question. Gratification, as with “pursuit of a relationship” are, pace the analysis of Mostyn J in Basson, not helpful in my judgement in promoting the public interests at stake here. These criteria set the bar too high and I respectfully disagree that they represent the law”.*

*“Had the touching been pleaded as being ‘sexual’ and had the Tribunal asked themselves whether in all the circumstances, which includes the absence of accident[...] absence of consent [...] and any other clinical or other proper justification [...] then it seems to me impossible they would have reached any conclusion other than that the touching was sexual”.*

On examination of the documents before the panel and consideration of the wider documentary and oral evidence, the panel concluded that Mr Henderson’s conduct as set out in allegation 3 was sexually motivated. The panel was of the view that there was no other plausible reason for this conduct. In particular, the panel noted that Mr Henderson’s comments arose in the context of sexually explicit messaging on social media sites which Mr Henderson stated he was using for the purpose of finding sexual partners. This led the panel to conclude that Mr Henderson’s motivation was sexual.

The panel also considered that, had the allegation been pleaded as conduct of a sexual nature, then it would be impossible to reach any other conclusion other than that the conduct was sexual, as set out in *Haris*.

Furthermore, for all the reasons set out in relation to allegation 3, the panel also concluded that Mr Henderson’s conduct as found proved by the panel demonstrated a sexual interest in children.

The panel found allegation 4 proven.

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

Having found all of the allegations proved, the panel went on to consider whether the facts of all of the proven allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute (and the panel noted that Mr Henderson had admitted that allegations 1 and 2 met these thresholds).

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 Henderson, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Henderson 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
  - 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 Henderson amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Henderson's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice.

The panel found that the offence of and caution for possession of Class A drugs was relevant. Similarly, having found allegations 3 and 4 proved, the panel also found that Mr Henderson had displayed behaviours associated with the offence type of sexual activity. The Advice indicates that where behaviours associated with such offence types exist, a panel is more likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel noted that the allegations took place outside the education setting, in that Mr Henderson was in possession of a Class A drug in his home and engaged in messages with Individual A outside of the School and via social media. However, the panel believed that this touched upon Mr Henderson's profession as a teacher, given that the explicit messages spoke about young children, sexual activity involving them and were instigated by Mr Henderson.

Accordingly, the panel was satisfied that Mr Henderson 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 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 therefore found that Mr Henderson's actions constituted conduct that may bring the profession into disrepute.

The panel noted that Mr Henderson's representative (by letters dated 11 November 2020 and 27 January 2021 respectively, and also the written representations of 1 December 2022), had raised that Mr Henderson had experienced a deterioration in his [REDACTED] during the period 2016 to 2019, and that he had felt increasingly [REDACTED] during the Spring 2018 term. Mr Henderson's representative stated that it was while struggling to manage his [REDACTED] that Mr Henderson met people using social media and used drugs on a few occasions. However, the panel considered that such matters were more relevant to mitigating factors when considering the appropriate sanction, rather than to disprove the facts of the allegations or whether the proven facts amounted to unacceptable professional conduct or conduct that may bring the profession into disrepute.

Having found the facts of allegations 1, 2, 3 and 4 proved, the panel further found that Mr Henderson's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

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

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

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

The panel were 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 Henderson, which involved a caution for possession of Class A drugs and engaging in messages with Individual A in which he stated that he had engaged in sexual activity with one or more children, there was a strong public interest consideration in respect of the protection of pupils, given the serious findings of inappropriate relationships with children.

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

In addition, the panel reminded itself that Mr Henderson's conduct was away from the education setting. On the facts before it, in respect of the findings of unacceptable professional conduct and conduct that may bring the profession into disrepute, the conduct was confined to Mr Henderson's personal life.

The panel decided that there was a strong public interest consideration in retaining the teacher in the profession, since no material doubt had been cast upon his abilities as an educator and/or that he is able to make a valuable contribution to the profession.

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Henderson.

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 Henderson. 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 the panel considered were relevant in this case were:



- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.
- 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;
- sustained or serious bullying, or other deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- a deep-seated attitude that leads to harmful behaviour; and
- dishonesty or a lack of integrity, including the deliberate concealment of their actions or purposeful destruction of evidence, especially where these behaviours have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests.

In particular, in respect of behaviour involving '*dishonesty or a lack of integrity*' the panel was advised that, as per the decision in *GMC –v- Kyetyar [2018] EWHC 813 (Admin)*, it is wrong to equate maintenance of innocence with a lack of insight. However, the panel weighed up all the evidence and concluded that the explanations presented by Mr Henderson in respect of the social media exchanges in question, were not credible, and as such the panel concluded that they demonstrated a lack of integrity on Mr Henderson's part.

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

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

There was no evidence to suggest that Mr Henderson was acting under extreme duress. In fact, the panel found Mr Henderson's actions to be calculated and motivated.

The panel considered the following mitigating factors to be relevant:

- The panel noted a letter from Mr Henderson's representative, dated 11 November 2020, which stated that Mr Henderson experienced a very difficult period in his life and a deterioration in his [REDACTED], from 2016 to 2019. In particular, it was asserted that during the Spring 2018 term, while struggling to manage his [REDACTED], Mr Henderson felt increasingly [REDACTED]. As a consequence he began taking drugs and took to meeting people using social media as a way to manage his [REDACTED]. The panel noted a further letter dated 27 January

2021, setting out Mr Henderson's response to the police report. Mr Henderson submitted that he was struggling with his [REDACTED] and foolishly sought to deal with this through drugs, alcohol and sexual promiscuity. Finally, in this regard, the panel further noted the content of the written representations submitted on 1 December 2022, which also addressed Mr Henderson's [REDACTED] and his wider personal circumstances. Whilst the panel acknowledged Mr Henderson's stated [REDACTED], it noted that no supporting [REDACTED] had been provided. As a result, the panel attached limited weight to this evidence.

- The panel took into account the fact there is no evidence to suggest that Mr Henderson has anything but a good history in the teaching profession. In this regard, the panel noted the evidence presented by Mr Henderson concerning his employment history, including several successful performance reviews/appraisals from previous employment all of which indicate that Mr Henderson performed his then role to a high standard.
- The panel noted a number of documents submitted by Mr Henderson in support of his character. These included letters from past students and colleagues alike, together with letters of thanks from teachers at other educational establishments that Mr Henderson had visited to provide music lessons. All indicated that Mr Henderson had made a positive contribution to the profession.
- Although Mr Henderson did not attend the hearing, and had not provided a witness statement, he had otherwise co-operated with the process. He had accepted allegations 1 and 2 and had recognised that, although he asserted it took place outside of school time and did not impact his work, his behaviour in taking drugs was inappropriate and wrong. He had further accepted that the choices he had made, irrespective of the circumstances surrounding them, were unacceptable for a teacher and sincerely apologised for them. Within the written representations submitted by his representative, it was stated that there has not been a day gone by where Mr Henderson has not felt regret and shame for his behaviour.
- The panel noted Mr Henderson's submission that he has voluntarily accessed support from a local recovery centre and that since his arrest he has been sober (clear from both alcohol and drugs). Furthermore, Mr Henderson stated that he has attended a level 2 course about drug recovery (although the panel saw no documentary evidence in support of this assertion).

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 Henderson of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Henderson. The fact that the panel had found sexual motivation was a significant factor in forming that opinion, and the panel placed reliance on the fact that it was Mr Henderson who had repeatedly steered the social media exchanges between him and Individual A towards discussion of underage sex. The panel considered that such a motivation is wholly unacceptable for any member of society, let alone a member of the teaching profession. Possession and use of a Class A drug was also a significant factor in the panel's decision since, notwithstanding the contrition expressed by Mr Henderson, the panel considered such behaviour was wholly inappropriate for a member of the teaching profession and someone who should act as a role model. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

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

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct, such as where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person or persons; any sexual misconduct involving a child. Having found allegations 3 and 4 proven, the panel found that Mr Henderson was responsible for serious sexual misconduct in that his actions had been sexually motivated.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. One of these behaviours include possession (including for personal use) of any Class A drug. The panel found that Mr Henderson was responsible for receiving a police caution for being in possession of a Class A drug.

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 that Mr Phillip Henderson should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Henderson 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
  - 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 finds that the conduct of Mr Henderson fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding which involved a caution for possession of Class A drugs and conduct which demonstrated a sexual interest in children and was sexually motivated.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher.

I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Henderson, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect pupils. The panel has observed, "In the light of the panel's findings against Mr Henderson, which involved a caution for possession of Class A drugs and engaging in messages with Individual A in which he stated that he had engaged in sexual activity with one or more children, there was a strong public interest consideration in respect of the protection of pupils, given the serious findings of inappropriate relationships with children." 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, "Although Mr Henderson did not attend the hearing, and had not provided a witness statement, he had otherwise co-operated with the process. He had accepted allegations 1 and 2 and had recognised that, although he asserted it took place outside of school time and did not impact his work, his behaviour in taking drugs was inappropriate and wrong. He had further accepted that the choices he had made, irrespective of the circumstances surrounding them, were unacceptable for a teacher and sincerely apologised for them. Within the written representations submitted by his representative, it was stated that there has not been a day gone by where Mr Henderson has not felt regret and shame for his behaviour."

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

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

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as

being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Henderson and the panel comment “The panel took into account the fact there is no evidence to suggest that Mr Henderson has anything but a good history in the teaching profession. In this regard, the panel noted the evidence presented by Mr Henderson concerning his employment history, including several successful performance reviews/appraisals from previous employment all of which indicate that Mr Henderson performed his then role to a high standard.” A prohibition order would prevent Mr Henderson 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 “The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Henderson. The fact that the panel had found sexual motivation was a significant factor in forming that opinion, and the panel placed reliance on the fact that it was Mr Henderson who had repeatedly steered the social media exchanges between him and Individual A towards discussion of underage sex. The panel considered that such a motivation is wholly unacceptable for any member of society, let alone a member of the teaching profession.

Possession and use of a Class A drug was also a significant factor in the panel’s decision since, notwithstanding the contrition expressed by Mr Henderson, the panel considered such behaviour was wholly inappropriate for a member of the teaching profession and someone who should act as a role model. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Henderson 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, 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 behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct, such as where the act was sexually

motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person or persons; any sexual misconduct involving a child. Having found allegations 3 and 4 proven, the panel found that Mr Henderson was responsible for serious sexual misconduct in that his actions had been sexually motivated.”

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, including sexual motivated conduct and possession of a Class A drug.

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 Philip Henderson 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 Henderson 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 Henderson 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: 7 December 2022**

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