



National College for  
Teaching & Leadership

# **Mr David Heap: Professional Conduct Panel outcome**

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

**January 2014**

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## **Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State**

<b>Teacher:</b>	Mr David Heap
<b>Teacher ref no:</b>	75/62943
<b>Teacher date of birth:</b>	1 July 1956
<b>NCTL Case ref no:</b>	10086
<b>Date of Determination:</b>	21 January 2014
<b>Former employer:</b>	Westley Middle School

### **A. Introduction**

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 20 and 21 January 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr David Heap.

The Panel members were Sheba Joseph (Teacher Panellist – in the Chair), Carol Jones (Teacher Panellist) and Martin Pilkington (Lay Panellist).

The Legal Adviser to the Panel was Isabelle Mitchell of Eversheds Solicitors.

The Presenting Officer for the National College was Laura Hackney of Browne Jacobson Solicitors.

Ms David Heap was not present and was not represented.

The hearing took place in public and was recorded.

## B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 6 November 2013.

It was alleged that Mr David Heap is guilty of unacceptable professional conduct and / or conduct that may bring the profession into disrepute, in that, whilst employed at Westley Middle School from September 1986 to 9 November 2012 he:-

1. Between December 2010 and December 2011, touched pupils inappropriately during lessons including:-
  - a. Pupil B on or around Friday 10 December 2010
  - b. Pupil C on or around 24 November 2011 contrary to receiving management advice on 4 January 2011 relating to inappropriately touching children
  - c. Pupil A on or around Tuesday 6 December 2011 contrary to receiving management advice on 4 January 2011
2. Acted inappropriately in that he:-
  - a. Had inappropriate materials in school, namely pornographic DVDs and magazines
  - b. Watched the pornography DVDs on the school computer on one or more occasions

Although absent from the hearing, Mr Heap indicated in his response to the Notice of Proceedings that the facts have not been admitted and it is not admitted that those facts amount to unacceptable professional conduct and / or conduct that may bring the profession into disrepute.

## C. Preliminary applications

### Proceeding in the absence of the teacher

The Panel considered an application from the Presenting Officer to proceed in the absence of Mr Heap. The Presenting Officer referred to the Notice of Proceedings at pages 5 to 8 of the case papers, which were sent to Mr Heap on 6 November 2013. The Presenting Officer submitted that the Notice of Proceedings contained the information required by the Regulations and had been sent to Mr Heap at least eight weeks before the hearing date. The Presenting Officer also referred the Panel to the Notice of Proceedings Response Form, contained at pages 9 to 11 of the case papers, which had been completed by Mr Heap and confirms that Mr Heap received the Notice of Proceedings.

The Presenting Officer submitted that Mr Heap has voluntarily waived his right to appear. The Presenting Officer relied on the following:

- The Notice of Proceedings Response Form (pages 9 to 11 of the case papers), completed by Mr Heap, in which Mr Heap stated that he did not intend to appear at the hearing.
- The witness statement of Mr Heap, submitted to the Panel on 17 January 2014, in which Mr Heap states as follows: “Acting on medical advice I am unable to attend the hearing however I can confirm I have been made fully aware of my right to attend... I acknowledge that I have been properly served in respect to the documentation from the NCT&L and I am content for the proceedings to take in my absence.”
- The letter from Mr Heap’s GP, dated 13 December 2013 (page 111), which says that Mr Heap is not well enough to attend the hearing at the present time and this remains so for the foreseeable future.
- An email from Mr Heap’s NUT representative sent to the Presenting Officer on 20 January 2014, which confirms that neither Mr Heap or his representative will be attending the hearing today. The email goes on to say that “Mr Heap is fully aware that he will be unrepresented at the NCT&L but he is happy for the hearing to proceed”.

The Presenting Officer submitted it is clear that Mr Heap knows the hearing is going ahead this week and has made a decision not to attend. The Presenting Officer also highlighted that Mr Heap had not asked for an adjournment of the hearing.

The Presenting Officer also made reference to the public interest in proceeding today, including the interests of the four witnesses in attendance who had travelled from Suffolk, and asked the Panel to consider the witnesses’ interests when exercising their discretion as to whether to proceed. Further, the Presenting Officer submitted that delay would not be desirable given the passage of time from the events being considered.

The Legal Adviser gave the Panel advice including referring to relevant case law, and the Panel adjourned to consider its decision.

The Panel reconvened and announced its decision and reasons for that decision as follows:-

“We are asked to consider proceeding with this case in the absence of the teacher, Mr David Heap.

We have been advised by the Presenting Officer that the Notice of Proceedings was sent to Mr Heap on 6 November 2013. We have viewed the Notice of Proceedings and are satisfied that it contains the information required under paragraph 4.10 of the Teacher Misconduct Disciplinary Procedures for the Regulation of the Teaching Profession, which we refer to as the ‘Procedures’. We are also satisfied that the Notice of Proceedings has been served in accordance with the service requirements at Regulation 19 of the Teachers’ Disciplinary (England) Regulations 2012, including serving the Notice of Proceedings with at least eight weeks’ notice of the hearing.

We are therefore advised that we have discretion to proceed in Mr Heap's absence in accordance with paragraph 4.26 of the Procedures.

In exercising this discretion we understand that we must proceed with great care and caution and with close regard to the overall fairness of the proceedings. Fairness to Mr Heap is of prime importance, but fairness to the National College and the requirement for proper regulation of the profession should also be taken into account.

We have also been advised to have regard to the guidance given in the cases of R v Jones and Tait v Royal College of Veterinary Surgeons.

We have considered the following to be relevant:-

- The nature and circumstances of Mr Heap's behaviour in absenting himself from today's hearing. Mr Heap's witness statement makes it clear that he is aware of his right to attend, but he would like the hearing to proceed in this absence. Mr Heap's NUT representative has also confirmed by email this morning that Mr Heap is fully aware that he will not be represented today, but he is happy for the hearing to proceed. On the basis of these documents, we consider that Mr Heap has made a clear and unqualified statement that he has voluntarily absented himself from today's hearing;
- Whether or not an adjournment might result in Mr Heap attending voluntarily. We note that Mr Heap has not requested an adjournment, and has deliberately chosen not to attend today. We also note the medical evidence which states that Mr Heap is unlikely to be fit to attend a hearing for the foreseeable future. We consider that it is unlikely that Mr Heap would attend on an alternative date;
- The seriousness of the case against Mr Heap and the risk of reaching the wrong conclusion in his absence today. The case against Mr Heap is serious and there will be a disadvantage caused to Mr Heap as a result of him not being present; and
- The general public interest and the particular interests of the witnesses attending today that a hearing should take place within a reasonable time of the events to which it relates. We consider that the interest of the witnesses and the public would not best be served if the hearing was adjourned and the witnesses were asked to come back on a later date. We are particularly mindful of the fact that the events relevant to the case took place over two years ago.

On that basis, we are satisfied that Mr Heap has voluntarily waived his right to be present at the hearing today, and he is not asking for an adjournment. We have therefore decided to proceed with the hearing today. We consider it is in the public interest that the case should not be delayed.

Proceeding under the new Teacher Misconduct: the prohibition of teachers published on 17 January 2014

The Panel raised the issue of the hearing proceeding under the new Teacher Misconduct: the prohibition of teachers guidance published on 17 January 2014, known as 'the Guidance'. As the Guidance has only very recently been published, as a matter of fairness, the Panel wanted to ensure that both the Presenting Officer and Mr Heap were aware that the new Guidance would apply to the hearing and to provide them with an opportunity to consider their case in light of this. The Presenting Officer has confirmed that the National College are happy to proceed on the basis that the new Guidance would apply to the hearing. In the absence of Mr Heap and any representative, the Presenting Officer had obtained written email confirmation from Mr Heap's NUT representative, Mr Des Hart, to confirm that Mr Heap was aware of the new Guidance and was content for the hearing to proceed under the new Guidance. The Panel considered the written confirmation and confirmed that on the basis of this response they were content to proceed.

#### Amendment to an allegation

The Presenting Officer referred the Panel to the anonymised pupil list in the case papers, which shows that Pupil A and Pupil C are named as the same pupil. Therefore, the Presenting Officer applied for allegation 1b to be amended to refer to "Pupil A", rather than "Pupil C", to ensure consistency. The Panel agreed to the amendment.

## **D. Summary of evidence**

### **Documents**

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

Section 1: Chronology and Anonymised Pupil List (Pages 1 to 3)

Section 2: Notice of Proceedings and Response (Pages 4 to 11)

Section 3: National College Witness Statements (Pages 12 to 32)

Section 4: National College Documents (Pages 33 to 102)

Section 5: Teacher Documents (Pages 103 to 105)

In addition, the Panel agreed to accept the following papers, which were submitted by Mr Heap and the Presenting Officer on 17 January 2014, both parties consenting in advance of the hearing to such documents being submitted:

- Witness statement from Mr Heap and letter from Mr Heap's GP (Pages 106 to 111)
- Statement presented by Mr Heap during the School's disciplinary hearing on 9 October 2012 (Pages 112 to 117)

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

## Witnesses

The Presenting Officer made an opening statement.

The Panel heard oral evidence from the following witnesses:

- The Head Teacher at Westley Middle School.
- The Deputy Head Teacher at Westley Middle School, who was appointed as the Investigating Officer when the allegations were made against Mr Heap in December 2011.
- A Teaching Assistant and Instructor of French at Westley Middle School, who witnessed and reported concerns to the Head Teacher in relation to Mr Heap.
- A Teaching Assistant at Westley Middle School, who reported the allegation on 6 December 2011.

The Presenting Officer made a closing statement.

## E. Decision and reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

### Summary of Evidence

Mr David Heap was employed as Head of Science at Westley Middle School, having worked at the school for 26 years.

On or around 10 December 2010, a teacher at the school reported to the Assistant Head Teacher that she had witnessed Mr Heap inappropriately touch Pupil B (a male pupil) by placing his right hand between Pupil B's leg with the palm of his hand resting on Pupil B's upper thigh. The school reported the incident to the Local Authority, informed Pupil B's parents and a strategy meeting was held. Under advice from the Local Authority, the school dealt with this incident by the Head Teacher issuing Mr Heap with the following management instruction on 4 January 2011:

*"It is essential that you do not put yourself or any pupils in vulnerable situations. So please can you follow the guidelines below:*

- *Never allow any pupils in the prep room or science office*
- *Do not allow pupils to pass through the prep room to move between the labs*
- *Never meet one to one with a pupil in a closed room*
- *Do not touch pupils inappropriately”*

On 24 November 2011, a Teaching Assistant witnessed Mr Heap openly stroking Pupil C (a male pupil) on the head in an affectionate way. The Teaching Assistant was concerned because she felt this was against the safeguarding training that all staff had received. The Teaching Assistant mentioned the incident to the class’ form tutor and logged it in her diary.

Then on 6 December 2011, a different Teaching Assistant who was supporting Mr Heap’s class reported to the Head Teacher that she had witnessed Mr Heap touching a year 5 male pupil (Pupil A) inappropriately, in that he rubbed the back of Pupil A’s head, rubbed his arm and rubbed the inside of Pupil A’s right upper leg.

As a result of the allegation on 6 December 2011, the Head Teacher contacted the Local Authority and a multi-agency strategy meeting was held the following day. At that meeting it was agreed that Suffolk police would interview Pupil A, with parental consent. Following the strategy meeting Mr Heap was suspended by the Head Teacher, on advice from the Local Authority. Pupil A was interviewed on 8 December 2011. Pupil A made no complaint against Mr Heap, but confirmed that Mr Heap had made physical contact with him on a number of occasions.

Mr Heap vehemently denies that he touched Pupils A or B (or Pupil C as previously described) as alleged.

Following Mr Heap’s suspension, pornographic material (two DVDs and magazines) were found in his office. An examination of Mr Heap’s computer indicated that the pornographic DVDs had been viewed on school equipment, although the data confirmed that the material had been viewed during ‘non-contact’ periods and during one contact period when his scheduled year 5 class were out on a school trip. Mr Heap accepts that the material was his and he kept it on school premises, although he says that it was securely stored and pupils would not have had access to it. Mr Heap acknowledges the inappropriate nature of this material and the fact that it should not have been in school. Mr Heap also acknowledges that it was inappropriate to watch the DVD on the school computer in his office.

## **Findings of Fact**

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:

**1. Between December 2010 and December 2011, touched pupils inappropriately during lessons including:-**

**a. Pupil B on or around Friday 10 December 2010**

The Presenting Officer has referred the Panel to the witness statement of a teacher at Westley Middle School, dated 13 December 2013, who we refer to as Witness A. Witness A says in her statement that on 10 December 2010 she entered a classroom and witnessed Mr Heap sitting at his desk, surrounded by pupils, with his right hand between Pupil B's leg and the palm of his hand resting on Pupil B's upper thigh. Witness A says she was horrified by what she saw and left the room unnoticed. Witness A goes on in her statement to say that in order to be sure about what she had seen, she re-entered the classroom and Mr Heap's hand was still in the same position. Witness A says she checked and Pupil B was not upset. Immediately following the incident, Witness A prepared a handwritten note recording what she had witnessed, including a diagram of the classroom and where Mr Heap and Pupil B were positioned.

We consider that the Panel has been placed at a disadvantage in that Witness A has not been called as a witness. We have not therefore heard oral evidence from Witness A and have not been able to test her evidence.

However, Witness A's witness statement is consistent with her earlier handwritten note, which recorded her account immediately following the incident. In her statement Witness A also describes Mr Heap as a kind man, and therefore we have no reason to believe that Witness A would give a false account of what she witnessed.

Mr Heap has denied the allegation, stating in his witness statement prepared for the purposes of this hearing that the evidence is not sufficient to reach the conclusion alleged and that no evidence has been offered as to any motive. However, Mr Heap has not submitted any evidence to provide his own version of events. We have particularly noted that Mr Heap does not appear to have challenged the management instruction that was issued to him by the Head Teacher on 4 January 2011 as a result of this incident. In fact we have been told by the Head Teacher that Mr Heap signed the management instruction.

We therefore prefer the evidence of Witness A, and consider that the touching described was inappropriate. Therefore, on the balance of probabilities, we find the particular of allegation proven.

**b. Pupil A on or around 24 November 2011 contrary to receiving management advice on 4 January 2011 relating to inappropriately touching children**

A Teaching Assistant, who we shall refer to as Witness B, provided both a witness statement and gave oral evidence before the Panel in relation to this allegation. Witness B's evidence was that she witnessed Mr Heap stroking Pupil A's head in an affectionate way. When questioned in oral evidence, Witness B was clear about the nature of the contact, saying that it was not sexual, but it was a "lingering" and "stroking" touch, which

lasted for between 30 seconds to a minute. Witness B said in oral evidence that the touching took place openly, in front of a classroom of 30 pupils. She described the contact as “odd” and inappropriate, and said that it made her feel uncomfortable.

We found Witness B to be a credible witness, who was fair and balanced in her evidence. The evidence given in her witness statement and in oral evidence was consistent.

We consider that the contact described by Witness B was inappropriate. In addition, the contact with Pupil B was in direct contravention of the management instruction which was issued to Mr Heap by the Head Teacher in January 2011. That management instruction said “do not touch pupils inappropriately”. Further, the contact was in contravention of the safeguarding training that all members of staff had received. Witness B explained in oral evidence that the safeguarding training provided to all teachers explained that teachers should not touch pupils at all, unless as a result of a first aid or health and safety issue.

Mr Heap has denied this allegation for the same reasons as allegation 1a, but has not provided an account of his version of events.

We prefer the evidence of Witness B and therefore find this particular of allegation proven.

**c. Pupil A on or around Tuesday 6 December 2011 contrary to receiving management advice on 4 January 2011**

In respect of this allegation, the Presenting Officer referred the Panel to the witness statement and oral evidence of another Teaching Assistant, who we shall refer to as Witness C, who witnessed the incident on 6 December 2011.

In her oral evidence, Witness C explained that she was assisting another pupil in Mr Heap’s class during a science lesson on 6 December 2011. In her witness statement, Witness C said that during the course of the lesson, she witnessed Mr Heap rubbing Pupil A on the head, rubbing his arm and stroking the inside of Pupil A’s right thigh. Witness C also described in her statement how she moved position in the classroom in order to obtain a clear view of Mr Heap’s hand, to ensure that what she thought she had seen was accurate.

In oral evidence, Witness C provided a visual demonstration of her positioning in the classroom, and that of Mr Heap and Pupil A, to describe what she had seen. Whilst we found Witness C to be a credible and honest witness, during oral evidence it became clear that she had difficulties describing what it was she had seen, and particularly where exactly on the body Mr Heap had touched Pupil A. There was an inconsistency between Witness C’s witness statement, when she described Mr Heap stroking Pupil A’s inner thigh, and in oral evidence, when she says Mr Heap was touching Pupil A’s groin. Upon further probing by the Panel, it became apparent that Witness C considered the upper thigh and the groin to be the same area of the body.

Despite the inconsistencies in her evidence, we accept Witness C's evidence that she clearly saw Mr Heap rub Pupil A's head, stroke his arm, and touch part of his upper leg. In oral evidence Witness C said that at the start she had a very good relationship with Mr Heap and she considered him to be a 'lovely man'. She also says in her witness statement that they initially had a positive relationship, and therefore we have no reason to believe that Witness C has not been truthful in her evidence. We recognise that Witness C's lack of confidence has made communicating her evidence more difficult and we have taken this into account. We consider that the inconsistencies in her evidence were as a result of the poor preparation of her witness statements and issues of communication, rather than issues of credibility.

Further, notwithstanding Witness C's inconsistent evidence, Witness C was very clear throughout her oral evidence that she did see Mr Heap touch Pupil A in the upper leg area. Whether Mr Heap touched Pupil A on the inner thigh or on the groin, either would be inappropriate.

Witness C's evidence has been corroborated by information given by Pupil A to the police on 7 December 2011, which the police summarised in a letter dated 14 February 2012 (pages 49 to 50 of the case papers). That letter says Pupil A told the police that Mr Heap would "touch him on his head and arm" and "touched him on the back of his thigh". We have taken into account that this is hearsay evidence and therefore the Panel has attributed less weight to this evidence as we have not had the opportunity to hear from and question Pupil A, and the document from the police was not a recorded statement of Pupil A's evidence. We have also noted that Pupil A did not report Mr Heap as having touched his groin.

Mr Heap denies the allegation and has questioned the credibility and reliability of Witness C. However, we note that Mr Heap has not provided his own account of the incident.

On the basis of the evidence before us, and on the balance of probabilities, we have found this particular of allegation proven.

## **2. Acted inappropriately in that he:-**

### **a. Had inappropriate materials in school, namely pornographic DVDs and magazines**

The Deputy Head, who was also the Investigating Officer during the school's investigation, provided the Panel with evidence concerning the discovery of the inappropriate materials belonging to Mr Heap. In oral evidence, the Deputy Head explained in some detail about how the search was conducted, and how and where the materials were found. The Deputy Head explained that he and another teacher had found seven magazines and two DVDs and he gave precise details about how these were placed in Mr Heap's desk drawers. The Panel probed the Deputy Head in relation to the nature of the material and the witness gave clear evidence about the explicit nature

of the magazines and DVDs, categorising them as adult pornography. We found the Deputy Head to be a credible witness who was clear and consistent in his evidence.

In his witness statement submitted as part of these proceedings, Mr Heap has said “I acknowledged at the Hearing, [the school’s disciplinary hearing] that the material; namely a DVD and magazines, were my property. I contend that they were securely stored in the Head of Science’s office”. Mr Heap goes on in his statement to say “During the investigation process and at the disciplinary hearing, I acknowledged the inappropriate nature of this material and the fact that it should not have been in school”. In his statement submitted to the school’s disciplinary hearing (at pages 112 to 117 of the case papers), Mr Heap also says “With regard to the materials found in my office by [the Deputy Head and Individual A] I accept full responsibility for this breach of professional conduct”. The notes of the school’s disciplinary hearing dated 9 October 2012 also record Mr Heap as confirming that the materials had been stored at school for at least 12 months (page 58 of the case papers).

On the basis of this evidence, we have found this particular of allegation proven.

**b. Watched the pornography DVDs on the school computer on one or more occasions**

The Deputy Head again gave clear evidence explaining how the school undertook the investigation to establish which DVDs were watched by Mr Heap on school computers and on what dates. The screen shots that were taken as part of the investigation were difficult for the Panel to interpret. However, in oral evidence, the Deputy Head provided a clear and helpful explanation as to how those screen shots demonstrated which DVDs had been viewed and on which dates. The Deputy Head also explained how he cross-referenced those dates against the school diary to establish whether or not Mr Heap watched these DVDs during lessons. The Deputy Head confirmed in oral evidence that Mr Heap viewed the material during non-contact periods (i.e. when there was no contact with pupils). Whilst one of the dates was during a year 5 science lesson, further examination of the school diary by the Deputy Head confirmed that the year 5 class was on a school trip that day, and therefore Mr Heap would have gained an extra non-contact period at this time.

The Panel also noted the reference made by the Deputy Head to the school’s Policy for Acceptable Use of ICT and Mobile Phones. Paragraph 4.18 of the policy states that “The following content should not be created or accessed on ICT equipment at any time: Pornography and ‘top shelf’ adult content”. The Deputy Head made clear in evidence that Mr Heap’s conduct was, therefore, in direct contravention of the school’s policy.

In his witness statement submitted as part of these proceedings, Mr Heap has said “I do acknowledge that it was inappropriate to watch the DVD on the school computer in my office. I did so in my own free time albeit during school time and the documentation on page 47 of the bundle indicates the timings that the material was accessed.”

We noted that Mr Heap made clear in his statement that “no evidence at all was presented to me at any stage of the proceedings indicating that any school student accessed this material.” In addition, the Panel has not heard any evidence that the materials were easily accessible to students, albeit that students did have access to the office on occasion.

On the basis of the evidence, we have found this particular of allegation, namely that Mr Heap watched the pornographic DVDs on the school computer on one or more occasions, proved.

## **Findings as to Unacceptable Professional Conduct and/or Conduct that may bring the profession into disrepute**

In considering the allegations we have found proven, we have had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the ‘Guidance’.

The Guidance states that both unacceptable professional conduct and conduct that may bring the profession into disrepute is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher and that this should be judged with reference to the standards published by the Secretary of State (“the Teachers’ Standards”).

We have considered the Teachers’ Standards, and in particular we consider that the following standards are relevant:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
  - At all times observing proper boundaries appropriate to a teacher’s professional position.
  - Having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

We have used our knowledge and experience of the teaching profession to assess whether Mr Heap’s conduct fell significantly short of the standard expected and have taken into account how the teaching profession is viewed by others and the influence that teachers may have on pupils, parents and others in the community.

Having found all of the allegations proven, we are satisfied that Mr Heap's conduct fell significantly short of the standards expected of a teacher.

All of the witnesses spoke about feeling uncomfortable when they witnessed Mr Heap's physical contact with pupils. We have no doubt that the nature of the contact, by touching and stroking pupils when a first aid or health and safety incident did not warrant such contact, was inappropriate. This type of physical contact is not at a level that parents and the public would expect from a teacher. We consider that by touching pupils in such a manner, Mr Heap crossed boundaries which should be observed by all teachers and abused his position of trust as a teacher.

In respect of two of the incidents, Mr Heap touched pupils inappropriately in direct contravention of the management instruction which had been issued to him by the Head Teacher, which clearly stated "do not touch pupils inappropriately". By failing to observe this management instruction, as well as the guidance given in safeguarding training, which advised teachers never to touch pupils unless in a first aid or health and safety situation, Mr Heap failed to observe the ethos, policies and practices of the school.

Mr Heap's conduct in possessing and viewing pornographic material in school was also in contravention of the teaching standard to have proper and professional regard for the ethos, policies and practices of the school. We consider that any teacher would be aware that this behaviour would be inappropriate for a teacher. However, Mr Heap's conduct was also in clear breach of the school's ICT policy which stated that "The following content should not be created or accessed on ICT equipment at any time: Pornography and 'top shelf' adult content".

We have also considered whether Mr Heap's conduct displayed behaviours associated with any of the offences listed on page 8 of the Guidance, as the Guidance indicates that where behaviours associated with such an offence exist, a Panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct. In particular, we have considered whether the offence of sexual activity, and the behaviours associated with such an offence, is relevant to this case. During oral evidence before the Panel, one witness commented that they did not consider that Mr Heap's contact with a pupil was sexual, whilst another witness said that she did think the contact was sexual. We have also taken into account that the National College has not advanced a case that Mr Heap's conduct was sexually motivated and we note that the allegations faced by Mr Heap are that he "touched pupils inappropriately" and not that this was sexual contact. Therefore, on the basis of the evidence before us, we are not persuaded that there is enough evidence to conclude that Mr Heap's behaviour was associated with an offence of sexual activity.

We do not consider that an offence involving viewing or possessing any indecent photograph or image or pseudo photograph or image of a child is relevant in this case, as the material in question was adult pornography.

However, taking into account the behaviour of Mr Heap, which falls significantly short of the standards of behaviour expected of a teacher, we find that Mr David Heap's actions in inappropriately touching pupils on three separate occasions, and possessing and watching pornographic materials in school, amounts to 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 is 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 has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition Orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The Panel has considered the particular public interest considerations set out in the Teacher Misconduct – Prohibition of Teachers Advice and having done so has found all the examples given to be relevant in this case, namely:

- The protection of pupils;
- The maintenance of public confidence in the profession; and
- Declaring and upholding proper standards of conduct.

The public interest consideration in respect of the protection of children is relevant given the findings against Mr Heap concerning inappropriate contact with children. Mr Heap failed to observe appropriate boundaries with pupils that were essential to his role as a teacher and thereby breached his position of trust.

Similarly, the Panel considers that public interest considerations exist in maintaining public confidence in the profession and declaring proper standards of conduct in the profession. Mr Heap's conduct was in clear contravention of the Teachers' Standards. The Panel has found that Mr Heap failed to observe proper boundaries, failed to have regard for the need to safeguard pupils' well-being and failed to have proper and

professional regard for the ethos, policies and practices of the school. The Panel has considered the nature of the findings and the importance of regulating the conduct of the profession. The Panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Heap were not treated with the utmost seriousness.

Notwithstanding 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 Heap. In forming a judgement in this respect, the Panel took particular account of Mr Heap's evidence contained in the case papers, which may be considered to constitute mitigation. In his witness statement, Mr Heap described the lack of support and the pressure at work which he was experiencing at the time of the incidents. Mr Heap also described the contribution he had made to the life of the school and witnesses before the Panel have described Mr Heap as being 'well-liked'. However, Mr Heap has denied the allegations in relation to the inappropriate touching of children and therefore the Panel does not consider this to be mitigation for these actions.

In carrying out the balancing exercise the Panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Heap. The Panel took further account of the Teacher Misconduct – Prohibition of Teachers Advice, which suggests that a Prohibition Order may be appropriate if certain behaviours of a teacher have been proven. From the list of such behaviours, the Panel has found the following to be relevant:

- Serious departure from the personal and professional conduct elements of the Teachers' Standards;
- Misconduct seriously affecting the education and / or well-being of pupils, and particularly where there is a continuing risk; and
- Abuse of position/trust (particularly involving vulnerable pupils) or violation of the rights of pupils

Even though there were behaviours that would point to a Prohibition Order being appropriate, the Panel went on to consider whether or not the mitigating factors outweighed a Prohibition Order being an appropriate and proportionate measure to impose, particularly bearing in mind the nature and severity of the behaviour and the circumstances of this specific case.

To the best of the Panel's knowledge, Mr Heap had a previously good teaching history prior to December 2010. The Panel also understands that Mr Heap has no criminal or previous disciplinary sanctions recorded against him.

Mr Heap has not provided any explanation for his actions, both in relation to the inappropriate touching of pupils, which he denies, and the possession and viewing of pornographic material on school premises. Therefore there is no evidence to suggest that Mr Heap was acting under duress.

There is also no evidence to suggest that Mr Heap's actions were not deliberate. In relation to the inappropriate touching of children, Mr Heap was issued with a clear management instruction to desist from this type of conduct, and he contravened this instruction on two occasions, as well as breaching safeguarding guidance. Mr Heap was also aware that possessing pornographic materials in school and viewing them on school computers was entirely inappropriate, and yet the materials were stored for at least 12 months and the DVDs watched on seven separate occasions. This behaviour also breached the school's policy of the use of ICT and mobile phones.

In light of the serious breaches of the Teachers' Standards and the absence of any explanation for or mitigation of this behaviour, the Panel makes 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 them to decide to recommend that a review period of the order should be considered. The Panel were mindful that the Teacher Misconduct – Prohibition of Teachers Advice advises that a Prohibition Order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the Prohibition Order reviewed after a specified period of time that may not be less than two years.

The Teacher Misconduct – Prohibition of Teachers Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. The Panel does not consider that any of these behaviours apply to this case. As explained in its decision on the findings of unacceptable professional conduct and conduct that may bring the profession into disrepute, the Panel is not persuaded that there is enough evidence to conclude that Mr Heap's behaviour was associated with an offence of sexual activity, and it does not believe that Mr Heap's actions were sexually motivated. The Panel does not therefore consider that Mr Heap's behaviour represents serious sexual misconduct.

The Panel has considered the extent to which Mr Heap has shown insight into his actions. In the Panel's view, during both the school's disciplinary procedures and throughout these proceedings, Mr Heap has failed to accept that there has been an issue with his conduct in respect of the first allegation, concerning the inappropriate touching of children. Mr Heap has denied this allegation, but has failed to present an explanation for the incidents. On no occasion has Mr Heap suggested that his contact with pupils during

the three incidents could have been misinterpreted. Rather, Mr Heap has adamantly denied the allegations with no explanation.

In relation to the allegation concerning the possession and viewing of pornographic material at school, Mr Heap has admitted the facts of this allegation and acknowledged that this was inappropriate behaviour. However, given the clear evidence against him in respect of this allegation, the Panel feels Mr Heap had no choice but to acknowledge his actions. Mr Heap has however failed to provide any explanation as to why the pornographic materials were being kept at school, and for such a long period of time, and why he accessed the DVDs during school time. Mr Heap ignored the school's ICT policy in this respect.

As a result of the lack of insight and awareness that Mr Heap has shown throughout these proceedings, and the disregard of management instructions, school policies and safeguarding guidance that he has demonstrated, Mr Heap has not been reflective enough to enable the Panel to conclude that in the future he would be able to reform and amend his behaviour. The Panel considers such behaviour to be fundamentally incompatible with being a teacher.

Therefore, the Panel felt 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 provisions for a review period.

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

**I have given full consideration to the findings and recommendations of the panel in this case. The panel have found proven all the allegations and have found that the facts amount to unacceptable professional conduct and conduct that might bring the profession into disrepute.**

**Mr Heap has failed to observe appropriate boundaries with pupils and has breached his position of trust. He has also failed to have proper regard for the need to safeguard pupils' well-being and failed to have proper regard for the ethos, policies and practices of the school.**

**The panel have properly considered any mitigating factors. Whilst Mr Heap had a previously good teaching record, there is no evidence to suggest he was acting under duress or that his actions were not deliberate. Mr Heap was issued with a clear management instruction to desist from the type of behaviour he was exhibiting and contravened this on two further occasions. He was aware that possessing pornographic materials in school and viewing them on school computers was entirely inappropriate yet they were stored on the premises for at**

**least 12 months and the DVDs watched on seven separate occasions. In all the circumstances I agree that a prohibition order is an appropriate and proportionate sanction.**

**I have considered whether a review period is appropriate. The panel have not found Mr Heap's behaviour to be serious sexual misconduct. However Mr Heap has failed to accept that there has been an issue with his conduct in respect of the allegation concerning inappropriate touching of pupils. He has continued to deny the allegations without offering any explanation.**

**Mr Heap has chosen not to attend the hearing and therefore the panel have seen no evidence of insight or remorse. The panel have therefore had no opportunity to determine that Mr Heap is able to reform and his behaviour. I therefore agree that the order should be without an opportunity for review.**

This means that Mr David Heap 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 David Heap 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 David Heap has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this Order.

A handwritten signature in black ink, appearing to read 'P Heathcote', with a large, sweeping flourish at the end.

**NAME OF DECISION MAKER: Paul Heathcote**

**Date: 22 January 2014**

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