



National College for  
Teaching & Leadership

# **Mr David Archer: Professional conduct panel outcome**

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

**August 2016**

## **Contents**

A. Introduction	3
B. Allegations	4
C. Preliminary applications	5
D. Summary of evidence	8
Documents	8
Witnesses	8
E. Decision and reasons	8
Panel's recommendation to the Secretary of State	18
Decision and reasons on behalf of the Secretary of State	21

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

**Teacher:** Mr David Archer

**Teacher ref number:** 0305852

**Teacher date of birth:** 23 July 1956

**NCTL case reference:** 14576

**Date of determination:** 23 August 2016

**Former employer:** Fulford School

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 22 and 23 August 2016 at the Ramada Hotel & Suites, Butts Road, Coventry CV1 2GG to consider the case of Mr David Archer.

The panel members were Mrs Fiona Tankard (teacher panellist – in the chair), Mr Colin Parker (teacher panellist) and Mr Rob Allan (lay panellist).

The legal adviser to the panel was Ms Patricia D’Souza of Eversheds LLP.

The presenting officer for the National College was Mr Ian Perkins of Browne Jacobson LLP.

Mr Archer was not present and was not represented.

The hearing took place in public and the hearing was recorded.

## B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 15 June 2016.

It was alleged that Mr Archer was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that, whilst employed as a teacher at Fulford School in York, he:

1. Engaged in an inappropriate relationship with Pupil A in 2010 that he:
  - a. met with her away from school including when he went with her to:
    - i. the cinema;
    - ii. the library;
    - iii. Spiritual Church;
    - iv. the pond at the University of York;
    - v. lie together under a tree
  - b. gave her a gift;
  - c. sent inappropriate e-mails to her including:
    - i. calling her “sweetie”;
    - ii. telling her he loved her;
    - iii. discussion of a sexual nature;
    - iv. discussion of having sexual intercourse with her;
    - v. one or more romantic poems he had written for her;
    - vi. one or more poems of a sexual nature he had written for her.
  - d. Sent inappropriate direct messages to her including:
    - i. telling her he loved her;
    - ii. sending her kisses (“xxx”)
  - e. engaged in sexual activity with her.
2. He continued to meet with Pupil A outside of school contrary to a direct management instruction not to do so issued in or around October 2010.

3. He failed to disclose to his employer that he had:
  - a. purchased a property in close proximity to Pupil A's home in 2011;
  - b. taken Pupil A as a lodger in his home in 2012;
  - c. entered into a relationship with Pupil A in 2012;
  - d. became engaged to Pupil A in or around 2013.
4. His conduct at (3) was dishonest in that he was attempting to conceal his relationship with a former-pupil who had recently left the school.
5. His conduct at 1(a) and/or 1(b) and/or 1(c) and/or 1(d) and/or 2 was sexually motivated.

The statement of agreed and disputed facts indicated that Mr Archer's admits the factual particulars of allegation 1(a)(i) to 1(a) (iv), 1(b), 1(c)(i) to 1(c)(vi), 1(d)(i) to 1(d)(ii) and 3(b) to 3(d). However, he does not admit the stem of allegation 1 or 3, nor the factual particulars of allegations 1(e), 2, 3a, 4 and 5. Mr Archer does not admit that his conduct amounts to either unacceptable professional conduct and/or conduct that may bring the profession into disrepute. This case is therefore proceeding as a disputed case.

## C. Preliminary applications

### Proceeding in absence

As Mr Archer did not attend the hearing, the presenting officer made an application for the hearing to proceed in Mr Archer's absence.

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

The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel has determined to exercise its discretion under Paragraph 4.29 of the Procedures to proceed with the hearing in the absence of Mr Archer.

The panel understands that its discretion to commence a hearing in the absence of Mr Archer has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that Mr Archer may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of *R v Jones [2003] 1 AC1*. Given that Mr Archer's written representations provided to the National College dated 9 November 2015 state that Mr Archer does not intend to attend the hearing, the panel is satisfied that Mr Archer is actually aware of the proceedings. The panel also noted that with the Notice of Proceedings being dated 15 June 2016 more than 8 weeks' notice of today's hearing has been provided in accordance with the Regulations. Such Notice of Proceedings was sent to Mr Archer's address which is the same as that included in his written representations. The panel therefore considers that Mr Archer has waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

The panel has had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing's taking place. There is no indication that an adjournment might result in Mr Archer's attending the hearing.

The panel has had regard to the extent of the disadvantage to Mr Archer in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of representations made by Mr Archer, and character statements on behalf of Mr Archer and is therefore able to ascertain the lines of defence. The panel has Mr Archer's written evidence addressing mitigation and is able to take this into account at the relevant stage. The panel has noted that the witness relied upon by the National College is to be called to give evidence and the panel can test that evidence in questioning that witness, considering such points as are favourable to Mr Archer, as are reasonably available on the evidence. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel's reaching the wrong decision as a result of not having heard Mr Archer's account.

The presenting officer referred the panel to medical evidence in the bundle which amounts to two letters from his GP dated March and April 2014 respectively. The presenting officer submitted that this is not up-to-date contemporaneous evidence of Mr Archer's current health. It is not suggested by Mr Archer, in his written representations, that his health is the primary reason for his non-attendance and there is no request for an adjournment on health grounds.

The panel also notes that there is one witness present at the hearing, who is prepared to give evidence, and that it would be inconvenient for them to return again.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Archer and has accepted that fairness to Mr Archer is of prime importance. The panel makes no judgment about Mr Archer or his case as a result of his

non-attendance and will fully explore the evidence both for and against him as is reasonably available. The panel noted from Mr Archer's written representations that he did not wish to attend as he is not "well enough and anything I wish to say has already been said above and I have nothing further to add". There was no information before the panel to suggest that Mr Archer would or wished to attend the hearing if he were in better health. The panel considered Mr Archer's waiver was unequivocal and it was clear and unqualified.

However, it considers that in light of Mr Archer's waiver of his right to appear, by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witness; that on balance, these are serious allegations and the public interest in this hearing's proceeding within a reasonable time is in favour of this hearing's continuing today.

#### Whether the hearing should be heard in private

The panel has considered whether to exercise its discretion under paragraph 11 of the Regulations and paragraph 4.57 of the Procedures to exclude the public from all or part of the hearing. The panel noted from the Notice of Proceedings response form that Mr Archer's response to question 1 was that the hearing should proceed in private due to the potential impact upon the health of himself and his family.

The panel has determined not to exercise its discretion under paragraph 11(3)(b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures for the entire hearing to proceed in private. However, the panel reserved its position on whether the public should be excluded from certain parts of the hearing only.

The panel has had regard to whether part of the hearing's proceeding by way of private session runs contrary to the public interest. The panel is required to announce its decision in public as to whether the facts have been proven and whether those facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In the event that the case continues, any decision of the Secretary of State will also be in public.

The panel has taken into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. The panel has noted that there are concerns about confidential matters relating to Mr Archer's health's being placed in the public domain.

The panel notes that any departure from the general rule has to be no greater than the extent reasonably necessary and that interference for a limited period of the hearing is

preferable to a permanent exclusion of the public. The panel has therefore, considered whether there are any steps short of excluding the public that would serve the purpose of protecting the confidentiality of matters relating to Mr Archer's health, and considers that to the extent it becomes necessary during the course of the hearing to discuss such matters, the panel can consider at that stage whether to exclude the public from that portion of the hearing only.

The panel also notes that there is information in the bundle of an intimate nature relating to Pupil A. Should it be necessary for such information to be referred to in the course of this hearing, the panel will consider at that time, whether the public should be excluded from those parts of the hearing also.

## 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 12

Section 3: National College's witness statements – pages 13 to 24

Section 4: National College's documents – pages 25 to 293

Section 5: Teacher's documents – pages 294 to 322

In addition, the panel agreed to accept the following in the course of the hearing:

Section 6: Additional documents – email correspondence relating to Pupil A deciding not attend the hearing as a witness. These were paginated 323 to 330.

The panel members confirmed that they had read all of the documents in the bundle in advance of the substantive part hearing.

### Witnesses

The panel heard oral evidence from the head teacher of Fulford School.

## E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and has reached a decision.

The panel confirmed that it had read all the documents provided in the bundle in advance of the hearing.

Mr Archer was employed as a teacher at Fulford School in York ("the School") between 1 September 2007 and 24 March 2014 as curriculum leader for social sciences. Pupil A began attending the School in 2009. In 2010 concerns were raised regarding Mr Archer's providing Pupil A with private tuition outside of School and conducting one-to one activities with her. This was subject to investigation. Mr Archer was issued with a letter containing management advice relating to tutoring pupils. Pupil A left the School in August 2011.

In December 2011, Mr Archer moved into a new property which was in close proximity to Pupil A's family home. In December 2011, Pupil A became a lodger in Mr Archer's house. Mr Archer and Pupil A became engaged in April 2013. Mr Archer was suspended from the School in September 2013 after a report was made of the relationship with Pupil A and he was dismissed in March 2014.

## **Findings of fact**

The panel's findings of fact are as follows:

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

### **Whilst employed as a teacher at Fulford School in York, you:**

#### **1. Engaged in an inappropriate relationship with Pupil A in 2010 that you:**

- a. met with her away from school including when you went with her to:
  - i. the cinema;
  - ii. the library;
  - iii. Spiritual Church;
  - iv. the pond at the University of York

The statement of agreed and disputed facts indicates that Mr Archer admits that he met up with Pupil A away from the School's premises. The panel noted that Mr Archer admits the factual particulars of allegations 1(a)(i) to 1(a)(iv); however, he did not admit the stem of allegation 1.

In her oral evidence, Witness A stated that Pupil A's mother was questioned as to whether permission had been sought for the cinema visit and the private tutoring Mr Archer was undertaking with Pupil A. Pupil A's mother indicated to the School that she

was fully aware of the private tutoring but had not agreed, in advance, to the cinema visit, although she had no objection to this.

Witness A's oral evidence was that if the School had been aware of the existence of and explicit content of the email correspondence between Mr Archer and Pupil A in or around 2010 when initial concerns relating to private tutoring and the cinema trip had been raised, the School would have acted differently.

Further in her oral evidence, Witness A stated that given the initial concerns investigated in 2010, the School would have expected Mr Archer to act reasonably and disclose the fact of his relationship with Pupil A.

Witness A was not aware of Mr Archer's tutoring any other pupil. Witness A had contact with Pupil A twice following the allegations and on both occasions, she found her to be a "gritty" young person, who appeared to "know her own mind". Witness A further stated that the transition report provided to the School by Pupil A's previous school indicated that she was lacking in confidence. In her sixth form years she did not have a wide circle of friends. Witness A could not state whether Pupil A could be described as particularly "vulnerable" in any way as no formal concerns were raised in relation to her.

The panel found the particulars of allegations 1(a)(i) to 1(a)(iv) to have been proven on the balance of probabilities.

**b. gave her a gift;**

In the statement of agreed and disputed facts Mr Archer admits that he gave Pupil A a homemade bracelet. The factual particular of allegation 1(b) is admitted.

Witness A's oral evidence was that she was aware that Mr Archer had made little origami shapes and other items such as a dream-catcher which he gave to staff including herself. However, she was not aware of whether Mr Archer gave such gifts to pupils. The School would have been concerned if the context had suggested that Mr Archer was paying one pupil particular attention. There was an expectation in the School that teachers should not give gifts to pupils if it might suggest that any particular pupil were being singled out for special attention. Witness A further stated in oral evidence that the School would not be concerned if gifts, such as sweets, were given to encourage performance.

The panel noted from the documentation in the bundle supplied by Pupil A on behalf of Mr Archer that other pupils received gifts from Mr Archer.

The panel found the particular of allegation 1(b) proven on the balance of probabilities.

**c. sent inappropriate e-mails to her including:**

- i. calling her "sweetie";
- ii. telling her you loved her;
- iii. discussion of a sexual nature;

- iv. discussion of having sexual intercourse with her;**
- v. one or more romantic poems you had written for her;**
- vi. one or more poems of a sexual nature you had written for her.**

The panel noted from the agreed and disputed facts that Mr Archer admits sending inappropriate emails to Pupil A that contained the details referred to at the particulars of allegation 1(c)(i) to 1(c)(vi).

The presenting officer submitted that a factual issue for the panel to determine is whether such messages were an elaborate ploy by Mr Archer to encourage his then wife to end their marriage, as put forward by Mr Archer in his written representations.

Witness A's oral evidence was that Mr Archer was aware that it was the School's policy that teaching staff should only ever use the School's email to email students. If the School had been aware at the time that Mr Archer had used personal email to contact Pupil A that would have been grounds for a disciplinary action. The panel noted from the record of the interview with Mr Archer on 20 October 2010 that Mr Archer is recorded as stating that he "only used school email, he had followed advice on this". Witness A's oral evidence was that the School was not aware of any emails such as this in 2010. Witness A considers that Mr Archer lied when he had said to the School in 2010 that he had only used his school email to contact Pupil A and she considered the content of the emails to be wholly inappropriate.

The panel considered that in addition to the particulars referred to at allegations 1(c)(i) to 1(c)(vi), the overall tone and content of the sexually explicit emails that Mr Archer admits sending Pupil A were wholly inappropriate and unprofessional. The panel noted further comments from an email Mr Archer sent to Pupil A on 16 August 2010, that "I just want to be with you for always..."

The panel considers that the particulars of allegation 1(c)(i) to 1(c)(vi) are therefore found proven.

- d. Sent inappropriate direct messages to her including:**
  - i. telling her you loved her;**
  - ii. sending her kisses ("xxx")**

From the statement of agreed and disputed facts it is clear that Mr Archer admits sending inappropriate messages to Pupil A which contain the detail referred to in allegations 1(d)(i) to 1(d)(ii).

The panel noted that the presenting officer did not draw any distinction in his submissions relating to allegation 1(c) and 1(d) as to what information included in the bundle amounted to a "direct message" or an email, therefore the panel was confused as to whether a direct message was the same thing as an email. However, the panel noted

that the emails included in the bundle sent by Mr Archer to Pupil A included several references to his “loving” Pupil A and including “xxx” symbols which the panel considered inappropriate.

The panel therefore found this allegation proven on the balance of probabilities.

**e. engaged in sexual activity with her.**

In the statement of agreed and disputed facts, Mr Archer denies engaging in sexual activity with Pupil A until some time after she had left the School.

In his closing submissions the presenting officer drew the panel’s attention to the content of the poetry that Mr Archer sent to Pupil A which included “lying under the tree” and “caressing”. The presenting officer submitted that symbolism within poetry is often used to describe real events and it is the National College’s case that such activity took place, and this was sexual.

Regardless of the poetry, the panel noted the sexually explicit references in Mr Archer’s emails to Pupil A which were inappropriate.

The presenting officer submitted that Mr Archer and Pupil A may have argued that these emails are simply figurative and not reflective of real events. However, the repetitive nature of the explicit sexual references in Mr Archer’s emails caused the panel concern.

The panel took into account written correspondence from Pupil A to the National College in which she states that “although sexual content was discussed via email....the motivation was only to catch [his then wife] reading Mr Archer’s private email”. The panel rejected Mr Archer’s explanation that he had invented the email correspondence and poetry in order to expedite the end of his marriage to his then wife. The content of the emails was simply inconsistent with this explanation. If Mr Archer had wanted to deceive his wife, the panel considered there was no need to involve Pupil A in any way.

The panel considered that the frequency, tone and explicit content of these emails and reference to past events indicated that sexual activity between Mr Archer and Pupil A had taken place.

The panel noted that such emails containing sexual references were sent in 2010, on or around the time that Mr Archer was subject to initial concern regarding his tutoring and cinema trip with Pupil A.

The panel was satisfied that on the balance of probabilities sexual activity had taken place between Mr Archer and Pupil A in 2010 and therefore particular 1(e) is found proven.

**Stem of allegation 1**

The presenting officer drew the panel’s attention to an email sent by Mr Archer to Pupil A on 31 July 2010 in which Mr Archer stated “I love you so much...I really hope that we can be with each other soon xxx less than a year xxx”.

The presenting officer also invited the panel to place no weight on the fact that Mr Archer and Pupil A are now married.

It is the National College's position that the romantic poetry written for Pupil A and the sexual content of the emails sent by Mr Archer to Pupil A was inappropriate communication for a pupil and teacher. The presenting officer submitted that the written correspondence from Pupil A sent to the National College in which Pupil A states that the relationship between herself and Mr Archer was not "entirely limited to the 'teacher' 'pupil' relationship", was particularly telling.

The panel considered that Mr Archer's tutoring relationship with Pupil A could arguably have been within the bounds of a normal teacher pupil relationship particularly in relation to the particulars of allegations 1(a)(i), (ii) and (iii), as the School had accepted at the time. However, the content of the email communications that Mr Archer sent to Pupil A in 2010 caused the panel no doubt that Mr Archer's conduct was inappropriate and was part of an inappropriate relationship that he formed with Pupil A whilst she was a pupil of the School at the time. Even if the panel considered that Mr Archer's explanation was plausible, it was deeply inappropriate to involve any pupil in this kind of correspondence.

Therefore the panel found the stem of allegation 1 proven.

##### **5. Your conduct at 1(a) and/or 1(b) and/or 1(c) and/or 1(d) and/or 2 was sexually motivated.**

Mr Archer denies this allegation in the statement of agreed and disputed facts. He denies sexual motivation and avers that his motivation was instead to expedite his separation and divorce from his then wife.

The panel was advised by the legal advisor that it may find it helpful to ask itself whether on the balance of probabilities reasonable persons would think the words/actions found proven could be sexual. If so, the panel would then need to go on to ask itself a second question: whether, in all the circumstances of the conduct in the case, it was more likely than not that Mr Archer's purpose of such words/actions was sexual.

The presenting officer submitted that it does not matter whether Mr Archer's motivation was to speed up the divorce process. If there was some sexual intention behind his communications then this establishes that sexual motivation is evident.

The presenting officer submitted that if Mr Archer wished to expedite the divorce proceedings, there was no need to send messages to Pupil A. The panel considered that if this had been Mr Archer's intention there were more obvious approaches that he could have adopted without involving Pupil A. The panel considers Mr Archer's explanation is not plausible.

The panel concluded that the factual particulars of allegation 1(a)(i) to (iv) are evidence of a developing relationship between Mr Archer and Pupil A, but did not satisfy the objective and subjective test relating to sexual motivation.

In addition, the panel considered there was not sufficient evidence to suggest that Mr Archer's giving Pupil A a gift, namely a bracelet, was evidence that Mr Archer was singling Pupil A out for "special treatment" and again did not consider this would satisfy the objective and subjective test relating to sexual motivation.

The panel considered that the emails sent by Mr Archer which contained numerous explicit sexual references (as referred to under allegation 1(c) and 1(d)) were sexually motivated and would satisfy both the objective and subjective test. A reasonable person would consider that the words or intention behind such emails was sexual and the panel considered that Mr Archer subjectively was aware that his intention was sexual.

As the panel did not find allegation 2 was proven, it was not necessary to consider this in the context of allegation 5.

The panel therefore find that sexual motivation is proven in relation to allegations 1(c) and 1(d) and accordingly allegation 5 is found proven.

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

**Whilst employed as a teacher at Fulford School in York, you:**

**1. Engaged in an inappropriate relationship with Pupil A in 2010 that you:**

**v. lie together under a tree**

The panel noted from the statement of agreed and disputed facts that Mr Archer does not admit this allegation. It is Mr Archer's position that he described lying under a tree in a poem/communication between himself and Pupil A but it did not in fact happen.

The presenting officer invited the panel to consider the information included in the bundle from Mr Archer's ex-wife which referred to the poetry he had sent to Pupil A and this is evidence that the "lying together under a tree" had taken place. The panel noted from the notes of the investigatory interview with Mr Archer's ex-wife that she stated there was an email which spoke of Mr Archer and Pupil A's meeting up after the gym and "lying under a tree by the river". When questioned by his ex-wife as to where he had been that day, he admitted that he had bumped into Pupil A and "gone for a walk by the river".

The panel noted references in poetry sent by Mr Archer to Pupil A in August 2010 "I so much want to see your special smile for me as we once again lay under a tree xxx". In another poem, Mr Archer sent to Pupil A in August 2010 he stated "Let us sit peacefully under our tree".

The presenting officer invited the panel to consider the frequent references to a meeting involving a tree is suggestive of Mr Archer and Pupil A lying together under a tree.

In her written correspondence to the National College, Pupil A also denied that she and Mr Archer lay together under a tree.

Although the panel was concerned by the frequent references by Mr Archer in his poetry communications with Pupil A with regard to lying under a tree, the panel was not satisfied on the balance of probabilities that there was sufficient evidence that this allegation is proven.

Therefore the panel found this allegation not proven.

**2. You continued to meet with Pupil A outside of school contrary to a direct management instruction not to do so issued in or around October 2010.**

This allegation is denied by Mr Archer. The statement of agreed and disputed facts indicates that he denies meeting Pupil A outside of school until after August 2011 by which time Pupil A was no longer a pupil of the School. The panel inferred from this response that Mr Archer denies that he engaged in conduct contrary to a direct management instruction not to do so issued in or around October 2010.

In his opening remarks, the presenting officer submitted that this allegation relates to a time period prior to when Pupil A left the School on or around August 2011.

The presenting officer asked the panel to consider whether it was more likely or not that Mr Archer and Pupil A “cut off” all contact until after she left the School in August 2011.

When questioned by the panel, Witness A referred the panel to a letter from herself to Mr Archer dated 27 October 2010 which included recommendations for any future private tutoring arrangements. Witness A considered that Mr Archer would have been clear that he should not also meet with Pupil A outside of the School in other ways.

The panel did not consider that this letter amounted to a “a direct management instruction” not to meet with Pupil A outside of the School. Furthermore, the panel was not presented with any evidence that Mr Archer and Pupil A had met outside of the School during her remaining time as a pupil. Witness A advised the panel that no further concerns were raised until 2013. Taking all of the above into account, the panel did not consider that the evidence available was sufficient to satisfy it that this allegation is proven on the balance of probabilities.

**3. You failed to disclose to your employer that you had:**

- a. purchased a property in close proximity to Pupil A's home in 2011;
- b. taken Pupil A as a lodger in your home in 2012;
- c. entered into a relationship with Pupil A in 2012;
- d. became engaged to Pupil A in or around 2013.

The panel considered that the stem of allegation 3 makes an inference that by “failing to disclose” Mr Archer was under an obligation to disclose the information set out at particulars 3(a) to 3(d). The panel noted from the statement of agreed and disputed facts that Mr Archer agrees the particulars of allegation 3(a) to 3(d) but he does not admit the stem of the allegation.

In the statement of agreed and disputed facts, Mr Archer denies that he failed to disclose this information to the School as he did not perceive anything inappropriate to be taking place. The panel noted that Mr Archer bought his house after Pupil A had left the School.

Mr Archer further states in the statement of agreed and disputed facts that he had been considering properties in other areas, prior to purchasing the property in question and he would have informed the school at the next data collection period in any event. Witness A’s oral evidence was that a data collection undertaken by the School was simply a process by which the School sought up-to-date contact information for a teacher. This was separate from the type of disclosure the School or Witness A would have expected Mr Archer to make relating to his decision to take Pupil A as a lodger and the relationship with Pupil A.

Mr Archer argues that he informed the School of his new address and that he did not, therefore, fail to inform the School that he had purchased a property in close proximity to Pupil A’s home.

The presenting officer submitted that the National College’s case is that the inappropriate relationship with Pupil A started whilst she was still a pupil of the School. The panel is not being asked to determine whether it is appropriate for a teacher to have a lodger or not.

The panel noted from Witness A’s witness statement there is nothing in the School’s current Code of Conduct or the version that was in place in 2010, that places teaching staff under an obligation to disclose their living arrangements to the School. However, it was Witness A’s view that staff should act reasonably and it would have been reasonable for Mr Archer to consider that he should have disclosed his taking Pupil A as a lodger, given the original safeguarding concern investigated in 2010. Witness A confirmed that the School had taken legal advice in relation to this matter and it had been advised that this was a reasonable expectation.

Witness A considered that Mr Archer would have been aware that the School would have wanted to know about this relationship as his conduct towards Pupil A had been previously investigated in 2010.

When questioned by the panel, Witness A stated that if Mr Archer had disclosed that Pupil A was his lodger, from a safeguarding perspective she would have been concerned that the relationship had started whilst Pupil A was at the School.

Whilst the panel considered that, given the history of this matter, it would have been sensible for Mr Archer to have disclosed the fact of his relationship with Pupil A, the panel considered that Mr Archer was not under any specific requirement to notify the School that he had purchased a property near to Pupil A’s home, taken a lodger, entered

into a relationship with Pupil A after she left the School or become engaged to Pupil A. Accordingly, the panel found that this allegation is not proven.

**4. Your conduct at (3) was dishonest in that you were attempting to conceal your relationship with a former-pupil who had recently left the school.**

As the panel did not find the conduct set out in allegation 3 proven, it was not necessary for it to go on to consider whether allegation 4 was proven. Accordingly this allegation is found not proven.

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

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as “the Advice”.

The panel is satisfied that the conduct of Mr Archer in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Archer is in breach of the following standards:

A teacher is expected to demonstrate consistently high standards of personal and professional conduct....

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher’s professional position;
  - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions;
- 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.

Sending emails to Pupil A containing sexually explicit references whilst she was a pupil of the School and engaging in sexual activity with her at the same time, fell significantly short of the standards of behaviour expected of a teacher.

The panel has also considered whether Mr Archer's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that behaviour associated with an offence of sexual activity could potentially be relevant. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct albeit that Mr Archer has not been convicted of an offence relating to sexual activity. The panel recognised that Pupil A was aged over 16 at the relevant time in 2010 and yet his conduct displayed behaviours associated with a relevant offence involving sexual activity, which the panel considered an abuse of the position of trust. Accordingly, the panel is satisfied that Mr Archer is guilty of unacceptable professional conduct.

The panel has taken 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 has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct are serious and the conduct displayed would be likely to have a negative impact on Mr Archer's status as a teacher, potentially damaging the public perception. The public would be extremely concerned by the tone and content of Mr Archer's emails and poetry and the fact that he formed a sexual relationship with Pupil A whilst she was a pupil.

The panel therefore finds that Mr Archer's actions also constitute conduct that may bring the profession into disrepute.

Having found the facts of particulars 1(a)(i)to (iv), 1(b), 1(c)(i) to (vi), 1(d)(i) to (ii), 1(e) and 5 proven, the panel further finds that Mr Archer's conduct amounts 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/or 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 Advice and having done so has found a number of them 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.

In light of the panel's findings against Mr Archer, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of an inappropriate relationship with Pupil A.

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

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

Notwithstanding the 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 Archer.

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Archer. 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 proven. In the list of such behaviours, those that are relevant in this case are:

- 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;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- sexual misconduct, eg 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;

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order's being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. In light of the panel's findings, there was no evidence that Mr Archer's actions were not deliberate. There was no evidence to suggest that Mr

Archer was acting under duress, and in fact the panel found Mr Archer's actions to be calculated and motivated. The presenting officer asked the panel to take into account that Mr Archer denied his relationship with Pupil A during the School's disciplinary process.

The panel noted both the historic information relating to Mr Archer's health in 2014 and his subsequent references to his health in his more recent written representations included in the bundle and did not consider that this would have impacted on his behaviour in carrying out the facts which have been found proven in this case.

The presenting officer confirmed there are no previous disciplinary orders relating to Mr Archer and the panel has not seen or heard any evidence that shows Mr Archer was previously subject to disciplinary proceedings other than the School's investigations which took place in 2010 and 2013.

The presenting officer submitted that the character evidence supplied by Pupil A to the National College on behalf of Mr Archer contains opinion evidence which is not relevant to the panel's considerations as they attempt to determine issues that the panel should determine (relating to facts and potential sanction). The panel noted that each of these character statements is unsigned and contains similar language and spelling errors. The panel is concerned over how such character evidence has been obtained and whether Mr Archer or Pupil A had a primary role in drafting the character statements. The panel decided it would place less weight on such representations as a result.

Witness A's oral evidence was that Mr Archer was reasonably well liked by staff. His students achieved good results in A-level. She said there was no evidence that he disliked teaching and stated he was engaged on a daily basis. However, the panel noted from his own written representations that he has "absolutely no desire to teach and disliked teaching that age-range" (16-18 year olds) as it represented "absolutely no challenge". Witness A stated that Mr Archer worked hard to assist pupils to perform well. If examination results were not as expected and if students had difficulties he would take steps to provide additional resources to them. Witness A also stated in oral evidence that Mr Archer had a number of sickness absences from School for minor reasons and this was monitored by the School.

Taking all of the above into account, the panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Archer. The inappropriate nature of Mr Archer's emails which he sent to Pupil A, coupled with the sexual activity to which they refer, whilst she was a pupil of the School, were the significant factors in forming that opinion. Accordingly, 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 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 proven, would militate against the recommendation of a review period. One of these behaviours includes serious sexual misconduct, eg 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 their professional position to influence or exploit a person or persons. The panel has found that Mr Archer was responsible for engaging with sexual activity with Pupil A which had the potential to result in harm to Pupil A and that Mr Archer used his professional position to influence Pupil A. The panel accordingly finds that there has been serious sexual misconduct in this case.

Despite the lengthy content of his written representations to the National College, the panel did not consider that Mr Archer demonstrated that he had developed any insight over the inappropriateness of his actions. In particular, the panel noted this statement: "All that I can say with reference to my relationship [with Pupil A] prior to October 2010 is that she offered me what I did not realise was much needed emotional support and for this I was much indebted". Even though Mr Archer now concedes that "this could be perceived to be a blurring of boundaries". Mr Archer considered that "in all honesty" he thought that his ability to maintain his objectivity would not cause any blurring as he did not treat Pupil A any differently from any other student when he adopted the "role" of her teacher. It was clear to the panel that Mr Archer did not recognise that he had treated Pupil A differently from other pupils and that this was outside the boundaries of a normal pupil teacher relationship. Both his sexual activity with and emotional unburdening on Pupil A were a serious departure from the personal and professional standards of conduct expected of a teacher.

The panel therefore considered that its 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 recommendations made by the panel both in respect of sanction and review period.

I have noted where the panel has found the allegations proven, and where the allegations have been found unproven I have set these from my mind.

Of the allegations found proven, the panel has found Mr Archer guilty of unacceptable professional conduct and conduct that is likely to bring the profession into disrepute.

I have noted that the panel is satisfied that Mr Archer's conduct in relation to the facts found proven, involved breaches of the Teachers' Standards, in particular:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;
  - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- 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.

I am satisfied that Mr Archer's conduct fell significantly short of the standards expected of the profession.

I note the panel has considered the particular public interest considerations set out in the Advice and, having done so, has found a number of them 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.

I have read the guidance that is published by the Secretary of State. I have taken into account the public interest as well as the interests of Mr Archer.

I note there was no evidence that Mr Archer's actions were not deliberate. I also note that the panel found there was no evidence to suggest that Mr Archer was acting under duress, and in fact the panel found Mr Archer's actions to be calculated and motivated. Mr Archer denied his relationship with Pupil A during the School's disciplinary process.

I agree with the panel that prohibition is both proportionate and appropriate.

The inappropriate nature of Mr Archer's emails which he sent to Pupil A, coupled with the sexual activity to which they refer, whilst she was a pupil of the School, were the significant factors in this case.

I now turn to the matter of a review period.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include serious sexual

misconduct. Mr Archer was responsible for engaging with sexual activity with Pupil A which had the potential to result in harm to Pupil A. Mr Archer used his professional position to influence Pupil A. I agree with the panel that there has been serious sexual misconduct in this case.

Mr Archer's sexual activity with Pupil A, and emotional unburdening on Pupil A, were a serious departure from the personal and professional standards of conduct expected of a teacher.

For the reasons set out above, I agree with the panel that there should be no review period allowed.

**This means that Mr David Archer 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 Archer 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 Archer 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 "J. Millions".

**Decision maker: Jayne Millions**

**Date: 19 September 2016**

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