



National College for  
Teaching & Leadership

# **Mr Joseph David Harvey: Professional conduct panel outcome**

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

**October 2016**

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

**Teacher:** Mr Joseph David Harvey

**Teacher ref number:** 0960895

**Teacher date of birth:** 22 March 1985

**NCTL case reference:** 13121

**Date of determination:** 12 October 2016

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 10 October 2016 to 12 October 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Joseph David Harvey.

The panel members were Mr Tony Woodward (former teacher panellist – in the chair), Mr Martin Greenslade (lay panellist) and Ms Julia Bell (teacher panellist).

The legal adviser to the panel was Mr Parminder Benning of Eversheds LLP.

The presenting officer for the National College was Ms Laura Hackney of Browne Jacobson LLP.

Mr Joseph David Harvey 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 13 July 2016.

It was alleged that Mr Joseph David Harvey was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher between 2010 and 2012 and upon leaving the school that he taught at during that period he:

1. Engaged in inappropriate physical contact with Pupil A in that he:
  - a. Kissed her or attempted to do so;
  - b. Hugged and/or placed his arms around her;
2. Engaged in inappropriate communications and/or conversations with Pupil A including;
  - a. Gave Pupil A his personal email address;
  - b. Exchanging messages with her on BlackBerry messenger and/or similar messaging facility;
  - c. Engaging in correspondence with her via Facebook;
  - d. Engaging in sexualised conversations with her;
  - e. Stating to her that he “loved her”
  - f. Asking her to come to his house as;
    - i. He had alcohol and;
    - g. ii. Offering to pay for her taxi
3. Acted inappropriately with Pupil A in that he:
  - a. Purchased alcohol for Pupil A whilst she was under the legal age limit;
  - b. Allowed Pupil A into his flat on one or more occasions;
  - c. Allowed Pupil A into his bedroom whilst he was getting changed;
4. Engaged in inappropriate communications and/or conversations with Pupil B including;
  - a. Inviting her to become a friend on Facebook;

- b. Asking her to meet with him at a public house;
  - c. Asking her to come to his house
5. Acted inappropriately with Pupil B in that he;
  - a. Offered to buy her a drink;
  - b. Invited her to his home
6. Had one or more students and/or ex-students, as friend on his Facebook account.
7. In doing 1, 2, 3, 4 and/or 5 above his conduct was sexually motivated.
8. In initial interviews with the Police he provided false information regarding the details of his relationship with Pupil A;
9. In so doing at 8 above, his conduct was dishonest in that he deliberately denied facts he knew to be true.

The above allegations are not admitted.

## **C. Preliminary applications**

### **Proceeding in the Absence**

As Mr Harvey was not in attendance, the panel has considered whether this hearing should continue in his absence.

The panel noted that the National College served the Notice of Proceedings by post on 13 July 2016 (pages 7 to 10 of the hearing bundle). Mr Harvey responded to the Notice of Proceedings on 3 August 2016 (pages 11 to 14 of the hearing bundle) where he indicated that he did not propose to attend the hearing.

Having considered the factual evidence before it, 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 the teacher.

The panel understands that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one. The panel also understand the requirement that it be only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place.

In making its decision, the panel has noted that the teacher 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. As noted above, Mr Harvey has had more than 8 weeks' notice of the hearing date and in fact responded to the Notice of Proceedings on 3 August 2016 indicating that he did not propose to attend the hearing nor did he intend to be represented at the hearing (page 11 of the hearing bundle). It is apparent to the panel that Mr Harvey is aware of these proceedings. Furthermore, there is no indication that an adjournment might result in Mr Harvey attending the hearing, and the medical evidence dated 9 February 2016 and 3 August 2016 indicates that the hearing should proceed in earnest without further delay (pages 176 to 177 of the hearing bundle). The panel therefore consider that Mr Harvey 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 extent of the disadvantage to the teacher in not being able to give his account of events, having regard to the nature of the evidence against him. However, the panel has the benefit of representations made by the teacher and is able to ascertain the lines of defence. The panel has noted that a number of witnesses relied upon are to be called to give evidence and the panel can test that evidence in questioning those witnesses, considering such points as are favourable to the teacher, as are reasonably available on the evidence. The panel has not identified any significant gaps in the documentary evidence provided to it and should such gaps arise during the course of the hearing, the panel may take such gaps into consideration in considering whether the hearing should be adjourned for such documents to become available and in considering whether the presenting officer has discharged the burden of proof. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel also noted that there are a number of witnesses present at the hearing, who are prepared to give evidence, and that it would be inconvenient and distressing for them to return again.

The panel has had regard to the seriousness of this case, and the potential consequences for the teacher and has accepted that fairness to the teacher is of prime importance. Furthermore, the panel note the public interest and the interest of witnesses and the teacher in this hearing proceeding within a reasonable time. The panel

considered that in light of the teacher'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 witnesses; that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing.

### **Excluding the Public**

The panel has considered whether to exercise its discretion under paragraph 11 of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and paragraph 4.57 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession (the "Procedures") to exclude the public from all or part of the hearing. This follows a request by the teacher that the entire hearing should be in private.

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 that the public should be excluded from the entire hearing.

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 the possible impact upon those members of the teacher's family who work at the school with such matters being placed in the public domain. The panel has balanced the reasons why the teacher has requested that the public be excluded against the competing reasons for which a public hearing is required.

The panel noted 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 be appropriate. Accordingly, the panel has decided that all references to the school should be anonymised. The panel consider this would serve the purpose of addressing the concerns raised by the teacher.

### **Admission of Documents**

The presenting officer made an application to admit into the evidence the full transcript of the DVD recorded police interview with Pupil B.

The presenting officer stated that the National College had only recently received the document from the police. The document provides probative evidence that will assist the panel in reaching its decision when determining the allegations.

The teacher had no objections to the inclusion of this document.

The panel had regard to paragraph 4.18 of the Procedures which provides the “panel may admit any evidence, where it is fair to do so, which may reasonably be considered relevant to the case”. In view of the nature and seriousness of the allegations, the panel held that the document was relevant and would assist in determining the allegations raised. Furthermore, the panel considered the need for fairness. The panel is comprised of experienced members, who will accordingly afford the document the appropriate weight in due course.

### **Evidence delivered through Video-link**

The panel considered an application by the presenting officer that Pupil A and Pupil B deliver their evidence via video-link.

The panel considered paragraph 4.71 of the Procedures, which provides that they will treat any person as a vulnerable witness where their quality of evidence is likely to be adversely affected at a hearing. The panel considered the submissions of the presenting officer and noted that there is no evidence that the welfare of Pupil A and Pupil B will be prejudiced by their giving evidence and the panel is content for them to give evidence. The panel does not consider either Pupil A or Pupil B to be vulnerable witnesses.

The panel went onto carefully consider whether Pupil A and Pupil B should be permitted to give evidence via video link. The Procedures do not specifically provide for the use of video-link save in respect of it being a measure that may be used to safeguard the interests of a child or vulnerable witness; the general position being that all witnesses attend in person. However, the panel noted that pursuant to paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case. The panel therefore considered it does have a discretion to decide whether it will allow the evidence of Pupil A and B to be adduced by video link.

The panel noted that the general position is that all witnesses attend in person to give their evidence. The panel feel that they have no other option but to accept the proposition that the witnesses deliver their evidence via video-link because and only because this would be preferable to not hearing the witnesses at all. The panel considered the extent to which the teacher would be disadvantaged by the witnesses not attending in person balanced against its duty in the public interest to investigate the allegations in so far as it is possible so to do. In particular, the panel considered whether there was disadvantage in losing the subtleties of tone and body language, but as they are an experienced panel they would attach appropriate weight to the evidence adduced.

The panel considered it was in the interest of fairness and the public interest to hear the evidence of Pupil A and Pupil B and therefore reluctantly consented to the application that they admit the evidence by video-link. Having said that, the panel are discontent with this position and would like it noted that these are formal proceedings, and should be treated as such, and would stress the importance of ensuring all parties and witnesses

attend in person, this being the standard position. The panel acknowledges that there may be legitimate reasons as to why parties and witnesses may not be able to attend in person; in such circumstances, an application of this nature should be made before the hearing, with such issues being addressed at a case management hearing.

### **Witnesses failure to attend**

The panel were informed that Pupil A and Pupil B were unable to attend the hearing to provide evidence. The presenting officer made a number of submissions concerning the medical health of those witnesses, explaining the reasons why they were unable to attend the hearing today.

The panel had regard to paragraph 4.49 of the Procedures which provides that “the procedure at the panel hearing will be determined by the chair” and also to paragraph 4.68 which states that “[t]he panel may require any person to attend and give evidence ... at the hearing”. The panel therefore considered it does have a discretion to direct that Pupil A and Pupil B be summoned to give evidence.

The panel considered there is a genuine public interest in this case proceeding within a reasonable time and are mindful that the fairness to the teacher is of prime importance.

The panel has had regard to the extent of the disadvantage in not being able to hear directly the witnesses’ account of events. However, the panel has the benefit of representations made by the National College and the evidence in the hearing bundle and is able to ascertain the lines of arguments. Furthermore, there is no indication that an adjournment to summons the witnesses might result in their presence at the hearing, and the medical evidence indicates that the hearing should proceed in earnest without further delay.

The panel has had regard to the seriousness of this case, and the potential consequences for the teacher and has accepted that fairness to the teacher is of prime importance. Furthermore, the panel note the public interest and the interest of witnesses and the teacher in this hearing proceeding within a reasonable time. The panel considered that, on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing.

## **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 2 to 5

Section 2: Notice of Proceedings and Response – pages 7 to 14

Section 3: NCTL witness statements – pages 16 to 22

Section 4: NCTL documents – pages 24 to 164

Section 5: Teacher documents – pages 166 to 175

In addition, the panel agreed to exercise its discretion afforded by the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession and admit the following documents into the evidence:

Section 6: Letters – pages 176 to 177

Section 7: Transcript of Police interview with Pupil B – pages 178 to 198

Section 8: Email correspondence from the presenting officer – page 199

The panel members confirmed that they had read all of the documents.

## **Witnesses**

No oral evidence was heard during the hearing.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Mr Harvey was employed as a teacher between September 2010 and August 2012.

On 17 August 2012, Pupil A went for a drink with Mr Harvey. Later that month, Pupil A met with Mr Harvey again. She attended his house where he answered the door with no top on and he asked her to help him pick an outfit. They went to his bedroom and Mr Harvey tried to kiss Pupil A, but she pulled away and left the house. Mr Harvey sent her a text and asked her to come back to his home.

In October 2012, Pupil A's mother contacted [redacted] and asked to be called back and on 17 October, during a call with the school, she informed them that her daughter had had a drink with Mr Harvey and had gone back to his flat in order to charge her phone.

On 4 March 2013, Pupil B informed her mother that she had accepted a friend request from Mr Harvey on Facebook. Mr Harvey had sent her messages asking whether she wanted to meet up in a public house. Pupil B replied that she had no money and that she was studying. Mr Harvey responded that he would buy her drinks and also stated that it

would be nice to meet up with her and watch a film. Pupil B's mother immediately sent an email to the school.

On or around the 6 March 2013, a member of the school spoke to Pupil A who confirmed what she had told her mother, but also said that Mr Harvey had tried to kiss her and had tried to contact her but she had cut all communications with him. In addition, she said that Mr Harvey had also contacted one of her friends, Pupil B.

On 8 March 2013, the deputy principal, contacted the child protection officer and the reports were passed onto the LADO and the police. Mr Harvey was arrested later that day at his home address.

On 29 May 2014, following a criminal trial, Mr Harvey was acquitted of sexual assault.

## **Findings of fact**

Our findings of fact are as follows:

We have found the following particulars of the allegation(s) against you proven, for these reasons:

### **1. Engaged in inappropriate physical contact with Pupil A in that you:**

#### **a. Kissed her or attempted to do so;**

Mr Harvey denied kissing or attempting to kiss Pupil A (pages 11 and 168 of the hearing bundle).

The panel considered the written statement of Pupil A and the transcript from her police interview supporting her version of events. During that interview, she informed the police that "I was sitting on his bed ... he lent in to kiss me" (page 117 of the hearing bundle). In the same interview, Pupil A stated that when she was leaving "he kissed me as I left, on my cheek" (page 118 of the hearing bundle). Further details of the incident are outlined at pages 126 to 127 of the hearing bundle. This account was consistent with the handwritten note of Pupil A which was taken around 6 March 2013 where she stated "he was trying to kiss [and] cuddle me" (page 137 of the hearing bundle). Pupil A was consistent with her evidence throughout. The panel therefore found the evidence of Pupil A to be credible, cogent, honest and consistent. Furthermore, the evidence did not appear to be exaggerated in any way.

The panel considered all of the evidence, and preferred the evidence of Pupil A and on the balance of probabilities it believed that Mr Harvey was more likely than not to have kissed or attempted to kiss Pupil A. The panel considers that kissing or attempting to kiss a pupil to be highly inappropriate physical contact. Therefore, the panel finds that Mr Harvey's actions amount to inappropriate physical contact.

#### **b. Hugged and/or placed your arms around her**

Mr Harvey admitted to hugging Pupil A stating that “I do accept that ... I greeted her with a hug” (page 168 of the hearing bundle).

The panel considered the written statement of Pupil A (page 137) and the transcript from her police interview supporting her version of events. During that interview, she informed the police that “I was standing at the door, and he put his arm around me ... And he kissed me as I left, on my cheek” (page 118 of the hearing bundle). Pupil A was consistent with her evidence throughout and, as stated above, the panel found the evidence of Pupil A to be credible, cogent, honest and consistent.

Having considered all the evidence, the panel finds that Mr Harvey did hug and/or place his arms around Pupil A, and having regard to appropriate teacher/pupil relationships, the panel concludes that such actions amounted to inappropriate physical contact and consequently find this allegation to be proved.

## **2. Engaged in inappropriate communications and/or conversations with Pupil A including;**

### **a. Giving Pupil A your personal email address;**

The facts of this allegation have been admitted by Mr Harvey where he accepts that “I signed multiple students (sic) leaving books and offered my email address”. However, he denied that this was inappropriate, arguing that he “spoke with my head of department who confirmed that this would be ok” (page 169 of the hearing bundle).

The facts of the allegation were verified by the evidence of Pupil A. The panel refers to the documentary evidence pertaining to the police interview of Pupil A on 11 March 2013, where she confirmed that Mr Harvey provided her with his email address (pages 99 and 106 of the hearing bundle). This account was consistent with the handwritten note of Pupil A which was taken around 6 March 2013 where she stated “he was trying to kiss [and] cuddle me” (page 137 of the hearing bundle).

The panel also considered the written evidence of the Head of Drama at the school, who stated, “[i]n Mr Harvey’s response to the NCTL he says that I said that it was fine for him to give his personal email address, I do not remember ever having a conversation of this sort, and would not have said that it was fine to do so” (page 21 of the hearing bundle). The panel noted that the school’s child protection policy did not include a section on private communications with students (page 164 of the hearing bundle). Having said that, as a teacher, the dangers of providing a pupil with a personal email address should have been plainly evident to Mr Harvey. Having regard to appropriate teacher/pupil relationships, the panel concluded that these actions were inappropriate and consequently find the allegations to be proved.

### **b. Exchanging messages with her on BlackBerry messenger and/or similar messaging facility;**

**c. Engaging in correspondence with her via Facebook;**

These allegations have been admitted by Mr Harvey in his response to the allegations (pages 146 and 167 to 170 of the hearing bundle) and verified by the evidence of Pupil A (pages 106 to 107 and 137 of the hearing bundle). Having regard to appropriate teacher/pupil relationships, the panel concluded that these actions were inappropriate and consequently find the allegations to be proved.

**d. Engaging in sexualised conversations with her;**

This allegation has been denied by Mr Harvey in his response to the allegations (pages 167 to 170 of the hearing bundle).

The panel considered the written statement of Pupil A (page 100 of the hearing bundle) and the transcript of her interview with the police (page 114 of the hearing bundle) where she detailed the nature of the sexualised conversations. This account was consistent with Pupil A's handwritten note of events which was taken around 6 March 2013 where she stated "the messages continued and became sexual" (page 137 of the hearing bundle).

The panel also considered the judicial summing up of the criminal case against Mr Harvey where these facts were relayed to the jury (pages 68 to 69 of the hearing bundle). The panel is aware that the outcome of that hearing is not determinative of the facts before the panel members and that they are required to turn their own independent mind to the issues before them, that the evidence before that hearing may be taken into account by the panel when assessing whether the facts of this case have been found proven. The panel was minded to attach weight to the evidence within the judicial summing up, particularly as such evidence was not challenged by either party during that hearing.

The panel noted that the evidence presented did not include the messages themselves. However, in her interview with the police Pupil A explained why she no longer has access to those messages, as Mr Harvey "blocked me" therefore deleting all messages (page 118 of the hearing bundle).

The panel considered all the evidence, and, on the balance of probabilities, it believed that this event is more likely than not to have occurred. Having regard to appropriate teacher/pupil relationships, the panel concluded that these actions were inappropriate and consequently finds the allegation to be proved.

**f. Asking her to come to your house as;**

**i. You had alcohol and;**

**ii. You offered to pay for her taxi**

These allegations are denied by Mr Harvey (page 11 of the hearing bundle).

The panel considered the record of interview with Pupil A (page 99 of the hearing bundle) and the transcript of the police interview with Pupil A on 11 March 2013 (pages 107 to 109 of the hearing bundle) where Pupil A outlined the details of the incident leading to Mr Harvey asking her to come to his house as he had alcohol and also offering to pay for her taxi to his home. Pupil A was consistent with her evidence throughout and, as stated above, the panel found the evidence of Pupil A to be credible.

Having considered all the evidence, the panel finds, on the balance of probabilities, that these events did occur and the panel conclude that these actions were highly inappropriate and consequently find the allegations to be proved.

### **3. Acted inappropriately with Pupil A in that you:**

#### **a. Purchased alcohol for Pupil A whilst she was under the legal age limit;**

This allegation is admitted by Mr Harvey (pages 168 to 169 of the hearing bundle) and verified by the evidence of Pupil A (pages 100 and 109 to 111 of the hearing bundle). Having regard to the age of Pupil A at the time of the event, and given that Mr Harvey was her teacher, the panel concluded that these actions were inappropriate and consequently find the allegation to be proved.

#### **b. Allowed Pupil A into your flat on one or more occasions;**

This allegation is admitted by Mr Harvey (page 168 of the hearing bundle) and verified by the evidence of Pupil A (pages 112 to 114 and 116 to 118 of the hearing bundle). Having regard to the age of Pupil A at the time of the event, and given the teacher/pupil relationship between Mr Harvey and Pupil A, the panel concluded that these actions were inappropriate and consequently find the allegation to be proved.

#### **c. Allowed Pupil A into your bedroom whilst you were getting changed;**

This allegation is denied by Mr Harvey where at page 168 of the hearing bundle he states Pupil A “was allowed into the house ... and we spoke briefly ... I was fully clothed”. The panel noted that in his initial interview with the police Mr Harvey denied this allegation (page 155 of the hearing bundle). However, the panel considered the judicial summing up, where it was reported that “[h]e [Mr Harvey] now accepts that [Pupil A] had been to his flat to charge her cell phone. He accepts that there was this later occasion when she was not only in his flat, but also in his bedroom sitting on his bed while he got changed. He accepts that there was a short moment when he did sit down besides her on the bed” (pages 48 to 49 of the hearing bundle).

The panel considered the evidence of Pupil A, which outlined the details of this incident where she found herself in Mr Harvey’s bedroom whilst he was getting changed (pages 117 to 118 of the hearing bundle). The panel also noted that Pupil A provided the police

with a graphic and detailed description of Mr Harvey's bedroom which was later verified by the police (page 80 of the hearing bundle).

Pupil A has been consistent with her evidence throughout and, as stated above, the panel found her evidence to be credible. On the other hand, the panel note Mr Harvey had provided numerous explanations ranging from an outright denial to an acceptance of a version of events as consistently relayed by Pupil A.

Having considered all the evidence, the panel finds, on the balance of probabilities, that these events did occur and the panel conclude that these actions were highly inappropriate and consequently find the allegation to be proved.

**4. Engaged in inappropriate communications and/or conversations with Pupil B including;**

**a. Inviting her to become a friend on Facebook;**

Mr Harvey denied this allegation (page 11 of the hearing bundle). However, the panel considered the transcript of the police interview with Mr Harvey dated 8 March 2013 where he accepts that he sent a Facebook friend request to Pupil B (page 147 and 162 of the hearing bundle). This is verified by the evidence of Pupil B, and the panel specifically refers to the case file summary prepared by the police on 14 November 2013 (page 25 of the hearing bundle), the record of the police interview with Pupil B dated 11 March 2013 (page 134 of the hearing bundle) and the transcript of the police interview with Pupil B (page 185 of the hearing bundle), where she asserts that Mr Harvey sent her the Facebook friend request.

The panel considered that the evidence adduced by Pupil B, taken together with the admissions of Mr Harvey at the time of the events, support the contention that the events are more likely than not to have occurred. The panel finds, on the balance of probabilities, that this incident occurred and Mr Harvey opened a channel to engage in inappropriate communications with Pupil B. Therefore, this allegation has been proven.

**b. Asking her to meet with you at a public house;**

**c. Asking her to come to your house**

These allegations are denied by Mr Harvey (page 11 of the hearing bundle). However, in his police interview on 8 March 2013, Mr Harvey admits to asking Pupil B to meet with him at a public house (pages 147 to 149 of the hearing bundle).

The panel noted that the evidence of Pupil B, and specifically refers to her record of interview dated 11 March 2013 (page 134 of the hearing bundle) and the transcript of her police interview (pages 187 to 188 of the hearing bundle). This is corroborated by the screenshots of the messages that appear at pages 131 to 133 of the hearing bundle. Pupil B's evidence was consistent throughout. The panel found the evidence of Pupil B

to be credible, cogent, and honest. Furthermore, the evidence did not appear to be exaggerated in any way.

The panel considered that the evidence adduced by Pupil B, taken together with the screenshots of the messages, supports the contention that the events are more likely than not to have occurred. The panel finds, on the balance of probabilities, that this incident occurred and having regard to the age of the pupil at the time and teacher/student relationships, Mr Harvey failed to maintain appropriate professional boundaries and engaged in inappropriate communications and/or conversations with Pupil B. Therefore, this allegation has been proven.

#### **5. Acted inappropriately with Pupil B in that you;**

##### **a. Offered to buy her a drink;**

##### **b. Invited her to your home**

These allegations are denied by Mr Harvey (pages 11 and 162 of the hearing bundle).

The panel considered the transcript of the police interview with Pupil B (page 188 of the hearing bundle) where she relayed that Mr Harvey had written, "I'll sort out your drinks" following her declining his request to meet him at a public house. She went on to state, "maybe come over and watch a film over at mine". This is corroborated by the screenshots of the messages that appear at pages 131 to 133 of the hearing bundle. Pupil B was consistent with her evidence and, as stated above, the panel found her evidence to be credible.

Having considered all the evidence, the panel finds, on the balance of probabilities, that these events did occur. Having regard to the age of the Pupil B and teacher/student relationships, Mr Harvey acted inappropriately. Therefore, this allegation has been proven.

#### **6. Had one or more students and/or ex-students, as friend on your Facebook account**

The panel considered the transcript from the police interview with Mr Harvey where he accepted that he had "about 7 or 8" students or former students on his Facebook account (page 147 of the hearing bundle). Mr Harvey accepted that Pupil A was on his Facebook account (page 143 of the hearing bundle) and admitted to sending Pupil B a Facebook "friend" request (page 162 of the hearing bundle). This is corroborated by the evidence of Pupil A (page 106 of the hearing bundle) and Pupil B (page 185 of the hearing bundle) where they refer to being "friends" with Mr Harvey on Facebook. The panel specifically refers to the police transcript of the interview with Pupil A (page 121 of the hearing bundle) where she stated that she overheard other female students stating that Mr Harvey had also sent them a "friend" request and to the transcript of the police interview

with Pupil B (pages 185 to 186 of the hearing bundle) where she named a number of female students that received a Facebook request from Mr Harvey.

The panel considered all the evidence and found, on the balance of probabilities, that Mr Harvey had one or more students and/or ex-students as a “friend” on his Facebook account and consequently find the allegation to be proved.

### **7. In doing 1, 2, 3, 4 and/or 5 above your conduct was sexually motivated**

In relation to the allegations found proven, the panel considered the two stage test for sexual motivation – firstly, whether a reasonable person would think the words and/or actions could be sexual and secondly, whether the purpose of such words and/or actions was sexual in all the circumstances of the case.

Mr Harvey denied that his actions were sexually motivated, stating that “my actions were an unfortunate misinterpretation and nothing else” (page 169 of the hearing bundle). He explained that the communications and conversations with Pupil A and B were merely concerning their future studies and were discussing Pupil A being bullied (pages 156 to 157 of the hearing bundle). However, the panel noted that nature of the allegations found proven against Mr Harvey which included, but not limited to, the following inappropriate words and/or actions:

- kissing and hugging Pupil A,
- providing Pupil A with his personal email address and engaging in conversations with Pupil A on social media messaging facilities, such conversations being of a sexualised nature,
- inviting Pupil A to his house, offering to pay for her taxi and offering Pupil A (an underage girl at the time) alcohol,
- allowing Pupil A into his house and on one occasion into his bedroom whilst getting changed,
- inviting Pupil B to become friends on Facebook, asking her (an underage girl at the time) to meet him at a public house and offering to buy her a drink, and
- inviting Pupil B to his home.

Upon consideration of the evidence, and following a detailed discussion regarding the test to be applied for a finding of sexual motivation, the panel decided it was satisfied that Mr Harvey’s words and/or actions would be viewed by a reasonable person as sexual. In reaching its decision, the panel noted that the very nature of the actions (for instance kissing) and of the words (for instance asking sexualised questions) would suffice to satisfy this element of the test.

Turning to the second limb, whether in all the circumstances of the conduct in the case, the purpose of such actions was sexual on Mr Harvey’s part. The panel was satisfied, in the absence of any reasonable explanation, that Mr Harvey’s intention behind these

actions and words was indeed sexual. His explanation that he merely sought to assist the former students with their future studies and plans lack credibility when considered in the context of the allegations found proven. Therefore, the panel find this allegation proven.

As the panel did not find allegation 2e proved on the fact, the panel did not consider whether Mr Harvey's conduct in this particular was sexually motivated, as it was not required to do so.

**8. In initial interviews with the Police you provided false information regarding the details of your relationship with Pupil A;**

The panel considered the transcript of the police interview with Mr Harvey dated 8 March 2013, at pages 154 to 155 of the hearing bundle, where he denied that Pupil A came to his house following meeting with her at the pub to charge her phone, stating that on another occasion she turned up at his house uninvited. The panel also considered the judicial summing up at pages 48 to 49 of the hearing bundle where the judge said "what [Mr Harvey] had said in interview ... was simply not true" noting that Mr Harvey submitted a revised defence on the first day of his criminal trial where he "accepts that [Pupil A] had been in his flat to charge her cell phone. He accepts that there was this later occasion when she was not only in his flat, but actually in his bedroom sitting on his bed while he got changed. He accepts that there was a short moment when he did sit down beside her". In light of this evidence, the panel finds this allegation to be proved.

**9. In so doing at 8 above, your conduct was dishonest in that you deliberately denied facts you knew to be true.**

The panel received and accepted advice from the legal adviser that if it was satisfied, on a balance of probabilities, that Mr Harvey had provided false information to the police regarding the details of his relationship with Pupil A, then there was a further requirement to consider two limbs when deciding whether Mr Harvey's actions were dishonest in doing so.

The panel was advised that the first limb of the traditional test to which panels are referred is "whether the panel is satisfied on the balance of probabilities that Mr Harvey's actions would be regarded as dishonest according to the standard of a reasonable and honest man". This is the objective test.

The panel was informed of a High Court case of May 2015 concerning the appeal against a decision of a Professional Conduct Panel which stated that the tribunal should first determine whether, on the balance of probabilities, a defendant acted dishonestly by the standards of ordinary and honest members of that profession. If so, it was advised that it must then go on to determine whether or not it is more than likely that the defendant realised that what he or she was doing was, by those standards, dishonest. The panel accepted that only if the answer to both these questions is yes can the allegation of

dishonesty be established in this case. The panel was also informed that the Court of Appeal, in an appeal against a criminal conviction in December 2015, held that the required standard under the objective limb was the ordinary standards of reasonable and honest people. However, the panel understands that it has yet to be seen whether that decision will be applied in the context of professional discipline proceedings, given the shift away from that test by the High Court.

If the panel finds the objective limb satisfied, it must go on to determine whether it is more likely than not that the teacher realised that what he or she was doing was by those standards, dishonest. This is the subjective test.

In this case, firstly the panel considered the objective limb of the two limb test. The panel did not determine that there would be any difference between the standards of the reasonable and honest person and the standards of the reasonable and honest teacher. In reaching this conclusion the panel considered that everyone, teacher or not, would view providing false information to the police as dishonest. Due to the need to maintain the integrity and trust in the teaching profession the panel concluded that the reasonable and honest person (and teacher) would find Mr Harvey's actions dishonest.

The panel then went on to consider the subjective limb of the test, which states that the panel must "determine whether it is more likely than not that Mr Harvey realised that what he was doing was dishonest". The panel noted that in his police interview transcript rather than provide no comment, Mr Harvey sought to deny outright questions put to him concerning his relationship with Pupil A, and at times offering an alternative explanation. Furthermore, when Mr Harvey had the opportunity to disclose the true nature of his relationship with Pupil A, he failed to do so until the first day of his trial. The panel considers that he thereby sought to conceal his actions which compounded the dishonesty. Mr Harvey had made no attempt to admit what he had done until the very last moment. The panel concluded that Mr Harvey did realise that what he was doing was dishonest.

Having reviewed all of the evidence, the panel does find allegation 9 proven.

We have found the following particulars of the allegation(s) against you not proven, for these reasons:

**2. Engaged in inappropriate communications and/or conversations with Pupil A including;**

**e. Stating to her that you "loved her"**

This allegation is denied by Mr Harvey. The presenting officer submitted that there was insufficient evidence to support this allegation. Having reviewed the evidence, the panel find this allegation 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 Harvey in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Harvey is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher’s professional position; and
  - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Mr Harvey fell significantly short of the standards expected of the profession. Having established contact with Pupil A outside of the school environment, Pupil A being someone, by his own admission, that had been bullied and therefore vulnerable, proceeded to invite her to his house and on one occasion when she was at his house he kissed and hugged her. On a separate occasion, he purchased alcohol for Pupil A. The panel noted Mr Harvey began engaging in a similar pattern of behaviour with Pupil B, where he invited her to his house and also invited her to meet him at the pub.

The panel has also considered whether Mr Harvey’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 the offences of serious dishonesty and sexual activity are relevant given the findings in relation to allegations 7, 8 and 9.

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

The panel notes that the allegations took place outside of the education setting and in such circumstances misconduct will only amount to unacceptable professional conduct if it affects the way the person fulfils their teaching role or may lead to pupils being exposed to or influenced by the behaviour in a harmful way. The panel noted the facts surrounding the allegations did not impact the manner in which Mr Harvey fulfilled his role as a teacher. However, there is clear evidence from the underlying facts that Mr Harvey's conduct did lead to pupils being exposed to and influenced by his behaviour in a harmful way; not least, the panel noted that Mr Harvey purchased alcohol for Pupil A despite her being under the legal drinking age and offered the same to Pupil B.

In light of the findings above, the panel is satisfied that Mr Harvey is guilty of unacceptable professional conduct.

The panel has taken into account how 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 likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception. The panel therefore finds that Mr Harvey's actions constitute 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 Advice and having done so has found a number of them to be relevant in this case, namely the protection of pupils, the protection of other members of the public, 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 Harvey, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of

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

The panel considered that there was a strong public interest in declaring proper standards of conduct in the profession. The panel found that the conduct exhibited by Mr Harvey was outside that which could reasonably be tolerated.

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 Harvey.

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 Harvey. 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;

The panel has found that Mr Harvey's conduct involved serious departures from the personal and professional conduct elements of the Teachers' Standards, as the panel has already detailed above.

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

The panel considered that Mr Harvey's conduct seriously affected the well-being of the pupils concerned. As noted above, the underlying incidents giving rise to the allegations were not isolated incidents and involved several events over a period of time concerning a number of pupils; this is a repeated pattern of behaviour. The panel note that Mr Harvey has subsequently sought counselling, however, they are not convinced by the limited evidence presented to them, that the counselling has assisted him to address the underlying cause resulting in his misconduct and this has led the panel to conclude that there is a continuing risk.

- a deep-seated attitude that leads to harmful behaviour;

As noted above, the underlying incidents giving rise to the allegations were not isolated incidents and involved events taking place over a period of time. This has led the panel to conclude that Mr Harvey held a deep seated attitude which led to the harmful behaviour forming the facts of the proven allegations.

- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;

The panel considered that Mr Harvey's conduct, in relation to the proven allegation, involved abuse of position or trust and his conduct as detailed in the proven elements of the allegations involved a violation of the rights of pupils.

- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;

The panel has found allegation 8 and 9 proven, noting that Mr Harvey acted dishonestly when he provided false information to the police regarding his relationship with Pupil A. He sought to cover up the truth of the relationship by seeking to discredit the account given by Pupil A, seeking to cast doubt over her character and credibility.

- 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;

The panel found allegation 7 proven, noting that Mr Harvey's actions were sexually motivated and exploited the trust he gained from his position as a teacher in order to engage with Pupils A and B.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. In particular:

- There was no evidence to suggest that Mr Harvey's actions were not deliberate.
- There was no evidence to suggest that Mr Harvey was acting under duress, and in fact the panel found the Mr Harvey's actions to be calculated and motivated.
- The panel noted that, in his role as a teacher, Mr Harvey had not been subject to any formal disciplinary proceedings.
- The panel also noted the evidence before it that Mr Harvey was an effective teacher and draw upon the testimonies provided in the hearing bundle.

In light of the above, 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 Harvey. Mr Harvey's abuse of his position of trust and the serious impact of his conduct on the pupils, together with the nature of the allegations found proven pertaining to dishonesty and sexual motivation were 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 it to decide to recommend that a review period of the order should be considered. The panel was

mindful that the 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 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include fraud or serious dishonesty and 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 Harvey has been found to have abused his position of trust and acted in an inappropriate manner towards pupils, resulting in him kissing one pupil and buying her alcohol whilst she was under the legal drinking age and furthermore, providing false information to the police regarding his relationship with Pupil A.

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 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 in respect of sanction and review.

I have also noted that in this case the panel did not find one of the allegations proven. I have put that allegation from my mind in considering this case.

In this case the panel has found that Mr Harvey is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position; and
  - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I have noted that the panel is satisfied that the conduct of Mr Harvey fell significantly short of the standards expected of the profession. Having established contact with Pupil A outside of the school environment, Pupil A being someone, by his own admission, that had been bullied and therefore vulnerable, he proceeded to invite her to his house and on one occasion when she was at his house he kissed and hugged her. On a separate occasion, he purchased alcohol for Pupil A. I have taken into account the fact that the panel noted Mr Harvey began engaging in a similar pattern of behaviour with Pupil B, where he invited her to his house and also invited her to meet him at a public house.

I note too that the panel has also considered whether Mr Harvey'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 the offences of serious dishonesty and sexual activity are relevant given the findings in relation to allegations 7, 8 and 9.

Mr Harvey has displayed behaviours that are:

- A 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.

I have taken into account the need to be proportionate. I have also taken into account the need to balance the interests of Mr Harvey and the wider public interest. I support the recommendation of the panel that a prohibition order is proportionate and in the public interest.

I have gone on to consider the matter of a review period. The panel has found that Mr Harvey's behaviours include fraud or serious dishonesty and 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 Harvey abused his position of trust and acted in an inappropriate manner towards pupils, resulting in him kissing one pupil and buying her alcohol whilst she was under the legal drinking age and furthermore, providing false information to the police regarding his relationship with Pupil A.

I agree with the panel's recommendation that there be no review period.

**This means that Mr Joseph Harvey 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 Joseph Harvey 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 Joseph Harvey 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 'Alan Meyrick', with a stylized flourish at the end.

**Decision maker: Alan Meyrick**

**Date: 18 October 2016**

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