



National College for
Teaching & Leadership

Mr Andrew Fielding- Day: Professional conduct panel outcome

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

January 2017

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

Teacher: Mr Andrew Fielding-Day

Teacher ref number: 1578050

Teacher date of birth: 30 March 1973

NCTL case reference: 14507

Date of determination: 11 January 2017

Former employer: DLD College, London

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 9 to 11 January 2017 at The Study Inn, 175 Corporation Street, Coventry CV1 1GU to consider the case of Mr Andrew Fielding-Day.

The panel members were Mr Martin Pilkington (lay panellist – in the chair), Ms Hilary Jones (lay panellist) and Ms Fiona Tankard (teacher panellist).

The legal adviser to the panel was Mr Robin Havard of Blake Morgan LLP solicitors.

The presenting officer for the National College was Mr Christopher Geering of 2 Hare Court.

Mr Andrew Fielding-Day was present and was represented by Mr Philip Dayle of No5 Chambers.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 22 November 2016.

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

Whilst employed as a teacher at DLD College, London (“the College”):

1. In or around June 2011 you inappropriately exchanged text messages with Pupil A;

2. The messages referred to as 1. above included messages which were flirtatious in nature;
3. On one or more occasions you acted inappropriately in that you:
 - a. Were intoxicated with pupils/consumed alcohol with pupils,
 - b. Met/attempted to meet pupils socially,
 - c. Discussed your sex life with pupils,
 - d. Asked students about their sex lives,
 - e. Communicated socially with Pupil B and/or Pupil E and/or other pupils using social media and/or email and/or mobile phone,
 - f. In respect of Pupil E, these communications referred to at 3.e. above included messages of a flirtatious nature;
4. In or around April 2012, you attended a rehearsal or meeting at the College and behaved in an inappropriate manner in that you:
 - a. Were intoxicated and/or consumed alcohol with pupil(s),
 - b. Offered pupil(s) alcohol,
 - c. In relation to 4.b. above, one or more of the pupils was under age to drink alcohol,
 - d. Told Pupil B to act “as if you were begging to give him a blowjob”, or words to that effect,
 - e. Asked Pupil B “have you never had a dick in your mouth”, or words to that effect,
 - f. Asked Pupil B if she was a virgin, or words to that effect,
 - g. Asked Pupil B “do you not touch yourself”, or words to that effect,
 - h. Attempted to dance with Pupil B,
 - i. Engaged in physical play fighting with Pupil E,
 - j. Pinned Pupil E to the ground,
 - k. Grabbed Pupil B by the hair and/or dragged her by the hair,
 - l. By your actions at 4.i. and/or 4.j. and/or 4.k. above you caused injury to Pupil D and/or Pupil E;

5. You failed to maintain professional boundaries in that you:
 - a. Developed an inappropriate/flirtatious relationship with Pupil E whilst she was at the College,
 - b. Formed a sexual relationship with Pupil E,
 - c. Went on holiday to Turkey with Pupil E,
6. Your conduct at paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5 was sexually motivated.

Mr Fielding-Day admitted the facts of allegations 1, 2, 3.a., 3.e. and 4.a. He also admitted that, on the basis of those admitted facts, he was guilty of unacceptable professional conduct and conduct likely to bring the profession into disrepute.

The remaining allegations and particulars were denied.

C. Preliminary applications

Amendment

The presenting officer applied to amend particular I. of allegation 4 so that it referred to Pupil B instead of Pupil D.

In addition, the presenting officer withdrew particulars b. and c. of allegation 5.

There was no objection on behalf of Mr Fielding-Day and therefore the panel granted the amendments.

D. Summary of evidence

Documents

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

Section 1: Chronology & anonymised pupil list, with page numbers from 2 to 4

Section 2: Notice of Proceedings & response, with page numbers from 6 to 13

Section 3: Witness Statements, with page numbers from 15 to 35

Section 4: National College for Teaching & Leadership Documents, with page numbers from 37 to 92

Section 5: Teacher Documents, with page numbers from 94 to 103.

The presenting officer applied to admit into evidence the staff conduct policy to which reference is made in the statement of Individual B and the letter from the College to Mr Andrew Fielding-Day of 27 June 2011 which sets out the decision that he should be given a final written warning.

Mr Dayle did not object to the application and therefore the panel agreed that they should be admitted into evidence.

Mr Dayle applied for permission from the panel to introduce into evidence a witness statement of Andrew Fielding-Day and character references. There was no objection from the presenting officer and the panel granted Mr Dayle's application.

The additional documents submitted by the presenting officer were paginated 35A to 35H.

The documents introduced by Mr Dayle were paginated 104 to 114.

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

Witnesses

The panel heard oral evidence from:

Pupil B who was a former pupil at the college and called by the presenting officer;

Individual A, director of studies, pastoral and academic, at the college, called by the presenting officer;

Individual B, principal of the college, called by the presenting officer.

Mr Fielding-Day gave evidence on his own behalf.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Brief Summary

The College has approximately 330 students. The age of the students ranges from 15 to 20 years with the majority of pupils aged between 16 and 18 years, studying GCSE and A level programmes predominantly. It is a well-established fee paying college.

Mr Fielding-Day had worked for a number of years at the College and, throughout the material time, was the Director of Drama.

In June 2011, an investigation took place with regard to Mr Fielding-Day relating to a series of inappropriate text messages exchanged with a pupil at the College, Pupil A.

At the conclusion of the investigation, Mr Fielding-Day was issued with a final written warning.

In August 2014, a disclosure was made to the Principal, Individual B, relating to an incident involving Pupil B.

The matter was reported to the police but, following an investigation, no further action was taken.

A disciplinary procedure took place in the college.

On 14 October 2014, Mr Fielding-Day resigned from his post as director of drama at the College before the disciplinary process had reached a conclusion.

Findings of fact

Our findings of fact are as follows:

The panel found the following particulars of the allegations against Mr Fielding-Day proven, for these reasons:

Whilst employed as a teacher at DLD College, London ("the College"):

1. In or around June 2011 you inappropriately exchanged text messages with Pupil A;

This allegation was admitted and the panel found it proved.

A part-transcript of the texts had been prepared by Individual A and the following exchanges were agreed by Mr Fielding-Day;

3rd June 2011 – 06 - 15

AF stop working you are better than that

AF we should also have dinner to find out stuff x if you feel able to

AF Are you any good at the massage? I'm gonna pay

AF I thought about helping you out on the quiet

Pupil A help me out? I'm confused

AF *That's about the long and short of it. But it needs to be regular x*

AF *You don't have to*

AF *Exactly only £25 is a great deal. There's nothing that wrong with it. We're not shagging for fux sake*

AF *Holy shit Pupil A. I've just seen my blackberry a so called "friend"... etc*

4 June

Pupil A *you were pissed last night*

AF *Hmm yes oops a daisy...*

AF *Pupil A I see you have a gap tomorrow English and Drama shall we use... say 127*

X???? xx?? X????

Pupil A *"unfit for w-"*

AF *"W – What (list of playful saucy ideas)*

AF *Actually thinking of W's without being rude is quite hard. Hope you're feeling better*

12 June

AF *We are in Notting Hill and thought about you*

Pupil A *We?*

AF *Me and me. Let's have drinks*

([another pupil] was with her)

AF *Ooh well best I stay where I am there then otherwise trouble occurs X*

In a letter to the Principal of the College dated 21 June 2011, Mr Fielding-Day confirmed that he had exchanged these messages with Pupil A "... and because of my being in a heightened state of intoxication owing to alcohol intake, that discussion thread developed into an unprofessional one".

The panel had taken into consideration the fact that this was not an isolated incident and inappropriate exchanges had taken place at Mr Fielding-Day's instigation on 3 separate occasions, namely 3, 4 and 12 June 2011.

2. The messages referred to as 1. above included messages which were flirtatious in nature;

This allegation was admitted by Mr Fielding-Day and the panel found it proved.

The panel was particularly concerned at the following:

- a. the invitation from Mr Fielding-Day to take Pupil A out for dinner,
- b. the reference to Pupil A providing him with a massage and that, "... it needs to be regular x," and finally,
- c. the invitation to have drinks.

Such messages were all, in the judgement of the panel, flirtatious in nature.

The panel also noted that, on being provided with a written warning, Mr Fielding-Day accepted that he had been provided with guidance as to his future conduct and that he had been properly trained in safeguarding issues.

3. On one or more occasions you acted inappropriately in that you:

a. Were intoxicated with pupils/consumed alcohol with pupils,

The facts of this particular were admitted by Mr Fielding-Day and the panel found it proved.

Mr Fielding-Day accepted that he would attend public houses with pupils and would "turn a blind eye" as to whether the pupils were old enough to be drinking alcohol. Mr Fielding-Day accepted that, throughout the material time, he had a drinking problem and that he was currently endeavouring to control and manage that problem.

There were a number of examples of pupils making reference to Mr Fielding-Day's having drunk to excess.

In one message to Mr Fielding-Day on 4 June 2011, Pupil A stated, "*you were pissed last night*".

In an email from Pupil B to Mr Fielding-Day of 10 April 2012, the subject line read "*better be there drunker*" (sic).

b. Met/attempted to meet pupils socially,

Whilst this was denied by Mr Fielding-Day, he accepted in his evidence that he would meet with pupils in public houses after theatre performances or productions.

The text messages exchanged with Pupil A also showed Mr Fielding-Day attempting to arrange to meet with Pupil A for dinner and, on another occasion, for drinks.

The panel found the facts of this particular proved.

e. Communicated socially with Pupil B and/or Pupil E and/or other pupils using social media and/or email and/or mobile phone,

Mr Fielding-Day admitted the facts of this particular and the panel found it proved.

There was a series of exchanges of messages on Facebook with Pupil B which were social in nature and had nothing to do with Mr Fielding-Day's role as a teacher at the college.

The panel had also read a substantial number of emails that passed between Mr Fielding-Day and Pupil E which would also include, on occasion, Pupil D where the content was purely social and made no reference to college matters.

As an example, on Saturday 7 April 2012 at 11:22pm, Mr Fielding-Day sent an email to Pupil E stating the following, *"Have finally escaped aforementioned hell hole. Hope you are feeling less gorgonzola and more stil(ton) W.*

I have lots to tell you. Why you insist on this facking frequency?"

Finally, the exchange of text messages with Pupil A was entirely social in nature as outlined under allegation 1 above.

f. In respect of Pupil E, these communications referred to at 3.e. above included messages of a flirtatious nature;

On Sunday 8 April 2012, Pupil E was abroad but the following exchanges of emails took place:

Pupil E "Ow, if I told you the full story you would be very proud of my arguing skills..."

AFD "I look forward to swelling up (with pride)"

Pupil E "... don't pig on the chocolate too much. Moment on the lips, foreveeeeer on the hips"

AFD "Hmmm"

"there are so many replies to that but I shall bite my tongue W"

In a subsequent exchange on the same day, there was reference to a film called "Taken" in which a young woman is abducted and sold into the sex trade. Pupil E sent an email to Mr Fielding-Day saying that she was in a foreign country and that the scene from the film when the young woman is abducted kept playing through her head.

In response, Mr Fielding-Day stated as follows:

"psychologically profiling you Pupil E, one would suggest you are secretly desiring the incident from the film to which you refer to actually occur. Well, maybe not to the extent within the film but you'd like the frisson of getting close to being "taken". Perhaps you should test my theory by hanging out at Gare de Nord and look out for a middle eastern type (probs in sunglasses) offering taxi rides. You can be the judge of how far you develop the role play."

In a subsequent email, Mr Fielding-Day stated:

"but I'd make an eggcellent (ooooh religiously topical reference from DOD) Liam Neeson W.

Although before you head down the psychological profiling route yourself, I accept that could be a bit weird".

Whilst Mr Fielding-Day denied the facts of this particular, the panel found his evidence to be wholly unconvincing. Mr Fielding-Day stated that, at the time these exchanges took place, he had not watched the film Taken. Before he was referred to his email in which he names Liam Neeson, he stated that he had only recently become aware that Liam Neeson played a part in the film.

In a further email, Mr Fielding-Day stated:

"would have been excellent if DOD and ADOD had arranged a dept meeting for this Parisian afternoon?"

In previous emails, Mr Fielding-Day had referred to himself as DOD (director of drama) and Pupil E as ADOD.

The panel was satisfied that this entire exchange was flirtatious in nature.

The panel found the facts of particular 3.f. proved.

4. In or around April 2012, you attended a rehearsal or meeting at the College and behaved in an inappropriate manner in that you:

a. Were intoxicated and/or consumed alcohol with pupil(s),

The facts of this particular were admitted by Mr Fielding-Day (although he denied being drunk) and the panel found them proved.

In seeking to prove allegation 4 and its particulars, the NCTL relied on the evidence of Pupil B together with supporting documentation.

The panel found Pupil B to be a credible and reliable witness. In reaching that conclusion, the panel took into consideration the fact that, following the events of 9 April 2012, Pupil B did not initially report the matter to anyone. When asked for her reasons for

not doing so, Pupil B indicated that, whilst upset by what had happened, she did not wish to cause Mr Fielding-Day any trouble or difficulties with his job. Indeed, Pupil B was balanced and measured in the way that she gave her evidence. As well as supporting the facts of the allegation, she was also anxious to emphasise that, in overall terms, she found Mr Fielding-Day to be an excellent teacher who was highly supportive.

Finally, the panel noted that, on her own evidence, Pupil B struggled whilst at college. She would miss deadlines and was prone to miss appointments or meetings. Individual B indicated that whilst a bright young woman, Pupil B was vulnerable to stress.

However, as stated, the panel was impressed by Pupil B as a witness. She remained steadfast with regard to what she could clearly recollect being said and what happened on 9 April 2012, at the same time accepting that there were elements of what took place which she could not clearly remember, such as whether she was handed a cup of wine or whether she poured it herself.

The matter came to the attention of members of the senior leadership team as a result of the parent of Pupil C, Parent Z, informing the SENCO and the principal, Individual B, on the day that the results were announced on 14 August 2014.

The panel noted that the account provided by Parent Z in her statement was markedly different to the account provided by Pupil B. However, Parent Z had not attended to give evidence and therefore it was not possible for her account to be tested. Furthermore, Pupil B had not been aware of the account provided by Parent Z until Pupil B attended to give evidence. The panel listened to Pupil B's expression of concern at the inaccuracy of the account by Parent Z and concluded that her reaction was genuine.

Finally, to a certain extent, Mr Fielding-Day provided a level of corroboration for the outline of events provided by Pupil B. It was not disputed by Mr Fielding-Day that he attended the rehearsal at the college with Pupils B, D and E on 9 April 2012 which was Easter Monday. Indeed, this was the basis on which he admitted particular 4.a. in that he accepted that, with Pupils B, D and E, he had been drinking wine during the rehearsal.

For these reasons, the panel preferred the oral evidence of Pupil B, which had been the subject of challenge, to that of the unchallenged written evidence of Parent Z.

In respect of this particular, not only did the panel find that Mr Fielding-Day had consumed alcohol, namely wine, with the pupils who attended the rehearsal but that he was also intoxicated.

The panel had heard that Mr Fielding-Day, who accepted that he had a drink problem, had been out for lunch with friends and he then attended the rehearsal where he stated that he drank two large glasses of wine. Pupil B described him as being drunk and, in the subject line of the email which she subsequently sent to Mr Fielding-Day at 12:52am on 10 April 2012, she states, "**Subject:** *better be there drunker.*"

In his reply, Mr Fielding-Day takes no issue with that description and says, "*Woah that was all a bit mad.*"

d. Told Pupil B to act "as if you were begging to give him a blowjob", or words to that effect,

Pupil B was due to attend an audition at a drama college on 11 April 2012.

In advance of that audition, arrangements had been made between Pupil B and Mr Fielding-Day for a rehearsal. At the time originally agreed, Pupil B failed to attend and, understandably, Mr Fielding-Day was frustrated and irritated at Pupil B's non-attendance as he waited for some 50 minutes. The email exchanges showed quite clearly that Mr Fielding-Day had run out of patience and he confirmed as much when giving evidence.

However, having apologised, Pupil B requested Mr Fielding-Day to rearrange the rehearsal and, as stated, this took place at the college on the afternoon and evening of Easter Monday, 9 April 2012.

Indeed, Pupils D and E also attended as all three pupils were to attend auditions in the near future and all three were studying different pieces of drama work. The panel noted that Pupil E attended the rehearsal the day after Mr Fielding-Day had been exchanging flirtatious emails with her whilst she was on holiday.

Pupil B was studying two pieces, one from Romeo and Juliet and one from Miss Julie. Mr Fielding-Day was known for adopting strategies which were bold and provocative to generate the necessary level of reaction and performance from the students. He would engage in improvisation with the pupil in the lead up to the speech the pupil would have to deliver in the course of the audition. The positive impact of such methods was evidenced in the testimonials provided.

It was accepted that, for example, with regard to the piece relating to Romeo and Juliet, he may well have asked Pupil B, in her role as Juliet, whether she was a virgin, but denied telling Pupil B to act, "*as if you were begging to give him a blowjob,*" or words to that effect, or asking Pupil B, "*have you never had a dick in your mouth,*" or words to that effect.

He also denied asking Pupil B, "*Do you not touch yourself,*" or words to that effect.

However, the panel had already indicated that it did not find Mr Fielding-Day to be a credible witness. Also there were concerns as to his reliability regarding his recollection of events, taking account of the fact that he had been drinking during that day.

Pupil B was clear and sure of what had been said to her.

For these reasons, the panel was satisfied, on the balance of probabilities, that the facts of particular 4.d. were proved.

Even if such words were used by Mr Fielding-Day in the course of the improvisation, which Mr Fielding-Day accepted he may have done with regard to at least one of the comments, the panel found such language to be inappropriate and, as a consequence, Mr Fielding-Day's behaviour was also inappropriate.

The panel found the facts of particular 4.d. proved.

e. Asked Pupil B “have you never had a dick in your mouth”, or words to that effect,

The panel referred to, and relied upon, its findings of fact in respect of particular 4.d. above. On this basis, it found that Mr Fielding-Day behaved in an inappropriate manner by asking Pupil B such words or words to that effect.

The panel found the facts of particular 4.e. proved.

f. Asked Pupil B if she was a virgin, or words to that effect,

The panel referred to, and relied upon, its findings of fact under particular 4.d. above and, on this basis, found that Mr Fielding-Day had behaved in an inappropriate manner by asking Pupil B if she was a virgin.

The panel therefore found the facts of particular 4.f. proved.

g. Asked Pupil B “do you not touch yourself”, or words to that effect,

The panel referred to, and relied upon, its findings of fact in respect of particular d above. In those circumstances, it found that Mr Fielding-Day behaved in an inappropriate manner in asking Pupil B, “do you not touch yourself,” or words to that effect.

The panel therefore found the facts of particular 4.g. proved.

h. Attempted to dance with Pupil B,

Whilst this was denied by Mr Fielding-Day, the panel preferred the evidence of Pupil B. Pupil B had stated, and the panel found, that, late in the evening, Mr Fielding-Day tried to dance with her. She told him to get off and he did as requested.

The panel found the facts of particular 4.h. proved.

i. Engaged in physical play fighting with Pupil E,

This was denied by Mr Fielding-Day but his denial lacked credibility. Indeed, when questioned about this allegation, he asked for a definition of “play fighting”. Mr Fielding-Day did say that in the course of the rehearsal there may have been an amount of, “jostling” or “jockeying for position”, but denied that he engaged in play fighting with Pupil E or pinned her to the ground.

Pupil B stated, and the panel found, that she witnessed Mr Fielding-Day engaging in play fighting with Pupil E which became progressively more robust. It ended up with Mr Fielding-Day pinning Pupil E to the ground. Pupil B told Mr Fielding-Day to get off Pupil E but he would not do so. She therefore went upstairs to obtain a cup of water and threw it over them to make them stop.

When Pupil B threw the water over Mr Fielding-Day, he reacted angrily and ran after Pupil B, catching up with her in the corridor near the student entrance to the College. Mr Fielding-Day then grabbed her by the hair and dragged her to the floor.

Whilst Mr Fielding-Day denied that he had behaved in this way, he stated that he would use water as a powerful tool in his drama lessons to "*build tension*".

Pupil B indicated that when these events took place, Pupil D had left and it was late in the evening.

The panel found that, having consumed alcohol during the afternoon and evening, Mr Fielding-Day's judgement was impaired and his conduct was such that this no longer resembled a rehearsal for impending auditions.

It may have been the case that Mr Fielding-Day was frustrated at having to come into college on Easter Monday, having been let down by Pupil B on previous occasions. It may also have been the case that Mr Fielding-Day found the level of preparation of the pupils to be inadequate. However, even if his conduct was driven by a sense of frustration, this did not amount to any justification for what took place and the panel was also satisfied that the amount of alcohol he had drunk contributed to the way that he behaved.

Consequently, the panel found the facts of particular 4.i. proved.

j. Pinned Pupil E to the ground,

The panel referred to, and relied upon, its findings of fact in respect of particular 4.i. and therefore found the facts of particular 4.j. proved.

k. Grabbed Pupil B by the hair and / or dragged her by the hair,

The panel referred to, and relied upon, its findings of fact in respect of particular 4.i. and therefore found the facts of particular 4.k. proved.

l. By your actions at 4.i. and/or 4.j. and/or 4.k. above you caused injury to Pupil B and/or Pupil E

The panel had not been provided with any medical evidence to substantiate any injuries caused to Pupil B and Pupil E. Pupil B described how she had sustained one or two medium sized bruises to her thigh and therefore, to this extent, the panel found the facts of particular 4.l. proved.

There was no evidence of any specific injury caused to Pupil E, and therefore, in respect of Pupil E, the panel did not find the facts of particular 4.l. proved.

5. You failed to maintain professional boundaries in that you:

a. Developed an inappropriate / flirtatious relationship with Pupil E whilst she was at the College,

The panel referred to, and relied upon, its findings of fact in relation to particulars 3.e and 3.f.

The panel noted that numerous emails were being exchanged between Mr Fielding-Day and Pupil E when Pupil E was on holiday. A number of the emails were sent late in the night, and the content, as found, was both inappropriate and flirtatious. This all took place at a time when Pupil E was a pupil at the College.

The examples of email exchanges extend to the end of January 2013. Again, the content of the emails illustrated a relationship which went well beyond the normal expected and professional relationship between teacher and pupil.

The conduct of Mr Fielding-Day as found in respect of particulars 4.i. and 4.j. also supported a finding that Mr Fielding-Day failed to maintain professional boundaries in that he had developed an inappropriate and flirtatious relationship with Pupil E while she was at the College.

Whilst it did not form part of the allegation, the panel also took notice of the fact that Pupil E left the College in July 2012. In March 2013, Mr Fielding-Day entered a relationship with Pupil E.

For these reasons, the panel found the facts of particular 5.a. proved.

6. Your conduct at paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5 was sexually motivated.

This was denied by Mr Fielding-Day. The panel had listened carefully to his evidence and had also taken into consideration the unsigned character references he had provided. This material was taken into consideration when assessing whether it was proper to infer from its findings of fact that Mr Fielding-Day's conduct was sexually motivated.

Allegations 1 and 2

Taking account of the panel's findings of fact in respect of allegations 1 and 2, and by reference to Mr Fielding-Day's initiating a proposal that he would pay Pupil A to provide him with a massage on a regular basis, the panel was satisfied that the tenor of the exchanges was designed to enable Mr Fielding-Day to achieve some form of sexual gratification. The panel therefore considered that, on the balance of probabilities, it was

proper to infer from its findings of fact that, in respect of allegations 1 and 2, Mr Fielding-Day's conduct was sexually motivated.

Allegations 3, 4 and 5

The panel referred to, and relied on, its findings of fact in respect of particulars 3.e. and 3.f. above. Certain of the communications sent by Mr Fielding-Day to Pupil E had been found to be flirtatious. Those emails had been sent on 8 April 2012.

Only a day later, i.e. on 9 April 2012, Pupil E, having returned to this country, attended the rehearsal with Mr Fielding-Day and Pupils B and D. Mr Fielding-Day then engaged in inappropriate conduct such as physical play fighting with Pupil E and pinning her to the ground.

The panel then relied on its findings of fact in respect of particular 5.a. relating to Mr Fielding-Day's failure to maintain proper professional boundaries in that he developed an inappropriate and flirtatious relationship with Pupil E while she was at the College.

The panel was satisfied on the balance of probabilities that, taking those allegations both individually and together, Mr Fielding-Day sought a level of sexual gratification through his behaviour towards Pupil E and his conduct was sexually motivated.

As for Pupil B, again the use of graphic sexual language purporting to be in the course of a rehearsal for an audition was, in the panel's judgement, designed to promote a level of sexual gratification, and therefore in respect of allegation 4 and Pupil B, the panel found that Mr Fielding-Day's conduct was sexually motivated.

In the circumstances, in respect of allegations 3, 4 and 5, the panel found Mr Fielding-Day's conduct to be sexually motivated.

On these bases, the panel found allegation 6 proved.

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

3. On one or more occasions you acted inappropriately in that you:

- c. Discussed your sex life with pupils,**
- d. Asked students about their sex lives,**

The only evidence in support of particulars 3.c. and 3.d. came from Pupil B who stated in general terms that Mr Fielding-Day would talk openly about his sex life and would ask students about their sex lives. There were no specific examples of what he would say or what he would ask, nor when such conversations took place. The panel was not satisfied on the balance of probabilities that the NCTL had produced sufficient evidence to support the particulars.

Therefore, on the balance of probabilities, the panel found the facts of particulars 3.c. and 3.d. not proved.

4. In or around April 2012, you attended a rehearsal or meeting at the College and behaved in an inappropriate manner in that you:

b. Offered pupil(s) alcohol,

Whilst the panel had found that Pupils B, D and E, and Mr Fielding-Day, were drinking wine when at the college on 9 April 2012, the evidence of who provided the wine and whether Mr Fielding-Day had offered any of the pupils alcohol was unclear. Mr Fielding-Day denied that he had offered any of the pupils wine. Pupil B stated that she could not remember who had supplied the wine and that she may well have poured herself a cup of wine.

The panel was therefore not satisfied that, on the balance of probabilities, the facts of this particular had been proved.

Had the particular alleged that Mr Fielding-Day permitted pupils to consume alcohol when in the college, the panel's finding may have been different.

c. In relation to 4.b. above, one or more of the pupils was under age to drink alcohol,

This particular did not contain a reference to any conduct on the part of Mr Fielding-Day. In any event, on the basis that particular 4.b. had been found not proved, the panel did not find particular 4.c. proved.

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

Save for particulars 3.c. and 3.d, and 4.b. and 4.c, the panel had found all allegations against Mr Fielding-Day proved.

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

In doing so, the panel had regard to the document Teacher Misconduct - The Prohibition of Teachers, which the panel referred to as "the Advice", and the Teachers' Standards.

The panel was satisfied that the conduct of Mr Fielding-Day in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part Two, Mr Fielding-Day was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by

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

The panel was satisfied that the conduct of Mr Fielding-Day fell significantly short of the standards expected of the profession.

The panel had 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 had 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 were that the misconduct was very serious and repeated. 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 found Mr Fielding-Day guilty of both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it 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.

The panel was satisfied that Mr Fielding-Day's behaviour was incompatible with being a teacher and the panel relied on the following reasons:

- These were serious departures from the personal and professional conduct elements of the Teachers' Standards as outlined above;
- The misconduct ran the risk of seriously affecting the education and well-being of pupils. Indeed, there was evidence that pupils had suffered as a consequence of Mr Fielding-Day's behaviour;
- This behaviour amounted to an abuse of his position of trust as a teacher;
- The conduct involved behaviour which was sexually motivated and Mr Fielding-Day had exploited his position of trust and influence;
- The actions of Mr Fielding-Day were deliberate and there was no suggestion that he had been acting under duress;
- Mr Fielding-Day had received safeguarding training and the panel found that, in any event, it should have been obvious to a teacher that his behaviour was entirely unacceptable;
- Despite the incident involving Pupil A in June 2011, despite the warnings and guidance given to him at that time, and despite the expressions of remorse, contrition and insight given at that time, he went on, within a matter of months, to act in, if anything, a way which was even more unacceptable in his conduct towards Pupils B and E;
- Mr Fielding-Day had been open about his drinking and the fact that it continued to be a problem. The panel was concerned that it was not yet properly managed and would present a risk in the future;
- The findings represented a deep-seated attitude which had led to harmful behaviour.

The panel had taken into consideration the fact that Mr Fielding-Day was a person of previous good character. It was also recognised that all the evidence, both in terms of written testimonials and the oral evidence of Pupil B, Individual A and Individual B, suggested that Mr Fielding-Day was an excellent teacher. However, the panel considered there was far more to being an excellent teacher than teaching drama to a very high standard. This included a teacher's wider responsibilities with regard, for example, to safeguarding, maintaining proper boundaries and complying in overall terms with the requirements and expectations set out in the teachers' standards. It was the panel's view that Mr Fielding-Day failed to meet these standards in a number of aspects of his work at the College.

With regard to the risk of repetition, this has to be linked with the observations and findings of the panel about Mr Fielding-Day's insight and remorse. The panel also repeated its observations with regard to the management and control of his drinking

condition as the excessive consumption of alcohol featured in much of the conduct which had given rise to these proceedings.

The panel concluded that such a risk could not be discounted.

The panel was satisfied that a Prohibition Order was necessary in order to: protect pupils; maintain public confidence in the profession and to declare and uphold proper standards of conduct. The panel felt that this was proportionate, having weighed the interests of the public against those of Mr Fielding-Day. Whilst it did not doubt that the consequences would be significant, it bore in mind that the reputation of the profession and the maintenance of the public's trust in the profession was more important than the fortunes of any one individual member of the profession. This was the panel's recommendation.

The panel further considered whether to recommend that Mr Fielding-Day should be able to apply for the prohibition order to be set aside after a specified period or whether there should be no such provision.

The panel recommends that Mr Fielding-Day should be entitled to apply for a review of the prohibition order after a period of five years has elapsed. The panel considered that a period of five years was sufficient to mark to the general public and the profession that such behaviour was wholly inappropriate. It may also be sufficient for Mr Fielding-Day to demonstrate that, over such a period, he fully and properly appreciated the attitude and behaviours required to fulfil safeguarding requirements and that any issues with regard to his drinking problem were completely resolved.

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 both sanction and review.

A number of the allegations have been found proven. Where the allegations have not been found proven I have put these from my mind.

The panel has found Mr Fielding-Day guilty of unprofessional conduct and conduct that may bring the profession into disrepute.

The panel has found that Mr Fielding-Day 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;
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;

- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I agree with the panel that the conduct of Mr Fielding-Day fell significantly short of the standards expected of the profession.

I have taken into account the guidance published by the Secretary of State. The guidance 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; and
- Abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils.

I have taken into account the need to balance the interests of Mr Fielding-Day and the wider public interest. I have taken into account the need to be proportionate.

As the panel has provided a very thorough description of their reasons for finding Mr Fielding-Day's behaviour incompatible with being a teacher, I do not need to repeat this here. I agree with the panel's finding that prohibition is both a proportionate and appropriate response.

I now turn to the matter of a review period. I have noted the comments of the panel and I agree that a period of five years is sufficient to mark to the general public and the profession that such behaviour is wholly inappropriate. I also agree with the panel that this period may also be sufficient for Mr Fielding-Day to fully and properly appreciate the attitude and behaviours required to fulfil safeguarding requirements, and resolve any issues regarding his drinking problem. For the reasons given I agree that a five year review period is appropriate and proportionate.

This means that Mr Andrew Fielding-Day is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 24 January 2022, five years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Andrew Fielding-Day remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Mr Andrew Fielding-Day 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 be 'JM', with a small dot at the end of the signature.

Decision maker: Jayne Millions

Date: 16 January 2017

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