



National College for
Teaching & Leadership

Mr Paul Cuthbertson: Professional conduct panel outcome

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

November 2017

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Professional conduct panel decision

Teacher: Mr Paul Cuthbertson
Teacher ref number: 0638615
Teacher date of birth: 6 November 1980
NCTL case reference: 15180
Date of determination: 16 November 2017
Former employer: South Craven Academy Trust, North Yorkshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“National College”) convened on 14 November 2017 at the Ramada Hotel, The Butts, Coventry, CV1 3GG to consider the case of Mr Paul Cuthbertson.

The panel members were Mr Brian Hawkins (teacher panellist – in the chair), Mr John Elliott (lay panellist) and Ms Nicolé Jackson (lay panellist).

The legal adviser to the panel was Ms Hannah James of Eversheds-Sutherland (International) LLP solicitors.

The presenting officer for the National College was Mr Andrew Cullen of Browne Jacobson LLP solicitors.

Mr Paul Cuthbertson 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 16 January 2017.

It was alleged that Mr Paul Cuthbertson was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as a PE teacher at South Craven Academy Trust (“the school”), he:

1. Made inappropriate contact with Pupil A, in that he:
 - a. Asked her to meet him;
 - b. Told her this would be ‘naughty and exciting’;
 - c. Told her he liked her;
 - d. Told her he would like to kiss her;
 - e. Told her he would ‘unsquash’ her;
 - f. Told her to ‘come in a box to mine’;
 - g. Told her he wanted to ‘unwrap’ her;
 - h. Used kisses in one or more communications;
 - i. Told her that he ‘fancied her all through school and had let her get away with things because he liked naughty girls’ or words to that effect;
 - j. Followed her on Instagram;
 - k. Added her on Snapchat.
2. Failed to report safeguarding concerns in that somebody was allegedly contacting Pupil A in his name;
3. Continued to make inappropriate contact with one or more female pupils by email despite having similar matters brought to his attention previously;
4. Made inappropriate contact with Pupil Z, including that he:
 - a. Told her he was going to ‘check out the talent’ in Aldi;
 - b. Told her he was going to a ‘big night out’ with a colleague;
 - c. Displayed preferential treatment towards her, in particular he:
 - i. Referred to her as his ‘best mate’ on one or more occasions;

- ii. Arranged for her to be an assistant during a dancing session;
 - d. Referred to her as:
 - i. '[redacted]';
 - ii. '[redacted]'
 - e. Compared the headteacher to 'Mr Majeka';
 - f. Referred to Pupil Z's mother as violent;
- 5. Made inappropriate contact with Pupil Z's mother, including in that he:
 - a. Used the term 'Bradistan';
 - b. Told her he was a man in demand;
 - c. Compared the headteacher to 'Mr Majeka'.

Mr Cuthbertson has admitted some of the allegations which is evident from his evidence. Reference to these admissions is set out in detail below under the allegation to which it is relevant. Mr Cuthbertson has not directly admitted unacceptable professional conduct nor has he admitted that he has conducted himself in such a way as might bring the profession into disrepute.

C. Preliminary applications

The panel considered three applications from the presenting officer, as set out below:

An application to proceed in the absence of Mr Cuthbertson

The panel has considered whether the hearing should continue in the absence of Mr Cuthbertson.

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

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

The panel determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of Mr Cuthbertson.

The panel understood that its discretion to commence a hearing in the absence of Mr Cuthbertson had to be exercised with the utmost care and caution, and that its discretion was a severely constrained one.

In making its decision, the panel noted that Mr Cuthbertson may waive his right to participate in the hearing. The panel took into account the various factors drawn to its attention from the case of R v Jones [2003] 1 AC1.

The panel was satisfied that Mr Cuthbertson is aware of the proceedings, as he had been corresponding with the presenting officer in relation to his attendance at the hearing, as recently as the day before the hearing, and the panel saw a copy of the correspondence exchanged. Mr Cuthbertson was provided with notice of the re-listed proceedings taking place this week – having been notified on 21 September and having acknowledged receipt of this notice by having corresponded with the presenting officer by providing further evidence, since this date. Mr Cuthbertson confirmed, by email on 13 November 2017 at 15:56, to the presenting officer that he would not be attending the hearing and that he was content for the hearing to proceed in his absence. The hearing had also been adjourned twice before affording Mr Cuthbertson an extensive time period to provide further evidence. Within this time, Mr Cuthbertson had provided further evidence which was considered by the panel.

The panel therefore considered that Mr Cuthbertson waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

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

The panel had regard to the extent of the disadvantage to Mr Cuthbertson in not being able to give his account of events, having regard to the nature of the evidence against him. The panel ensured fairness to Mr Cuthbertson throughout the hearing by having taken into account all points in his favour that may arise, thereby ensuring that there was no risk of prejudice to him.

The panel had received some attachments from the presenting officer, which Mr Cuthbertson re-forwarded the day before the hearing. The panel did not consider that those documents provided adequate detail to substantiate a medical appointment.

The panel had the benefit of Mr Cuthbertson's extensive evidence, which was contained in the bundle of documents before the panel. The panel was therefore able to ascertain Mr Cuthbertson's lines of defence, as well as his evidence on mitigation. The panel was also able to test the National College's witnesses on their evidence and also considered Mr Cuthbertson's case, and points favourable to him, in doing so.

The panel had not identified any significant gaps in the documentary evidence provided to it and any gaps which arose during the course of the hearing the panel confirmed would be taken 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 was 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 were number of witnesses who were present at the hearing, who were prepared to give evidence, and so it would have been inconvenient and distressing for them to have had to return again. The panel also considered the fact that Mr Cuthbertson's recent correspondence to the presenting officer suggested that he was due to be moving abroad, and that any re-scheduled hearing may therefore be difficult for Mr Cuthbertson to attend.

The panel had regard to the seriousness of the case, and the potential consequences for Mr Cuthbertson and it accepted that fairness to Mr Cuthbertson and the National College is of prime importance. However, it considered that in light of Mr Cuthbertson'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 the hearing proceeding within a reasonable time was found to be in favour of the hearing continuing.

An application for documentation to be adduced late

The presenting officer applied to admit the witness statement of Individual A and its attached exhibit (pages 124 to 137 of the bundle), a trace report and related correspondence (pages 438 to 453 of the bundle), a chronology of documents demonstrating the history of the case and the requests for further evidence (pages 12 to 68 of the bundle).

Those documents were not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel were required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures at the discretion of the panel. The panel took into account the representations from the presenting officer as to the admission of those documents. The panel exercised caution in exercising this discretion given that it had determined to proceed with this hearing in the absence of Mr Cuthbertson.

The panel also considered whether or not to allow the admission of documents within the bundle at pages 553 to 559 which the panel understands from Mr Cuthbertson's correspondence he wished to include in support of his defence. The relevance of those documents appeared to be intended by Mr Cuthbertson to support his assertion that he did not have internet at his flat.

Under paragraph 4.18 of the Procedures, the panel can admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel was satisfied that the documents were relevant to the case as they:

- related to factual evidence linking to the allegations as a whole;
- provided a useful chronology and history of the case;
- provided tracing evidence which Mr Cuthbertson considered assisted his defence arguments and which National College also relied on; and
- provided evidence which the National College considers supported its core case.

The panel noted, in respect of the evidence Mr Cuthbertson wished to adduce late, that it would apply appropriate weight to the hearsay evidence as it deemed necessary, without the witness being in attendance. The panel had regard to whether it would be a sufficient safeguard for a hearsay warning to be given before the panel's determination on the facts. The panel were satisfied that any imbalance caused to the presenting officer in being unable to cross-examine the witness could be addressed by the weight the panel will place on the evidence. The central question for the panel in relation to the evidence the presenting officer wished to adduce, late, was whether it was fair in the circumstances to allow evidence to be put forward by the presenting officer without the opportunity for the witness to be cross-examined by Mr Cuthbertson. The panel noted that Mr Cuthbertson would not be able to cross-examine in any event as he, nor any legal adviser on his behalf, was present at the hearing.

The panel noted that these documents were relied upon to substantiate a separate allegation also. The panel therefore considered the importance of the evidence and whether it constituted a critical part of the evidence against Mr Cuthbertson. The panel noted that the evidence was of a key witness to a central allegation in the case.

In respect of the documents the presenting officer sought to adduce, the panel considered that:

- Mr Cuthbertson had already had sight of the exhibit to the witness statement of Individual A and so the witness statement was the document which Mr Cuthbertson had not seen before;
- Mr Cuthbertson consented to the admission of the documents the presenting officer proposed to adduce which can be seen in his email to the presenting officer of 8 November 2017 timed at 18:04, as well as Mr Cuthbertson's further consent in his previous emails which are contained in the bundle at pages 560 and 561;
- Mr Cuthbertson considered that the documents the presenting officer wished to adduce support his defence;

- Mr Cuthbertson had had sight of the presenting officer's previous application which contained the majority of the documents which the presenting officer sought to adduce, which are at pages 12 to 68 of the bundle;
- the majority of the documents the presenting officer sought to adduce were provided by Mr Cuthbertson in any event.

In respect of the documents which Mr Cuthbertson sought to adduce, but for which he had not made an application to include, the panel considered that the documents appeared to be intended to support Mr Cuthbertson's defence, and due to his non-attendance, the panel could consider them when considering Mr Cuthbertson's defence.

The panel noted that the documents may have required individual consideration if they were to give rise to different questions of fairness.

By reason of the points mentioned, the panel decided to admit each of the documents. All documents had already been paginated other than the documents presented to the panel on the morning of the hearing and relied upon by the presenting officer in respect of his application to continue in the absence of Mr Cuthbertson. Those documents contain correspondence between the presenting officer and Mr Cuthbertson. They were paginated as follows 560 to 583 and placed at the back of the bundle.

An application to amend the allegations:

An application was made by the presenting officer to amend the Notice of Proceedings by correcting a typographical error in allegation 1.f. The presenting officer wished to replace the word "yours" with the word "mine".

The panel also considered, despite there being no applications before it on the point, whether to amend the allegations to include the allegation of "sexual motivation".

The panel had the power to, in the interests of justice, amend the allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case have been proved.

Before making an amendment, the panel was required to consider any representations by the presenting officer and by Mr Cuthbertson, and the presenting officer had been afforded that opportunity. Mr Cuthbertson was not due to his absence from the hearing.

The panel considered that the typographical error proposed would not change the nature, scope or seriousness of the allegation. There was no prospect of Mr Cuthbertson's case being presented differently had the amendment been made at an earlier stage, and therefore no unfairness or prejudice could have been caused to him. The panel therefore decided to correct the typographical error as proposed.

In addition the panel considered whether, of its own volition, it should amend the allegations to include an allegation of sexual motivation. The presenting officer did not wish to amend the allegations to include sexual motivation.

It was considered that adding this allegation could change the nature and scope of the allegations, but would certainly change the seriousness of the allegations. There was a real risk that Mr Cuthbertson's case may have been presented differently were he facing an allegation of sexual motivation.

The panel noted that the witness statements that were potentially relevant to an allegation of sexual motivation were included in the panel bundle already, as they appeared to relate allegations 1.a. to 1.k. They had therefore been seen by Mr Cuthbertson and he had had the opportunity to respond to those as allegations 1.a. to 1.k. had been disclosed to Mr Cuthbertson prior to the hearing. Mr Cuthbertson provided his response to allegations 1.a. to 1.k. in advance of the hearing, and upon reading that, the panel considered whether, had there also been an allegation of sexual motivation, Mr Cuthbertson's defence may have been different. The panel considered that it would have been.

The panel therefore considered that Mr Cuthbertson could suffer prejudice, unfairness and harm, if the allegation of sexual motivation were to be added now. The panel does not consider that it would be in the interests of justice to amend the allegation and so it decided not to do so.

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 4
- Section 2: Notice of Proceedings and response – pages 5 to 71
- Section 3: National College witness statements – pages 72 to 137
- Section 4: National College documents – pages 138 to 453
- Section 5: Teacher documents – pages 454 to 559

In addition, the panel agreed to accept the following:

Email correspondence – pages 560 to 583.

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

Witnesses

The panel heard oral evidence from two witnesses:

Witness A (headteacher of South Craven Academy Trust); and

Witness B (head of school and designated lead for child protection of South Craven Academy Trust);

both of whom were called by the presenting officer.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Cuthbertson had been employed by the school since 1 September 2006 as a PE teacher. In addition to his teaching role, he also undertook many extra-curricular activities, including coach of the girls' football team. Mr Cuthbertson is accused of inappropriate contact with several pupils and ex-pupils, as well as with a parent of a pupil. The allegations are alleged to have taken place between 2015 and the beginning of 2016. Pupil B witnessed contact between Mr Cuthbertson and Pupil A and communicated this to the school on Friday 22 January 2016. Mr Cuthbertson was suspended on Monday 25 January 2016 pending investigation but later resigned on 31 January 2016. The investigation continued and was conducted as though Mr Cuthbertson had not resigned and was still a teacher. Mr Cuthbertson participated in the school's investigation.

Findings of fact

Our findings of fact are as follows:

- 1. Made inappropriate contact with Pupil A, in that you:**
 - a. Asked her to meet you;**
 - b. Told her this would be 'naughty and exciting';**
 - c. Told her you liked her;**
 - d. Told her you would like to kiss her;**
 - e. Told her you would 'unsquash' her;**

- f. Told her to ‘come in a box to mine’;**
- g. Told her you wanted to ‘unwrap’ her;**
- h. Used kisses in one or more communications;**
- i. Told her that you ‘fancied her all through school and had let her get away with things because you liked naughty girls’ or words to that effect;**

The panel has found allegations 1a to 1i proven for the following reasons:

- The panel has found it more likely than not that the Facebook messages set out in allegations 1.a. to 1.h. were sent by Mr Cuthbertson, rather than by a hacker.
- The panel has seen copies of screenshots of Facebook messages between Pupil A and Mr Cuthbertson (pages 79 to 86 of the bundle). The messages were sent from the Facebook account of Paul Cuthbertson. His name is clearly shown and Mr Cuthbertson accepts that it was his account that was used to send the messages despite alleging that it was in fact a hacker who had accessed his account and sent them.
- The name “[redacted]” was used (page 85) in one of the messages sent by Mr Cuthbertson to describe Pupil A’s sister, Pupil H. The wording used was “dont tell [redacted] ha x”. The panel had evidence before it that “[redacted]” was a name only Mr Cuthbertson would use for Pupil H which nobody else is aware of and is not her real name. The panel relies upon the evidence of Pupil A (page 106) and Pupil H (page 104) in this regard. Witness B, who gave live evidence, was found to be a credible witness. Witness B said that he interviewed Pupil H (page 104) and that she told him that Mr Cuthbertson called her [redacted], and that he was the only person who called her that. Pupil A had said the same thing when she was interviewed (page 106). The panel considered that it would be highly unlikely for an alleged hacker to have known of this and therefore found that it was more likely than not that the Facebook messages at pages 79 to 86 were sent by Mr Cuthbertson.
- In his written submissions Mr Cuthbertson said he did not have internet access at the time of the alleged hacking and consequently it could not have been him who sent the messages to Pupil A. Mr Cuthbertson relies on an email from an ex flat mate, Friend C, which states that there had never been wifi internet at Mr Cuthbertson’s flat (page 485). Mr Cuthbertson also relies on an email from another previous flat mate, Friend B, in relation to there being no internet in his flat (page 555). The panel was not persuaded by his account because (i) wifi is freely available in many public places; (ii) Mr Cuthbertson could have visited a friend or family member’s home to use wifi; (iii) Mr Cuthbertson could have used the 3G/4G capability on his mobile phone for internet usage and so would not

have required wifi to access the internet in any event. Friend B confirms in his email that Mr Cuthbertson would use the data on his own phone to access the internet; (iv) Friend C and Friend B have not provided witness statements and nor did they appear at the hearing to give evidence; and (v) because Mr Cuthbertson forwarded the purported emails from friend C and friend B (which allows an opportunity to alter their content) rather than attaching the originals, the panel attached little weight to them.

- Mr Cuthbertson says that at the relevant times his internet enabled mobile phone was being repaired. He produces a receipt in support dated 18 December 2015 (page 465). The panel is not persuaded by this evidence because the receipt refers to a “LCD repair” and Mr Cuthbertson accepts it was a screen repair (page 466). The panel is aware that screen repairs can usually be completed the same day, so this does not persuade the panel that the mobile phone was out of use for longer than a few hours on 18 December 2015.
- Mr Cuthbertson also says that his friend (Friend A) can confirm that he did not have an internet enabled mobile phone on the 19 December 2015. The panel has seen an email said to come from Friend A (page 486). What Friend A’s email actually says is that Mr Cuthbertson was contacting him on his spare phone which does not have internet access. However, the email does not say when this contact took place. Again, Mr Cuthbertson simply forwarded Friend A’s email rather than providing as an attachment. Consequently the panel placed little weight on this evidence.
- Mr Cuthbertson had access to an iPad supplied by the school. The panel has seen evidence that some emails sent by Mr Cuthbertson were sent from his iPad (page 327). Even if Mr Cuthbertson’s mobile phone was broken, he could still have accessed the internet using his iPad.
- The panel has seen screenshots of Mr Cuthbertson’s apparent inability to log in to his Facebook account (page 479). The panel attached no weight to this evidence because simply entering an incorrect password would generate the same error message and, more importantly, it only related to the period after the alleged inappropriate conduct when Mr Cuthbertson was preparing evidence for the school investigation.
- Similarly the Facebook posts suggesting that Mr Cuthbertson was in Lanzarote on 24 January 2016 (page 478) and Dublin (page 470) are after he had been challenged by pupils (19 January 2016) and the school had begun to investigate.
- The panel accepted the evidence from both Witness A and Witness B that Mr Cuthbertson had been spoken to on two previous occasions (in December 2014 and February 2015) by Witness B about his inappropriate use of social media, including “flirting” on Facebook and sending Facebook messages to students during school holidays (pages 103 to 104). When giving evidence, Witness B

corrected an error in his statement in that paragraph 4 of his witness statement should read December 2014 rather than December 2015.

- Witness B told the panel that in relation to the February 2014 concerns Mr Cuthbertson gave an explanation that his Facebook account had been hacked. Mr Cuthbertson gives the same explanation in relation to this allegation. On the balance of probabilities, the panel considers it to be highly unlikely that Mr Cuthbertson's Facebook account was hacked.
- Mr Cuthbertson relies on an email dated 28 January 2017 from Individual B sent to three teachers in the school (page 541) purporting to confess to the hacking. The panel has placed little weight on this email because the individual has not come forward to give evidence, there is no corroboration in support of this confession, for example, no witness had any knowledge of Individual B.
- Mr Cuthbertson subsequently provided emails from three men, Individual C, Individual D and Individual E, allegedly admitting to hacking his Facebook account and sending messages to pupils (pages 438 to 453). Trace searches against the available information for the three men have been conducted on behalf of the National College. The information generated is inconclusive for a number of reasons. First, the trace report on Individual C identified a man with a date of birth in 1985 (page 441). No link was made to the email which Individual C allegedly used to admit to hacking Mr Cuthbertson's account (page 451). In addition, the two email addresses identified for Individual C (page 441) were not the same as the email address used to send the admission. Further, the school completed a search against the name Individual C and found that there had been no Individual C under the age of 25 years who had attended the school;
- Individual E admitted to doing no more than reply to a tweet composed by another individual. This is supported by three pieces of evidence; his email to presenting officer, an attendance note of his telephone call with presenting officer, and a copy of a screenshot of a Facebook message (page 444 to 446). The only evidence to contradict this is an email in Mr Cuthbertson's defence bundle of papers which does not match the wording of the original Facebook message;
- Individual D made no admissions (page 453);
- In respect of allegation 1i, Pupil B stated that she was present with Pupil A at Pupil A's home when Mr Cuthbertson sent Snapchat messages and photographs to Pupil A (pages 73 to 78). Pupil B reported this to the school on 22 January 2016 and provided copies of the Facebook messages Pupil A had forwarded to her. Pupil B said she had seen Snapchat messages from Mr Cuthbertson stating that he "fancied [Pupil A] all through school and that he let her get away with things at school because he liked naughty girls". Pupil B stated that she knew it was Mr Cuthbertson because he also sent a photograph of his face and shoulders in real time showing him without a top on. Pupil B said that the

photograph later disappeared due to the nature of Snapchat. Pupil A corroborated Pupil B's account in respect of Mr Cuthbertson forwarding a photo of himself, received via Snapchat (page 106), which is how both Pupils A and B say they can be certain that the person sending the messages was in fact Mr Cuthbertson.

j. Followed her on Instagram;

- Mr Cuthbertson has admitted that he followed Pupil A on Instagram on his Notice of Referral Form (page 10) by circling "yes" for admitted next to allegation 1.j., and also as set out in his accompanying letter sent with his Notice of Referral Form dated 19 September 2016 (page 460). In that letter he says "I did add her (accepted her request) on Instagram sometime in November";
- The panel also relies on the statement of Pupil A in confirming that Mr Cuthbertson followed her on Instagram (page 106).

k. Added her on Snapchat.

The panel has found this allegation proven because:

- Pupil A confirms (page 106) that Mr Cuthbertson had asked her for her Snapchat name, that he had added her on the application, and that he had sent her a message and a photograph of himself. Pupil B says (page 73) she saw his face "clearly" and Pupil A described the photograph of his face saying that he had no top on as he had messaged to say he was going swimming;
- The panel understands that in order to be able to send and receive Snapchat messages and photographs the parties must be connected. Therefore, on a balance of probabilities, it considers that Mr Cuthbertson did add Pupil A on Snapchat and did send her messages and a photograph.

The panel finds that all of the particulars of allegation 1 are proven. The panel also finds that each individual allegation amounts to inappropriate contact in breach of school policy and teachers standards.

2. Failed to report safeguarding concerns in that somebody was allegedly contacting Pupil A in his name;

The panel found this allegation proven for the following reasons:

- The panel was satisfied that Mr Cuthbertson received regular safeguarding and child protection training. He therefore knew, or ought to have known, that he should report any misuse of his social media account resulting in messages being sent to pupils (pages 104, 371, 376, 377 and 378);
- The panel accepted the evidence of Witness B that Pupils C and D had challenged Mr Cuthbertson on Tuesday 19 January 2016 about inappropriate messages sent from his Facebook account (page 104);

- The panel also saw tweets Mr Cuthbertson published on his Twitter account on 22 January 2016 (pages 160 to 162) which demonstrate that Mr Cuthbertson was aware that Facebook messages had been sent from his account;
 - In his disciplinary interview (page 459 and 460), Mr Cuthbertson admitted that he failed to report the safeguarding concerns stating “I appreciate and fully understand that I should have reported this”. The panel agree.
- 3. Continued to make inappropriate contact with one or more female pupils by email despite having similar matters brought to your attention previously;**

The panel has found this allegation proven because:

- The panel accepted evidence from Witness B, the designated safeguarding officer, (pages 103 and 104) that he had given Mr Cuthbertson professional advice and guidance about his inappropriate interactions on Facebook and email with pupils on two previous occasions in 2014;
- Mr Cuthbertson admits that he continued to send inappropriate emails in 2015 to January 2016 (page 463);
- The panel consider the emails to be entirely inappropriate. Examples of the emails include:
 - page 251, an email sent to Pupil Z saying “shall go to Aldi and do my shopping and check out the talent”;
 - page 326, an email sent to two pupils including “Hey you two, hope you are ok and had a nice weekend!...if you ever need a chat or if there is anything I can do to help please just let me know!...I think the world of you two, you are absolute stars so please give me a shout anytime or even if it’s just someone to have a good Feather rant at then I am here!...we all need a good rant now and again!”;
 - page 325, email to a pupil saying “I will ya div”;
 - page 340, an email sent to what appears to be the girl’s football team saying “I love you all to bits”;
 - page 341, an email to Pupil Z saying “Was earwiggling earlier!!!! If you ever get too stressed with anything you come and find me, I will do all I can to help you. If you don’t I will just meg you”;
 - page 163, an email to Pupil C, the pupil who told him about the school learning of the Facebook activity in the week of 19 January 2016, to tell her “someone has been logging into my account from Skipton! More stuff happened this weekend!!!! – NOT GOOD...will tell you when I see you”;
- The panel has found this allegation proven on the basis of the emails themselves, Mr Cuthbertson’s admission to having sent them, and also because the panel considered their content to be entirely inappropriate;

- This conduct is unprofessional, in breach of teaching standards and the school's acceptable IT use policy.

4. Made inappropriate contact with Pupil Z, including that you:

a. Told her you were going to 'check out the talent' in Aldi;

The panel relies upon:

- Mr Cuthbertson's admission of this allegation which can be seen from him circling "yes" on the Notice of Referral Form (page 10);
- The admission is consistent with the email at page 251.

The panel therefore found this allegation proven.

b. Told her you were going to a 'big night out' with a colleague;

The panel had regard to:

- Mr Cuthbertson's admission of this allegation which can be seen from him circling "yes" on the notice of referral form (page 10);
- This admission is consistent with the email at page 170.

The panel therefore found this allegation proven.

c. Displayed preferential treatment towards her, in particular you;

i. Referred to her as your 'best mate' on one or more occasions;

The panel had regard to:

- Mr Cuthbertson's admission that "ever since [she was in] Year 7 I have called her my best mate" (page 461);
- This admission is consistent with the six emails at pages 167, 169, 172, 174, 221 and 461, including one saying "BEST MATE".

The panel therefore found this allegation proven.

ii. Arranged for her to be an assistant during a dancing session;

The panel did not find this allegation to be proven because the following evidence does not amount to inappropriate contact:

- There was insufficient evidence that the arrangements Mr Cuthbertson admits to making for Pupil Z (page 222) amount to preferential treatment;
- Witness A gave evidence explaining that it was usual for teachers to arrange for pupils to help with the traditional Scottish dancing that day and that teachers would have been asking for help from pupils.

d. Referred to her as:

i. '[redacted]';

The panel had regard to the emails which Mr Cuthbertson admits sending which contain references to "[redacted]" which refer to Pupil Z (pages 268 and 276).

The panel therefore found this allegation proven.

ii. '[redacted]'

The panel had regard to the emails which Mr Cuthbertson admits sending which contain references to "[redacted]" which refer to Pupil Z (pages 310 and 311).

The panel therefore found this allegation proven.

e. Compared the headteacher to 'Mr Majeka';

The panel could not find any evidence to support the assertion that this reference was made when Mr Cuthbertson was contacting Pupil Z, only when he was contacting Pupil Z's mother (see below). The panel therefore found this allegation not proven.

f. Referred to Pupil Z's mother as violent;

The panel found this allegation proven. It had regard to the email sent to Pupil Z saying "She's violent!!!!!!" (page 246), which Mr Cuthbertson admits he sent. This reference relates to Pupil Z's mother which can be seen from the previous email sent by Pupil Z to which Mr Cuthbertson was replying.

Mr Cuthbertson does not accept that the email correspondence with Pupil Z was inappropriate (page 10). However, the panel noted in the disciplinary investigation, he said "I realise that this may well be over the top and seen as unprofessional" (page 363).

The panel was satisfied that the contact Mr Cuthbertson had with Pupil Z, as set out in allegations 4.a. to 4.c.i, 4.d. and 4.f. was inappropriate, in terms of its content and tone, the sheer volume of emails sent and received, the fact that he would sometimes email her during evenings and weekends, and call her by nicknames. Additionally, Mr Cuthbertson accepts that "I fully understand that I shouldn't have emailed mum and daughter in that way" (page 461).

5. Made inappropriate contact with Pupil Z's mother, including in that you:

a. Used the term 'Bradistan';

The panel had regard to:

- Mr Cuthbertson’s admission in his letter to National College of 18 September 2016 in that he states “I regret sending the emails especially the one that used the word Bradistan and I appreciate that that was inappropriate” (page 462);
- This admission is consistent with the email at page 187.

The panel therefore found this allegation proven.

b. Told her you were a man in demand;

The panel had regard to:

- An email which Mr Cuthbertson admits sending to Pupil Z’s mother, which states “I’m a man in demand” at page 175.

The panel therefore found this allegation proven.

c. Compared the headteacher to ‘Mr Majeka’.

The panel had regard to:

- Two emails which Mr Cuthbertson admits sending to Pupil Z’s mother use the term “Mr Majeka” to describe Witness A. These are at pages 192 “How’s your new best mate, Mr Majeka??!” and page 303 “[Pupil Z] needs to deliver it to Mr Majeka personally”.

Having found all the factual allegations in allegation 5 proven, the panel is satisfied that Mr Cuthbertson acted inappropriately in his contact with Pupil Z’s mother. The sheer volume of emails between Mr Cuthbertson and Pupil Z’s mother, the friendly and over familiar tone including references to his personal life such as “the women of Aldi love it” and “more of a spray tan kind of guy” (page 188), and the use of nicknames all demonstrate the inappropriateness of the exchanges.

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

Having found all of the allegations except allegation 4.c.ii. and 4.e. to have been proven, the panel has gone on to consider whether the facts of the 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 Cuthbertson in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Cuthbertson 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.

The panel is satisfied that the conduct of Mr Cuthbertson amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Cuthbertson's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that none of these offences are relevant.

The panel is satisfied that the inappropriate email and social media contact included contact with present and past pupils of the school. Much of the contact was via Mr Cuthbertson's school email account.

Pupils A, B, C and D were clearly unhappy and uncomfortable with the Facebook and Snapchat messages which Mr Cuthbertson was sending as two of them challenged Mr Cuthbertson directly about his behaviour and one reported it to the school. It appears to the panel that the pupils were more aware of proper professional boundaries and appropriate behaviours than Mr Cuthbertson.

Accordingly, the panel is satisfied that Mr Cuthbertson 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 Cuthbertson'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 a 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; declaring and upholding proper standards of conduct; the interest of retaining the Mr Cuthbertson in the profession.

In light of the panel's findings against Mr Cuthbertson, which involved his inappropriate interaction with pupils and a parent, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate conduct with children.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Cuthbertson were not treated with the utmost seriousness.

There is a strong public interest consideration in declaring proper standards of conduct in the profession as the conduct found against Mr Cuthbertson was beyond that which can be reasonably tolerated.

The panel considered that there was a public interest consideration in retaining Mr Cuthbertson in the profession. Both the headteacher and the head of school described Mr Cuthbertson as a committed, popular and successful PE teacher who did more than most and went over and above what was expected.

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

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 Cuthbertson. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the wellbeing of pupils, particularly where there is a continuing risk.

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of the imposition of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case. In light of the panel's findings:

- There was no evidence that the Mr Cuthbertson's actions were not deliberate;
- There was no evidence to suggest that the Mr Cuthbertson was acting under duress, and in fact the panel found his actions to be calculated and motivated;
- There is evidence that shows Mr Cuthbertson was given professional advice and guidance about his use of social media and email but no formal disciplinary action was initiated.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel is sufficient.

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 Cuthbertson. The panel is concerned that pupils were able to identify proper professional boundaries but Mr Cuthbertson was not. Despite having received professional guidance about his use of social media and email, and its implication for safeguarding, on two previous occasions, Mr Cuthbertson continued to compromise proper boundaries with pupils and parents through social media and email. This, in the panel's view, is evidence of immaturity and insufficient insight into his behaviour, the need to maintain proper professional boundaries and the effect breaching them can have on pupils, his own professional reputation, that of the school, and the teaching profession generally.

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

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provision for a review period.

A review period of 2 years will afford a potentially good teacher, such as Mr Cuthbertson, the opportunity to gain and demonstrate the insight and understanding he currently lacks.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of sanction and review period.

In considering this case, I have also given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case, the panel has found the majority of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. Where the panel has not found allegations proven I have put those matters from my mind. The panel has made a recommendation to the Secretary of State that Mr Cuthbertson should be the subject of a prohibition order, with a review period of two years.

In particular the panel has found that Mr Cuthbertson 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.

The panel finds that the conduct of Mr Cuthbertson fell significantly short of the standards expected of the profession.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published

finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Cuthbertson, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed “Pupils A, B, C and D were clearly unhappy and uncomfortable with the Facebook and Snapchat messages which Mr Cuthbertson was sending as two of them challenged Mr Cuthbertson directly about his behaviour and one reported it to the school.” A prohibition order would therefore prevent such a risk from being present in the future. I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “evidence of immaturity and insufficient insight into his behaviour, the need to maintain proper professional boundaries and the effect breaching them can have on pupils, his own professional reputation, that of the school, and the teaching profession generally.” In my judgement the lack of full insight means that there is some risk of the repetition of this behaviour and this risks the future wellbeing of pupils. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “the conduct displayed would likely have a negative impact on the individual’s status as a teacher, potentially damaging the public perception.”

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

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Cuthbertson himself. He is an experienced teacher and the panel observe, “the headteacher and the head of school described Mr Cuthbertson as a committed, popular and successful PE teacher who did more than most and went over and above what was expected.”

A prohibition order would prevent Mr Cuthbertson from teaching and would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case I have placed considerable weight on the panel's comments concerning the lack of insight or remorse. I have given less weight in my consideration of sanction to the contribution that Mr Cuthbertson has made and is making to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by remorse or insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended a 2 year review period. That is the minimum set out in the legislation.

I have considered whether a 2 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case I consider that it does.

I consider therefore that a two year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Paul Cuthbertson 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 6 December 2019, 2 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 Paul Cuthbertson remains prohibited from teaching indefinitely.

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

Mr Paul Cuthbertson 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.



Decision maker: Alan Meyrick

Date: 29 November 2017

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