



Neutral Citation Number: [2024] EWHC 1878 (Admin)

Case No: AC-2023-LON-001788

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25 July 2024

**Before :**

**THE HONOURABLE MR JUSTICE PEPPERALL**

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**Between :**

**JOSHUA JAMES SUTCLIFFE**

**Appellant**

**- and -**

**SECRETARY OF STATE FOR EDUCATION**

**Respondent**

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**Michael Phillips** (instructed by **Camerons Solicitors LLP**) for the **Appellant**  
**Iain Steele** (instructed by **Government Legal Department**) for the **Respondent**

Hearing date: 1 May 2024  
Further submissions: 3 May 2024  
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**Approved Judgment**

This judgment was handed down remotely on 25 July 2024  
by circulation to the parties and by release to the National Archives.

**THE HONOURABLE MR JUSTICE PEPPERALL:**

1. This appeal by a teacher against the Secretary of State's decision to make an order prohibiting him from teaching raises issues as to the conflict between the teacher's Christian faith and his professional duties to the children in his class. The laws that protect a person's freedom of thought, conscience, religion and expression apply to teachers just as much as anyone else. A teacher's right to believe that no one can self-identify as a different gender and that homosexuality is a sin against God is protected by law, but does not entitle the teacher to fail to treat transgender, gay and lesbian pupils with anything short of the dignity and respect with which all schoolchildren must be treated or justify a failure to safeguard the best interests and wellbeing of such children.
2. This case is not about a teacher who accidentally failed to follow a school's policy of referring to a transgender pupil by the child's chosen pronouns or even about a teacher who reconciled his religious convictions with such policy by choosing to avoid pronouns altogether and referring to the child by name. Rather, it is about a teacher who deliberately used female pronouns to refer to a transgender male pupil both in the classroom and then on national television in such a way that he would be "outed" without any apparent regard for a vulnerable child who was thereby caused significant distress. Further, it is about a teacher who told his class that homosexuality is a sin and implied that homosexuals might be cured through God without any apparent regard for the gay and lesbian children in his class and who made them feel that their teacher regarded them as worthless.
3. Joshua Sutcliffe is a maths teacher and an evangelical Christian who preaches both on the streets and online. He has strong and sincerely held views rooted in his faith about gender identity, homosexuality, the sanctity of marriage between a man and a woman, the role of men and women in society, and Islam:
  - 3.1 He believes that biological sex is immutable and that people cannot self-identify as a different gender. He believes that God makes us male or female, and that what God ordains cannot be changed. He argues that it is wrong to require him or any other person to refer to a transgender person by their preferred pronouns. He regards that as a matter of conscience.
  - 3.2 He believes that homosexuality is a sin that is contrary to God's design and to nature.
  - 3.3 He argues that marriage is a lifelong commitment between a man and a woman.
  - 3.4 He considers that the man is the head of the household who provides for his wife and children.
  - 3.5 He believes that Islam is evil and that Mohammed is a false prophet.
4. Many (including on the evidence of the theologian, Dr Martin Parsons, many other evangelical Christians) will agree with him on at least some of these points. Many others will vehemently disagree, and some of those who disagree will take deep offence. Nevertheless, Mr Sutcliffe's freedom of thought, conscience and religion is protected by Article 9 of the European Convention on Human Rights. Furthermore, his

right to express his opinions is protected by Article 10. As Sedley LJ rightly observed in Redmond-Bate v. DPP (1999) 7 BHRC 375, at [20]:

“Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative ... Freedom only to speak inoffensively is not worth having.”

5. This case arises from the conflict between Mr Sutcliffe’s deep convictions and his professional duties as a teacher. Such conflict led to complaints about Mr Sutcliffe’s conduct as a teacher at The Cherwell School in Oxfordshire and ultimately to his dismissal in February 2018. It led to further complaints and to his resignation from his subsequent employment at St Aloysius College in Islington in November 2019.
6. Following a six-day hearing into his conduct at the two schools, a professional conduct panel of the Teaching Regulation Agency found that Mr Sutcliffe was guilty of unacceptable professional conduct and of conduct that might bring the teaching profession into disrepute. The panel recommended that the Secretary of State should impose a prohibition order, being an order prohibiting Mr Sutcliffe from carrying out “teaching work” as defined by reg.3 of the Teachers’ Disciplinary (England) Regulations 2012 and provide that such order could be reviewed after a minimum period of two years. By a decision made on 10 May 2023, the Secretary of State accepted the panel’s recommendations. Her decision and the making of the prohibition order were confirmed by a letter from the Teaching Regulation Agency dated 11 May 2023.
7. Mr Sutcliffe now appeals against the making of the prohibition order and seeks an extension of time for bringing his appeal.

#### **THE APPLICATION FOR AN EXTENSION OF TIME**

8. Mr Sutcliffe’s solicitor, Robert Smith, filed his appeal at the King’s Bench Division using the court’s e-filing service at 3.03pm on 8 June 2023. It is common ground between the parties that that was the last day for filing Mr Sutcliffe’s appeal. The following morning, Mr Smith received a notification that the appeal had been rejected because, it was asserted, statutory appeals are required to be made to the Administrative Court. On 9 June, Mr Smith refiled the appeal at the Administrative Court and applied for an extension of time.
9. Regulation 17 of the 2012 Regulations provides that a teacher may bring an appeal within 28 days of the date on which notice of the prohibition order is served. While such time limit is apparently absolute, s.3 of the Human Rights Act 1998 requires that reg.17 must be read down so as to confer a discretion or duty to extend time in exceptional circumstances where the strict application of the 28-day limit would “impair the very essence of the statutory right of appeal”: Adesina v. Nursing & Midwifery Council [2013] EWCA Civ 818, [2013] 1 W.L.R. 2156; Pomieczowski v. District Court of Legnica [2012] UKSC 20, [2020] 1 W.L.R. 1604; Stuwe v. Health & Care Professions Council [2022] EWCA Civ 1605, [2023] 4 W.L.R. 7.

10. Michael Phillips, who appears for Mr Sutcliffe, argues that his solicitor was misled by the decision letter, by the Secretary of State's online guidance note "Teacher misconduct: regulating the teaching profession", and by her rather fuller guide "Teacher misconduct: Disciplinary procedures for the teaching profession", each of which advise that appeals are made by application to the King's Bench Division of the High Court. Further, Mr Phillips relies on the delay being just one day and submits that, once informed that he had issued the appeal in the wrong court, Mr Smith took immediate action to regularise matters.
  
11. Iain Steele, who appears for the Secretary of State, points to the exceptional and narrow nature of the discretion to extend time. He argues that the attempt made to file in the wrong court does not amount to an exceptional circumstance such that application of the time limit would impair the very essence of the right of appeal. Further, he points to the Secretary of State's covering letter dated 11 May 2023 which advised that any appeal should be made to the Administrative Court.
  
12. Such arguments are premised on the parties' joint assumption that the appeal was rightly rejected by the King's Bench Division. I questioned the correctness of that assumption and invited further submissions on the issue. Having considered those submissions, I conclude that this appeal was wrongly rejected:
  - 12.1 Paragraph 2.1 of the Practice Direction 52D to the Civil Procedure Rules 1998 provides that the court to which a statutory appeal lies is prescribed by statute. Beyond that, Part 52 provides no specific guidance as to the destination of statutory appeals by teachers.
  - 12.2 Here, the relevant statute is the Education Act 2002. Paragraph 5 of Schedule 11A to the Act states that regulations must provide for a right of appeal "to the High Court." That is done by reg.17 of the 2012 Regulations that provides that an appeal lies "to the High Court". Neither the Act nor the Regulations requires the appeal to be made to any particular division, to any particular specialist court, or in any particular specialist list of the High Court.
  - 12.3 The combined research of both counsel and the court has not been able to find any statutory provision, rule or Practice Direction requiring this appeal to have been filed in the Administrative Court. I am reassured to note the similar position in the unreported 2023 case of Watt & Kelly v. Secretary of State for Education.
  - 12.4 In my judgment, the highest it can be put is that there is a longstanding custom and practice of appeals against prohibition orders being issued and litigated in this court. Absent some provision mandating issue in the Administrative Court, such custom and practice does not, however, mean that this appeal was wrongly filed in the King's Bench Division. Further, even where the court office concludes that there has been an error of procedure, such error does not invalidate the step taken (here issue in what was thought to be the wrong court) unless the court so orders: r.3.10. I would therefore suggest that in future appeals lodged by teachers in the King's Bench Division might properly be accepted and then transferred to the Administrative Court for case management and hearing.

13. Whatever should have happened, the court must deal with the case on its facts. The original filing was rejected and the court is dealing with an appeal issued out of time such that it is necessary to consider Mr Sutcliffe's application to extend time. That said, my conclusions that Mr Sutcliffe had validly issued his appeal in the King's Bench Division on 8 June and that such appeal was wrongly rejected by the court are plainly very important. Neither he nor his solicitors were at fault and in these exceptional circumstances I have no doubt that strict application of the 28-day limit would impair the very essence of the statutory right of appeal such that the court must extend time in this case. This appeal must therefore be determined upon its merits.

### **THE REGULATORY FRAMEWORK**

14. Section 141B of the Education Act 2002 provides that the Secretary of State may investigate cases where it is alleged that a teacher may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute. Where, after giving the teacher an opportunity to comment, the Secretary of State decides that such a case should be considered by a professional conduct panel, she must appoint a panel consisting of at least three people, which must include one or more teachers or persons who have been teachers in the past 5 years: regs.5-6, Teachers' Disciplinary (England) Regulations 2012.
15. In considering the case, both the Secretary of State and the panel may take into account any failure by the teacher to comply with the personal and professional conduct standards set out in Part 2 of the Teachers' Standards: reg.4. Such standards include the following requirements:
- “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 ...
  - having regard for the need to safeguard pupils' wellbeing, in accordance with statutory provisions
  - showing tolerance of and respect for the rights of others
- 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.”
16. Where a panel finds the teacher guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute, it must make a recommendation to the Secretary of State as to whether a prohibition order should be made: reg.7. The matter then passes back to the Secretary of State who must consider the panel's recommendation and decide whether to make a prohibition order: reg.8. Where the Secretary of State decides to make a prohibition order, she must also decide whether an application may be made for a review of the order and, if so, the minimum period (which cannot be less than two years) before the teacher can apply for such review. The Secretary of State's decision must be published.

17. The Teaching Regulation Agency published advice on the regulatory framework in its February 2022 guidance “Teacher misconduct: the prohibition of teachers”. It advises that a panel must first make its findings of fact, and then decide whether any proven allegations amount to unacceptable professional conduct (being misconduct of a serious nature that falls significantly short of the standard of behaviour expected of a teacher) or conduct that may bring the profession into disrepute (being conduct that could potentially damage the public’s perception of the teacher).
  
18. The advice observes that in making a judgment as to whether a teacher’s behaviour falls short of the expected standard, the panel should “draw on its own knowledge and experience of the teaching profession, particularly the personal and professional conduct elements of the Teachers’ Standards and the responsibilities and duties in relation to the safeguarding and welfare of pupils set out in statutory guidance”. Further, in considering whether the teacher is guilty of conduct that may bring the profession into disrepute, panel members should “use their knowledge, skills and experience to take into account how the teaching profession is viewed by others, the responsibilities and duties of teachers in relation to the safeguarding and welfare of pupils, and the influence that teachers may have on pupils, parents and others in the community”. Panels should also take account of the “uniquely influential role that teachers can have in pupils’ lives and that pupils must be able to view teachers as role models in the way they behave”.
  
19. The advice stresses the need for caution with misconduct that occurs outside of the education setting:
  - 19.1 Such conduct will only amount to unacceptable professional conduct if it affects the way in which the teacher fulfils their teaching role or it may lead to pupils being exposed to or influenced by the behaviour in a harmful way.
  - 19.2 Further such conduct will only be relevant to the question of whether it may bring the profession into disrepute if it is of a serious nature and would be likely to have a negative impact on the public’s perception of the individual as a teacher.
  
20. Where a panel finds unacceptable professional conduct or conduct that may bring the profession into disrepute, it must decide whether to recommend the imposition of a prohibition order. The guidance advises:
  - “36. A prohibition order aims to safeguard pupils, to maintain public confidence in the profession, and uphold proper standards of conduct, referred to as public interest. Prohibition orders should not be given simply in order to be punitive or show that blame has been apportioned, although they are likely to have a punitive effect. In making a judgment as to whether a prohibition order is appropriate the panel will consider the public interest, the seriousness of the behaviour, and any mitigation offered by the teacher, and decide whether an order is necessary and proportionate ...
  38. In considering the seriousness of the behaviour, it is important to consider the influential role that a teacher can play in the formation of pupils’ views and behaviours. The level of trust and responsibility that members of the teaching profession hold means that the expectation, of both the public and pupils, is that all members of the teaching profession maintain an exemplary

level of integrity and ethical standards at all times. A teacher's behaviour that seeks to exploit their position of trust should be viewed very seriously in terms of its potential influence on pupils and be seen as a possible threat to the public interest, even if no criminal offence is involved.

39. It is likely that a panel will consider a teacher's behaviour to be incompatible with being a teacher, if there is evidence of one or more of the following factors:

- serious departure from the personal and professional conduct elements of the Teachers' Standards; ...

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

- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children ...

- violation of the rights of pupils;

- actions or behaviours that ... undermine fundamental British values of ... mutual respect and tolerance of those with different faiths and beliefs ...”

21. In deciding whether such recommendation is necessary, panels must apply the principle of proportionality and demonstrate that they have given careful consideration to whether publication of adverse findings might be sufficient to achieve the desired public interest outcomes.

### **THE PANEL'S DECISION**

22. The panel made the following findings of fact:

22.1 First, Mr Sutcliffe had failed to use Pupil A's preferred male pronouns on one or more occasions in the classroom while teaching maths at Cherwell.

22.2 Secondly, when appearing on "This Morning", Mr Sutcliffe had used female pronouns on multiple occasions when referring to Pupil A.

22.3 Thirdly, in an email to Cherwell sent on 8 December 2017, Mr Sutcliffe failed to use Pupil A's preferred male pronouns.

22.4 Fourthly, Mr Sutcliffe had told pupils in a maths lesson at Cherwell that he was against gay marriage.

22.5 Fifthly, when discussing homosexuality in a maths lesson at Cherwell, Mr Sutcliffe had told pupils about a person who had, through God, "stopped being gay" as it was "wrong".

22.6 Sixthly, on or around 18 October 2019, Mr Sutcliffe showed pupils at St Aloysius College a video uploaded by PragerU in form time. The video, which was entitled "Make Men Masculine Again", contained comments to the effect that:

a) The growing problem in today's society is that men are not masculine enough.

b) When men deny their masculinity, they run away from responsibilities leaving destruction and despair in their wake.

c) Children who grow up without a father are generally more depressed than their peers who have a mother and a father. They are at far greater risk of

incarceration, teen pregnancy, and poverty. 71% of High School dropouts are fatherless.

- d) Women want “real men” and the presenter did not know any woman of any age who is attracted to a passive man who looks to her to be his provider, protector and leader.
  - e) Passive men don’t defend, protect or provide. Passive men do not lead.
- 22.7 Seventhly, during his employment at St Aloysius College, Mr Sutcliffe had uploaded a video to his YouTube account which included the following assertions:
- a) Mohammed is a false prophet.
  - b) “If we look at Islam in the modern generation, we see that many people go out killing in the name of Allah.”
  - c) “I would suggest that Muslims have a false understanding of God because they’ve been led by a false prophet.”
  - d) “The Fruit of Islam is not peace, it’s division.”
  - e) “It’s the beginning of a great evil in this land when we’re not able to speak against Islam.”
  - f) “Joseph Smith is a false prophet ... these are false and destructive heresies.”
- 22.8 Eighthly, Mr Sutcliffe had uploaded further videos to his YouTube account after his resignation from St Aloysius College entitled:
- a) “What does the Bible say about LGBT?”
  - b) “Muhammed is a false prophet.”
  - c) “Muslim man threatens to knock me the f\*\*\* out.”
  - d) “Police telling preacher not to talk about homosexuality.”
  - e) “LGBT mafia member tries to intimidate preacher.”

### THE MISGENDERING ALLEGATIONS

23. Pupil A was registered female at birth but identified as male by the time that he joined Cherwell. He wore his hair short and, upon the evidence, was of male appearance such that few people suspected that he had been born female.
24. On joining Cherwell, Pupil A had made clear his preference for the school to use male pronouns. The school agreed and the assistant headteacher explained the position at paragraph 3 of her statement:
- “Pupil A ..., a transgender pupil, had transferred to us from another school. Pupil A had always presented as, and been known as, a boy at our school. In my opinion, if you had seen Pupil A whilst a pupil at our school, you would have viewed Pupil A as male. Aside from Mr Sutcliffe, I was not aware of any other difficulties amongst pupils or teachers in responding to Pupil A as male. I sensed from talking to students in the class later that certainly Pupil A’s closest friends were aware that Pupil A was transgender. I sensed that other students were aware, but weren’t publicly talking about it.”
25. A fellow maths teacher at Cherwell decided that Pupil A should be moved into Mr Sutcliffe’s set. Before the pupil was moved, the colleague said that she had a brief chat with Mr Sutcliffe in February 2017. Her account continues:



“I stated very clearly that [Pupil A] was transgender and should always be referred to using male pronouns just to make Joshua aware. I also mentioned that [Pupil A] looked male so it was unlikely that Joshua would make a mistake. Joshua replied that was, of course, fine and that he understood.”

26. On 2 November 2017, Pupil A’s parents complained to the school that Mr Sutcliffe had frequently misgendered Pupil A (i.e. that he referred to the pupil using language, typically pronouns, that did not reflect the pupil’s gender identity) and aired his negative views about equal marriage (namely legal reforms to give equal effect to marriage whether it be between opposite-sex or same-sex couples) during the course of his maths lessons. While that complaint was being investigated, Mr Sutcliffe appeared on ITV’s “This Morning” with Phillip Schofield and Holly Willoughby on 13 November 2017 and discussed the situation at Cherwell.
27. The panel found that in failing to use Pupil A’s preferred pronouns in the classroom (finding 1) and in the course of the television interview (finding 2), Mr Sutcliffe had failed to treat him with dignity and respect, and had failed to safeguard Pupil A’s wellbeing.
28. The panel concluded that as soon as Mr Sutcliffe realised that his personal convictions might conflict with Pupil A’s wellbeing, it was his professional responsibility to raise the matter with the school at the earliest opportunity in order to agree an appropriate approach to safeguard the pupil’s wellbeing. In this respect, the panel noted the headteacher’s letter to Mr Sutcliffe written in May 2017 which offered prescient advice:

“I shared with you my concern that you have been finding it difficult to separate your Evangelical Christian faith from your professional responsibilities as a teacher at this school ...

I would encourage you to talk directly to me if at any time you feel that you are finding it hard to work within this ethos of the school.”
29. The panel observed that Mr Sutcliffe could have balanced his personal convictions with the interests of Pupil A in order to safeguard him by always referring to the pupil by name. While the panel noted some attempt to do so, it found that he had deliberately referred to Pupil A using female pronouns on more than one occasion. The panel concluded:

“By not seeking a satisfactory solution to his dilemma, but choosing instead to teach Pupil A and [failing] to use Pupil A’s preferred pronouns, Mr Sutcliffe failed to consider what was in the best interests of Pupil A, and therefore failed to have regard for the need to safeguard Pupil A’s wellbeing.”
30. The panel found that Mr Sutcliffe described Pupil A in the course of a national television programme, that he would have been aware was highly likely to have been watched by members of the Cherwell school community including Pupil A, in such a

way that it would have been apparent to him and other pupils at the school that he was referring to Pupil A. By referring to Pupil A with female pronouns in class and on national television, the panel found that Mr Sutcliffe had identified to other pupils that Pupil A was transgender where this had not previously been common knowledge. The panel found that Mr Sutcliffe failed to consider the ramifications for Pupil A of his appearance and comments on the programme, and that he failed to have regard to the need to safeguard Pupil A's wellbeing.

31. The panel concluded that Mr Sutcliffe had failed to show tolerance of and respect for the rights of others by deliberately using female pronoun when referring to Pupil A both in the classroom and on national television.
32. Cherwell was described by the panel as explicitly diverse and inclusive. The school's practice was to use a child's preferred pronouns. Such practice was reinforced at a staff meeting on 12 October 2017 at which staff, including Mr Sutcliffe, were updated on the school's approach to transgender pupils. Staff were reminded about the appropriate use of pronouns and names, and advised to use gender-neutral pronouns or the child's name where teachers did not know the pupil's gender. The panel found that Mr Sutcliffe was aware of the school's policy and that he had a professional responsibility to report to the school any concerns that he had about being expected to use preferred pronouns. By failing to seek such advice, the panel found that Mr Sutcliffe did not have proper and professional regard for Cherwell's ethos, policies and practices.
33. The panel dismissed a like allegation in respect of the email (finding 3) which was private correspondence to the school.

#### SHARING HIS VIEWS ON HOMOSEXUALITY

34. The panel found that Mr Sutcliffe had shared his views about gay marriage and homosexuality (finding 4) in direct answer to a question from pupils as to his views. The panel dismissed the allegation that, in answering such direct question, Mr Sutcliffe had failed to treat pupils with dignity or respect, or that he had failed to safeguard their wellbeing.
35. The panel found that Mr Sutcliffe's comments about someone "stopping being gay" through God because it was "wrong" (finding 5) had been unprompted and that he had failed to consider the potential impact of his words on pupils and particularly on those children who "may be from the LGBTQ+ community". Pupil A felt that the comments were addressed at him and Pupil B, and that the teacher's implication was that they were "wrong" and needed to be "cured". Pupil B felt that, by saying being gay was wrong, Mr Sutcliffe was saying that her existence was inherently wrong. The panel concluded that Mr Sutcliffe had failed to deal with the matter professionally and in a balanced way, and that he had thereby failed to treat pupils with dignity and respect, and had failed to safeguard pupils' wellbeing.

### THE PRAGERU VIDEO

36. The panel found that in showing the PragerU video to pupils (finding 6), Mr Sutcliffe had failed to provide a balanced view or any opportunity for pupils to discuss alternative views. His failure to provide context or debate risked the video being perceived by pupils as the sole position on the definition of masculinity. The panel found that Mr Sutcliffe had failed to take into account the potential negative impact on pupils who did not agree with or conform to the views of masculinity portrayed in the video. Further, it found that Mr Sutcliffe acted insensitively by failing to take into account the potential ramifications for pupils whose personal circumstances did not reflect those portrayed as idealistic in the video. The panel concluded that Mr Sutcliffe had failed to treat pupils with dignity and respect, and that he had failed to safeguard their wellbeing.

### THE YOUTUBE VIDEOS

37. The panel noted that only one video was uploaded to Mr Sutcliffe's YouTube account during his employment at the Islington college (finding 7). As to that, the video was made and uploaded in Mr Sutcliffe's own time and made no reference to the college, its pupils or the fact that he was a teacher. Further, the panel found that Mr Sutcliffe did not encourage or direct pupils to watch his YouTube channel. The panel concluded that in making and uploading the video, Mr Sutcliffe was exercising his right to freedom of expression when preaching about his religious beliefs. Further, it noted that the remaining videos (finding 8) were uploaded after the end of Mr Sutcliffe's employment. The panel therefore dismissed the further allegations of misconduct in respect of Mr Sutcliffe's YouTube account.

### THE PANEL'S CONCLUSIONS

38. The panel then considered the allegations that it had upheld and found that Mr Sutcliffe had breached the Teachers' Standards. Specifically, the panel found that Mr Sutcliffe failed to treat his pupils with dignity or build relationships rooted in mutual respect. It noted the guidance in "Keeping Children Safe in Education" that all professionals should make sure their approach is child-centred and consider at all times what is in the best interests of the child. The panel particularly highlighted Mr Sutcliffe's intolerance.
39. The panel concluded that Mr Sutcliffe's conduct fell significantly short of the standard of behaviour expected of a teacher and that he was guilty of unacceptable professional conduct. Further, it concluded that his actions constituted conduct that might bring the teaching profession into disrepute.
40. The panel then considered whether it was appropriate to recommend the imposition of a prohibition order. In doing so, it considered the public interest, the seriousness of the behaviour, Mr Sutcliffe's mitigation, and whether a prohibition order would be necessary and proportionate. It observed that prohibition orders should not be made in order to be punitive or show that blame had been apportioned. In considering the issue, the panel had particular regard to the public interest in safeguarding and the wellbeing of pupils, the maintenance of public confidence in the profession, declaring and

upholding proper standards of conduct, and the interest of retaining the teacher in the profession.

41. The panel noted that Mr Sutcliffe has ability as an educator, describing him as a competent teacher and a good one-to-one tutor. It did not, however, find that he had contributed significantly to the education sector and concluded that the adverse public interest considerations outweighed any interest in retaining him within the profession since his behaviour had fundamentally breached the standard of conduct expected of a teacher. It noted the expectation of both the public and pupils that teachers should maintain an exemplary level of integrity and ethical standards at all times.
42. By way of mitigation, the panel noted that Mr Sutcliffe had a previously good record, his ability as a teacher, and that he had demonstrated exceptionally high standards in his personal life in light of his significant contribution to his church. While the panel found his actions to be deliberate, it noted that Mr Sutcliffe was a relatively new teacher with limited experience and that he had not maliciously intended to cause distress. The panel found that Mr Sutcliffe failed to distinguish between his roles as a teacher and a preacher.
43. The panel found that Mr Sutcliffe had some level of insight and remorse as to the effect of his actions on pupils, but that this was limited and fell significantly short of the level that it expected.
44. Taking all of these matters into account, the panel concluded that it would not be a proportionate or appropriate response to fail to recommend a prohibition order. Simply publishing the adverse findings would unacceptably compromise the public interest. The panel had regard to the three aims of prohibition: namely safeguarding pupils, maintaining public confidence in the profession, and upholding proper standards of conduct. The panel laid particular emphasis in this case on the issue of safeguarding. It found that Mr Sutcliffe lacked the level of insight and remorse sufficient to satisfy the panel that, faced with a similar set of circumstances, there would be no risk of repetition. Accordingly, the panel recommended a prohibition order but did not regard the case as so serious as to warrant a review period longer than the minimum two-year period.

#### **THE DECISION OF THE SECRETARY OF STATE**

45. The panel's recommendation was then considered on behalf of the Secretary of State. By a decision dated 10 May 2023, the Secretary of State accepted the recommendation that a prohibition order should be made and directed that Mr Sutcliffe could not apply for such prohibition to be set aside for a period of two years.

#### **THE PROPER APPROACH TO THIS APPEAL**

46. The proper approach to appeals against a prohibition order is as follows:

- 46.1 The court should allow an appeal where the decision was wrong or unjust because of a serious procedural error or other irregularity: r.52.21(3).
- 46.2 Rule 52.21 provides that the appeal should be limited to a review of the decision unless a practice direction makes contrary provision (it doesn't in the case of teachers) or the court considers that, in the circumstances of an individual appeal, it would be in the interests of justice to hold a rehearing.
- 46.3 Generally, the appeal should therefore proceed by way of a review rather than a rehearing for the reasons explained by Steyn J following her detailed review of the authorities in Ullmer v. Secretary of State for Education [2021] EWHC 1366 (Admin). See also the unreported case of Brittain v. Secretary of State for Education (2019), Lang J; and Jones v. Secretary of State for Education [2019] EWHC 3151 (Admin), Cavanagh J.
- 46.4 I am not satisfied that there are any particular circumstances of this appeal that require the court to conduct a rehearing.
- 46.5 Professional conduct panels have the benefit of hearing the witnesses and have the primary responsibility for deciding the disputed facts of a case. The court will not interfere with a panel's finding of fact unless it is perverse in the sense that there is either no evidence to support the finding of fact or it is one which no reasonable panel could have reached.
- 46.6 Both the panel and the Secretary of State are expert and informed decision-makers who are well placed to assess whether the proven conduct constitutes unacceptable professional conduct or may bring the teaching profession into disrepute. The court will pay proper deference to their expertise before interfering with the exercise of their professional judgment.
- 46.7 The panel and Secretary of State are also well placed to assess whether a prohibition order is necessary in the public interest. Where unacceptable professional conduct or conduct that may bring the profession into disrepute is established, the court will again pay proper deference and only interfere with the decision to impose a prohibition order if satisfied that such decision was wrong.

## **THE APPEAL**

47. In a wide-ranging attack on the panel's decision, Mr Sutcliffe argues no fewer than twelve grounds of appeal. On his behalf, Mr Phillips focuses his written and oral submissions on a broader attack based on human rights and equality law. I shall consider this broader formulation first and then separately address each detailed ground of appeal in turn.

## **THE HUMAN RIGHTS & EQUALITY GROUNDS**

### **The argument**

48. Mr Phillips' central argument is that the panel's decision infringed Mr Sutcliffe's Convention rights pursuant to Articles 9 and 10 whereas Pupil A had no legal right to insist on the use of his preferred pronouns. Most of the conduct alleged was, he asserts, a manifestation of Mr Sutcliffe's religious or philosophical beliefs. He argues that a refusal to allow conscientious objection fails to strike a proper balance between the competing interests.

49. Mr Phillips argues that there was much conflation between the protected characteristic of gender reassignment under s.7 of the Equality Act 2010 and gender identity belief, and that it is questionable whether Pupil A had such protected characteristic. Further, he relies on s.85(10) of the 2010 Act which exempts schools from liability for harassment that is related to gender reassignment.
50. Mr Phillips relies on the draft guidance issued by the Secretary of State in December 2023 as to how schools and colleges should approach requests that pupils be referred to by their preferred pronouns. Further, he relies on the interim report issued by Dr Hilary Cass in February 2022 in respect of her independent review of gender-identity services for children and young people. Mr Phillips asserts that transgender-affirming policies do none of the children they are meant to serve any real or lasting good and in fact harm the vast majority of such children with catastrophic consequences for many. He argues that schools should be vigilant against espousing “gender-identity belief”.
51. Mr Phillips points to the exponential increase in referrals of teenage girls for gender dysphoria and argues that such pattern suggests that social influence, or “transgender-identity promotion” as he terms it, is responsible rather than merely an increase in public acceptance. Further, he submits that English law treats sex as binary and immutable, and a matter of biology.
52. Mr Phillips also argues that many elements of Mr Sutcliffe’s conduct – and particularly his appearance on “This Morning” and the PragerU video - were contributing to a debate on a matter of public interest and, as such, attracted a heightened level of protection under Article 10.
53. Mr Steele responds that Mr Sutcliffe’s appeal ranges far and wide on issues that simply did not fall to be determined by the panel and which remain irrelevant on this appeal. Specifically, he argues that the case was not about Convention rights; whether Pupil A had a protected characteristic under the Equality Act 2010; whether the law recognises Pupil A as male; or whether Mr Sutcliffe’s conduct was actionable under the 2010 Act. Further, the appeal is not about Mr Sutcliffe’s conscientious objection to using Pupil A’s preferred pronouns or his expression of his beliefs outside the workplace. Mr Steele stresses that the panel was right to remain focused on the issue of whether Mr Sutcliffe was guilty of misconduct as a teacher.

### Analysis

#### Human rights and equality law

54. Article 9 of the Convention provides:
  - “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

55. Article 9 plainly protects Mr Sutcliffe's religious convictions. Indeed, this is all well-trodden ground:

55.1 Gender-critical views:

- a) Maya Forstater also holds gender-critical views. Specifically, she asserts that biological sex is real, important and immutable, and not to be conflated with gender identity. She regards statements such as "woman means adult human female" and "transwomen are male" to be statements of neutral fact and not expressions of antipathy or transphobia. She regards it as polite or kind to "go along with" a transgender person's wish to be referred to by particular pronouns but observes that there is no fundamental right to such courtesy. She is particularly concerned about transwomen seeking to access female-only spaces and services, and observes that "avoiding upsetting males is not a reason to compromise women's safety, dignity and ability to control their own boundaries".
- b) Ms Forstater's gender-critical views are rooted not in religion but in her understanding of the science.
- c) In Forstater v. CGD Europe [2022] I.C.R. 1, the Employment Appeal Tribunal found that Ms Forstater's gender-critical views are protected by Article 9. I have no hesitation in accepting that Mr Sutcliffe's similar views rooted in his conservative Christian faith are likewise protected by Article 9.

55.2 A Christian's beliefs that same-sex marriage is contrary to God's will and that homosexuality is a sin are also protected: Eweida v. United Kingdom (2013) 57 E.H.R.R. 8; R (Ngole) v. University of Sheffield [2019] EWCA Civ 1127.

56. Mr Sutcliffe's right to express his deep religious convictions is protected by Article 10 of the Convention, which provides:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

57. Section 7 of the Equality Act 2010 provides that a person has the protected characteristic of gender reassignment if the person is "proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of

reassigning the person's sex by changing physiological or other attributes of sex." In Forstater, Choudhury J observed, at [118], that only a proportion of people who identify as transgender will have such protected characteristic.

58. A small number of transgender people may obtain a Gender Recognition Certificate pursuant to the Gender Recognition Act 2004. Where a full certificate is granted then s.9 of the Act provides that "the person's gender becomes for all purposes the acquired gender". It is otherwise true, as Mr Phillips points out, that the law regards sex as an immutable and binary matter of biological fact: see, for example, Corbett v. Corbett [1971] P 83, Bellringer v. Bellringer [2003] 2 A.C. 467, and Forstater. Further, he is also right to submit that unless a transgender person has the protected characteristic of gender reassignment, equality law does not expressly protect the concept of social transitioning.
59. I reject Mr Phillips' argument that there was "much conflation" between the protected characteristic of gender reassignment and, what he prefers to term, gender-identity belief. It was no part of the panel's analysis that Pupil A's preference for being treated as a transgender male engaged the protected characteristic of gender reassignment under s.7 of the 2010 Act or that Mr Sutcliffe had unlawfully discriminated against or harassed Pupil A contrary to the Act.
60. All of this, however, misses the point. The right to manifest one's religion and beliefs under Article 9(2) and the right to exercise one's freedom of speech under Article 10(2) are qualified rights. It is fundamental that teachers should not only educate but that they should at all times treat the children in their care with dignity and respect and that they should safeguard their wellbeing. Insofar as the Teachers' Standards qualify a teacher's right to manifest their religion or beliefs and their freedom of expression, I have no doubt that such restrictions are proportionate in the sense identified in Bank Mellat v. HM Treasury (No. 2) [2013] UKSC 39, [2014] A.C. 700 in that:
- 60.1 the objectives of treating children with dignity and respect and of safeguarding their wellbeing are sufficiently important to justify the limitations;
  - 60.2 the standards are rationally connected to such objectives;
  - 60.3 a less intrusive measure could not be used without unacceptably compromising the achievement of the objectives; and
  - 60.4 the importance of such objectives to the extent that the standards contribute to their achievement outweighs their effects on the teacher's rights.
61. By virtue of their immaturity and inexperience of the world, children and young people are vulnerable and many children struggle as they navigate adolescence. Whatever a teacher's religious or philosophical beliefs about the immutability of a person's gender or the morality of homosexuality, it is their professional obligation:
- 61.1 to treat their pupils with dignity and respect; and
  - 61.2 to safeguard the wellbeing of all children in their class.

Further, teachers must understand that adolescence may be particularly difficult for children who either identify as transgender or are questioning their gender identity



(such as Pupil A), or who identify as gay, lesbian or bi-sexual or are questioning their sexuality (such as Pupil B).

62. Just because misgendering a transgender pupil might not be unlawful does not mean that it is appropriate conduct for a teacher or that, when done repeatedly and deliberately both in class and on national television in breach of the school's instructions and ethos such that distress is caused to the child, it cannot amount to professional misconduct.

63. In my judgment, the panel correctly identified its role when it observed:

“Broad representations were made on behalf of Mr Sutcliffe that this case related to issues of freedom of expression and speech in the abstract. It was not the function of this panel to assess such broader issues. The panel has no role in determining the veracity, reasonableness or otherwise of Mr Sutcliffe's beliefs. This panel was concerned with the Teachers' Standards and the distinct professional considerations which apply to the specific conduct alleged, and its findings were similarly limited ...

Mr Sutcliffe contended that biological sex is immutable and cannot be changed, that Pupil A did not have the protected characteristic of gender reassignment, and that there is no legal requirement to use preferred pronouns. However, it was not the function of the panel to determine these three matters. The questions for the panel [were] not whether Mr Sutcliffe breached the Equality Act 2010, or whether Mr Sutcliffe harassed or discriminated against Pupil A. The question for the panel was whether it was more likely than not when performing his duties as a teacher he failed to treat Pupil A with dignity and respect, and failed to safeguard Pupil A's wellbeing.

The panel was mindful of Mr Sutcliffe's strong and sincere religious beliefs rooted in his deep faith which led him to have a personal conviction against using preferred pronouns.

Mr Sutcliffe has a right to hold this belief. It is the manner in which Mr Sutcliffe chose to manifest this belief to which objection could justifiably be taken if he failed to have regard to Pupil A's dignity, to treat him with respect, or to safeguard Pupil A's wellbeing.”

*The 2023 draft guidance*

64. Equally this case is not about whether Cherwell was right or wrong to accept Pupil A's request to use his preferred pronouns.

65. In December 2023, the Department for Education published draft guidance for schools and colleges under the title “Gender Questioning Children”. The draft stressed that schools and colleges should make decisions to ensure that “everyone is kept safe and treated with respect and understanding within an environment that protects the rights of children fairly”. The draft considers the proper approach to requests to take actions such as changing names, pronouns, uniforms or allowing the use of different facilities

(which it collectively refers to as “social transitioning”). Schools are advised to allow a period of “watchful waiting” to ensure that the request is a sustained and properly thought-through decision and to engage with parents (save in the very rare case where doing so might raise a significant risk of harm to the child). The school should then consider its duty to safeguard and promote the welfare of the gender questioning child. The draft adds that safeguarding requires consideration of what is in the best interests of the child but that that may not be the same as the child’s wishes. Great weight should be given to the view of the parents.

66. The draft adds:

“Following the process for decision making will ensure that all members of staff are supporting the child in a consistent way. Members of staff should not unilaterally adopt any changes, including using a new name or new pronouns, unless or until this has been agreed by the school or college in accordance with the proper procedures and, in the vast majority of cases, parental consent, as set out in this guidance.

If and where any change has been agreed, the school or college should communicate this to other pupils and staff where it is necessary and proportionate to do so. This should be done sensitively, without implying contested views around gender identity are fact. Other pupils, parents and teachers may hold protected religious or other beliefs that conflict with the decision that the school or college has made, these are legitimate views that must be respected.”

67. As to pronouns, the draft guidance is that schools should only agree to a change of pronouns if they are confident that the benefit to the child outweighs the impact on the school community. It continues:

“On these rare occasions, no teacher or pupil should be compelled to use these preferred pronouns and it should not prevent teachers from referring to children collectively as ‘girls’ or ‘boys’, even in the presence of a child that has been allowed to change their pronouns. Even in the exceptional case where safeguarding requires a school or college to take an alternative approach, schools and colleges should exhaust all other options, such as using first names, to avoid requiring other individuals having to use preferred pronouns ...

In all cases, bullying of a child must not be tolerated. No child should be sanctioned for honest mistakes when adapting to a new way of interacting with another pupil.”

68. The draft guidance, which of course postdated these events and the panel’s decision, envisaged that schools would rarely agree to change a pupil’s pronouns but did not purport to suggest that such course would never be appropriate. As the draft made plain, such decisions are complex and are made by schools and not individually by each member of staff according to their own assessment of the merits of the request. Whether an individual teacher agreed with the school’s decision or considered it a dangerous transgender-affirming decision that was not in the best interests of the child

is not the point. The responsibility for that decision lay with the school. Here, Cherwell made a decision and staff were required to abide by that decision and follow the ethos of the school. Any teacher who objected to using male pronouns might properly have avoided using pronouns altogether and simply referred to Pupil A by name, but, in my judgment, Mr Sutcliffe's religious convictions did not justify him in deliberately misgendering the child both in class and on television.

69. The draft makes the obvious and sensible point that no child should be sanctioned for an honest mistake in adapting to a new way of interacting with a pupil who is transitioning. Plainly the same latitude should be given to teachers and other staff. That is not, however this case. Here, Pupil A credibly passed for male and was only known by male pronouns at Cherwell. This was not a case of honest mistake but, on the panel's findings, the repeated and deliberate misgendering of a vulnerable child.

### THE DETAILED GROUNDS

70. Against those general observations, it is now necessary to address the detailed grounds of appeal.

#### The pronoun grounds

71. Ground 1 argues that the panel made a perverse finding that it was in Pupil A's best interests to be considered a transgender male and that his preferred pronouns must be used. The body with responsibility for making that decision was not the panel but the school. As already recounted, it was Cherwell's decision to accept Pupil A's request to treat him as a transgender male and to use his preferred pronouns. Mr Sutcliffe's disagreement with the school's decision was something for him to raise privately and discreetly with the headteacher, but did not justify his conduct in ignoring the school's decision or in failing to treat Pupil A with dignity and respect.
72. There was, in any event, evidence before the panel of the negative effect of Mr Sutcliffe's actions on Pupil A. He was new to the school and had only been known as male at Cherwell such that very few pupils were aware that he was transgender. Mr Sutcliffe's conduct made Pupil A cry and caused him to suffer panic attacks and feel sick on days when he had maths lessons. He felt scared of being identified as transgender and missed school. Further, he was distressed because the whole reason that he had left his previous school was to escape abuse. The redacted decision also referred to evidence of a far more serious impact of Mr Sutcliffe's actions on Pupil A's health, wellbeing and safety.
73. Ground 2 argues that the panel's finding that Mr Sutcliffe failed to treat Pupil A with dignity and respect and/or that he failed to safeguard his wellbeing by failing to use his preferred pronouns was perverse. Such ground is not properly arguable:
- 73.1 First, there is no basis for interfering with the panel's primary findings of fact:
- a) The panel's findings as to his actual conduct were properly based on the evidence of the witnesses and the transcript of Mr Sutcliffe's appearance on "This Morning". There was ample evidence to justify findings 1 and 2.

- b) Further, it was properly open to the panel upon that evidence, and in particular the transcript, to find that Mr Sutcliffe's conduct was deliberate.
- 73.2 Secondly, the panel's further decision that, in so conducting himself, Mr Sutcliffe had failed to treat Pupil A with dignity and respect and that he had failed to safeguard his wellbeing were judgments that were properly open to the panel. The court should not lightly interfere with the evaluative judgment of this specialist panel on this matter of professional judgment, and there is no basis for finding that the panel was wrong.
74. Ground 3 argues that the panel incorrectly put the onus on Mr Sutcliffe to raise his concerns regarding Pupil A with the school. As I have already observed, it was for the school to make a decision about Pupil A's request to use male pronouns and for staff to abide by that decision or avoid using any pronouns. If Mr Sutcliffe or any other professional teacher was unhappy with the school's decision then such concerns should obviously have been raised with the headteacher or other senior member of staff. In any event, Mr Sutcliffe was bound by the Teachers' Standards to treat all pupils, including Pupil A, with dignity and respect and to safeguard their wellbeing.

#### The Convention & PragerU grounds

75. Ground 5 alleges that the panel unjustifiably interfered with Mr Sutcliffe's Convention rights by requiring him to use Pupil A's preferred pronouns; by not permitting him to talk about the protected characteristic of being an "ex-homosexual"; and by not permitting him to show the PragerU video without allowing debate to follow. Ground 4 argues that the panel's finding that playing the PragerU video in class without time for debate was professional misconduct was perverse.
76. There is no merit in these grounds:
- 76.1 Pronouns: The panel did not impose any positive obligation to use Pupil A's preferred pronouns and observed that Mr Sutcliffe might have reconciled his religious convictions with his duty to Pupil A by avoiding using any pronouns and by referring to the pupil by name. In any event, as already identified, Mr Sutcliffe's obligation was to treat Pupil A with dignity and respect and safeguard his best interests.
- 76.2 Ex-homosexual: This is not a proper characterisation of the finding which was that Mr Sutcliffe had told his class about someone who had, through God, "stopped being homosexual" because it was "wrong". The misconduct was not in talking about someone who formerly identified as gay, but in implying that a gay person might be cured and in the assertion that homosexuality was wrong without any regard for the gay and lesbian pupils in the classroom.
- 76.3 PragerU: I acknowledge that this video was shown in the context of Mr Sutcliffe's employment in a Roman Catholic school. There is, however, no basis for interfering with the professional assessment of the panel and Secretary of State that it was misconduct to show the PragerU video without allowing debate about contrary views.

#### The harm grounds

77. Ground 6 alleges that the panel fell into error by excessively focusing on the harm “perceived or otherwise” to the complainant children, which Mr Sutcliffe alleges “was not evidenced”, when – he asserts – the primary focus should have been on his actions and intentions. He argues that the impact on the complainants must be a foreseeable consequence and that the “mere assertion of distress” cannot justify a finding of unprofessional conduct or the bringing of the profession into disrepute.
78. There is no merit whatsoever in this ground:
- 78.1 Evidence of harm, or potential harm, through a teacher’s failure to treat children with dignity and respect and to safeguard their wellbeing was rightly identified as important.
- 78.2 I have already referred to the evidence of actual harm to Pupil A at paragraph 72 above. In addition, there was evidence that Pupil A felt that the comments about a homosexual man having stopped, through God, being gay because it was “wrong” were directed at him and Pupil B and that the implication was that they were wrong and needed to be “cured”. There was also evidence from Pupil B that she felt that Mr Sutcliffe was saying that her existence was inherently wrong.
- 78.3 It is concerning that Mr Sutcliffe does not regard such harm as the foreseeable consequence of his actions.

#### The professional judgment grounds

79. Ground 7 argues that the panel fell into error by finding Mr Sutcliffe guilty of unacceptable professional conduct and conduct which might bring the profession into disrepute through his intolerance and that the panel misapplied the guidance. The ground selectively quotes from the guidance on the question of the approach to certain criminal convictions. That is not this case and Mr Sutcliffe has wholly failed to establish an error in the panel’s approach to the professional judgments required in this case.
80. Ground 8 complains that the panel failed to undertake a proper assessment and/or give full reasons for its findings that Mr Sutcliffe’s conduct amounted to unacceptable professional conduct and/or conduct which might bring the profession into disrepute. There is no merit in this ground:
- 80.1 The panel properly directed itself in accordance with the 2022 guidance.
- 80.2 There is nothing in the procedural complaint about a lack of reasoning; this decision provided clear and adequate reasons that more than satisfied the requirement for reasons in English v. Emery Reimbold & Strick Ltd [2002] 1 W.L.R. 209, CA, as applied in this regulatory context by Kingston v. Secretary of State for Education [2017] EWHC 421 (Admin), Dove J, and O v. Secretary of State for Education [2014] EWHC 22 (Admin), Stephen Morris QC.
- 80.3 Further, its conclusions on these questions of professional judgment were properly open to the panel and Mr Sutcliffe has failed to establish any error in either the panel’s approach or its ultimate findings of misconduct.

#### The expert evidence ground

81. Ground 12 argues that the panel failed properly to analyse and consider the expert reports of Dr Martin Parsons, Edmund Matyjaszek and Maya Forstater. Further, Mr Phillips argues that the panel was obliged to explain why it did not accept the expert opinions which, he asserts, went to the heart of the case. He particularly cites the fact that Dr Parsons and Ms Forstater gave evidence as to why they believed that he was not obliged to use preferred pronouns, and that Dr Parsons gave evidence to explain why the PragerU video was in harmony with the ethos of St Aloysius.
82. I have considerable sympathy with the panel's initial view that this evidence was either not expert or was not required, and for its pragmatic decision ultimately to admit the evidence.
83. Dr Parsons is a theologian and could properly give expert evidence as to Christian teachings if such matters were relevant to the panel's decision. The panel did not, however, question Mr Sutcliffe's faith or the provenance or sincerity of his beliefs on the issues of gender-identity, homosexuality or the role of men and women within society. I do not therefore accept that expert evidence on issues of theology was necessary to allow the panel to decide this case. In any event, Dr Parsons' evidence was admitted and, in broad terms, what such evidence comes to is to put on an evidential footing my own observation at paragraph 4 of this judgment that many evangelical Christians will agree with Mr Sutcliffe's views in these issues. Mr Sutcliffe asserts that the panel was under a duty to explain why it disagreed with Dr Parsons' evidence, but wholly fails to identify how such evidence was relevant to whether he failed to treat children with dignity and respect, or to safeguard their wellbeing.
84. Mr Matyjaszek is a former headteacher of a Christian school. This specialist panel was chaired by a teacher and one of the two other panel members was also a teacher. Generally, the composition of the panel is such that it can rely on its own knowledge of teaching and does not need expert evidence on such issues. That said, Mr Matyjaszek was able to add the perspective of a former headteacher of a faith school and accordingly could give useful evidence in respect of the allegations concerning St Aloysius College. His expertise in faith education was not, however, relevant to the allegations in respect of Cherwell school. Further, the allegation that was upheld in respect of the college was not that Mr Sutcliffe should not have challenged the pupils by playing the PragerU video, but that he did so without allowing discussion of alternative views. The panel did not need expert evidence on that issue and, in any event, Mr Matyjaszek expressly stressed the importance of open discussions in which pupils would be permitted to share their views.
85. Mr Sutcliffe relies on Ms Forstater as an expert on sex and gender. Plainly, Ms Forstater is prominent in the gender-critical movement and has strong and deeply considered views on such issues. I am not, however, persuaded that she is properly described as an expert. Choudhury J explained her professional background as a researcher, writer and adviser on sustainable development. In her report, she says that she is the Executive Director of Sex Matters, a human-rights organisation concerned with clarity about sex in both law and policy. She has written extensively about the importance of clarity about sex, arguing that being a man or a woman is a matter of

biology and not gender or gender identity; that the statement that transwomen are women is not literally true; that people need to be able to speak clearly about sex; that spaces where women undress and sleep should remain genuinely single-sex in order to protect women; and that children with gender-identity disorders should not be given puberty blockers as minors.

86. In any event, this case is not about:
- 86.1 whether Pupil A should have been treated as transgender and referred to by his preferred pronouns (that decision being one for his school);
  - 86.2 the proper approach to changing and toilet facilities for a transgender woman; or
  - 86.3 the appropriate delivery of healthcare to gender-questioning children and young people (such question, including the prescription of puberty blockers and masculinising/feminising hormones, and ultimately surgical intervention, is controversial and is currently the subject of review by Dr Hilary Cass).
87. Ms Forstater explained that the use of non-preferred pronouns in this case might be due to cognitive dissonance. Mr Phillips was not, however, able to identify any medical expertise that she might have to opine on that issue.

#### The sanction grounds

88. Ground 9 argues that the panel fell into error in finding that a prohibition order was justified and that it should have given adequate reasons for its decision. Ground 10 argues that the decision to impose a prohibition order was irrational and incorrect. It is said that the panel applied the impermissible approach of deciding that a prohibition order should be imposed in any case involving safeguarding concerns. Further, ground 11 argues that it was perverse to find that prohibition was necessary and proportionate and that the panel failed properly to assess whether the sanction of publication was sufficient.
89. A prohibition order, even when coupled with an order that a review might be sought after the minimum permissible period of two years, is a severe sanction. I have given anxious consideration to whether this case was so serious that it warranted a prohibition order. I am not persuaded that Mr Sutcliffe has demonstrated any error in the approach taken by the panel and the Secretary of State to the question of sanction. Further, it is appropriate to pay proper deference to the expertise of this specialist panel and the Secretary of State for Education in assessing whether a prohibition order was necessary in the public interest and proportionate.
90. In considering this issue, I particularly have in mind the following points:
- 90.1 It was one matter to refer to Pupil A as female in class, but quite another to do so deliberately and in breach of clear instructions from the school so as to out this vulnerable pupil.
  - 90.2 That conduct was very significantly aggravated by then talking about Pupil A's case on national television in terms in which members of the school community

would know who he was, and again outing him as transgender and deliberately using female pronouns to refer to him.

- 90.3 The combination of this conduct was to cause a vulnerable child very significant distress and harm.
- 90.4 Further, Mr Sutcliffe’s comments in class that implied that gay people might be “cured” though God and asserted that homosexuality was wrong were made without any apparent regard for the likely effect on gay and lesbian children in his class. Such comments made gay and lesbian children feel that their teacher regarded them as worthless.
- 90.5 The panel expressly found that Mr Sutcliffe lacked the insight and remorse that would allow the panel to be satisfied that, if faced with a similar set of circumstances, there would be no risk of repetition. I am sure that the panel was absolutely right in that assessment and was struck in this appeal how, even now, Mr Sutcliffe fails to understand or accept the harm that he caused vulnerable children in his class or accept that his right to manifest and express his religious convictions might have to be balanced against his professional duties to treat children with dignity and respect and to safeguard their wellbeing. As Mr Steele put it, he failed to differentiate between teaching and preaching.
91. In my judgment, Mr Sutcliffe has failed to establish that the panel and Secretary of State were wrong to decide that a prohibition order was necessary and proportionate in this case. The panel properly applied the guidance and took into account the seriousness of the conduct, the public interest, the available mitigation, and whether a prohibition order was necessary and proportionate. Again, there is no merit in the procedural complaint about a lack of reasoning.

## **CONCLUSIONS**

92. For these reasons, I extend time but dismiss this appeal.