



Neutral Citation Number: [2024] EWHC 2454 (Admin)

Case No: AC-2023-LON-000395

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/10/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between :

ROBERT MACCALLUM

Appellant

- and -

**THE SECRETARY OF STATE FOR
EDUCATION**

Respondent

Mark Harper KC and Rosie Kight (instructed by **Escalate Disputes**) for the **Appellant**
Iain Steele (instructed by **Government Legal Department**) for the **Respondent**

Hearing dates: 13 June 2024

Approved Judgment

This judgment was handed down remotely at 10:30 on 11 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is an appeal under reg 17 of the Teachers' Disciplinary (England) Regulations 2012 (SI 2012/560) (the 2012 Regulations) by Robert MacCallum, the Appellant.
2. Following a hearing before a Professional Conduct Panel convened by the Teaching Regulation Agency (TRA) in November 2022, the Panel found allegations against the Appellant proved which amounted to unacceptable professional conduct by him which was likely to bring the teaching profession into disrepute. The Appellant was found to have had a sexual relationship with a vulnerable former pupil and then lied about it to the school Principal.
3. As I shall explain, under the relevant regulatory framework, a professional conduct panel makes a non-binding recommendation to the Secretary of State where it finds misconduct proven against a teacher. In this case the Panel recommended that the Appellant be issued with a prohibition order, which prohibits him from teaching indefinitely, but that he should have the right to have it reviewed by the Respondent after two years (the minimum period permissible). A successful application for a review leads to the prohibition order being set aside.
4. Mr Meyrick, then the Chief Executive of the TRA, acting on behalf of the Secretary of State, then considered the case. He agreed that a prohibition order was appropriate, and imposed a prohibition order with effect from 17 November 2022. However, he disagreed with the Panel's recommendation of a two year review period. He decided that the prohibition order should not be reviewed before five years from the date of the order.
5. The Appellant appeals the decision to impose the five year review period (the Decision). He says it was wrong and disproportionately harsh and excessive. He argues, in summary, that the Secretary of State, in fixing a review period of five years, relied on facts that underlay allegations that the Panel had found not proven or were not found by the Panel and also ignored or gave insufficient weight to findings of the Panel that were relevant to the fixing.

Legal framework

6. Before setting out the facts, I think it is helpful to set out the legal framework relating to teachers' disciplinary matters.

Statutory framework

7. Section 141B(1)-(2) of the Education Act 2002 provides that the Secretary of State may investigate a case:

“(1) ... where an allegation is referred to the Secretary of State that a person to whom this section applies -

(a) may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute, or

(b) has been convicted (at any time) of a relevant offence.

(2) Where the Secretary of State finds on an investigation of a case under subsection (1) that there is a case to answer, the Secretary of State must decide whether to make a prohibition order in respect of the person.”

8. In *Lonnie v National College for Teaching and Leadership* [2014] EWHC 4351 (Admin), [10], William Davis J (as he then was) said:

“10. I glean from that statutory provision that it is for the Secretary of State to decide whether a prohibition order is to be made in relation to a teacher who has been guilty of the relevant conduct. That decision is the Secretary of State's decision.”

9. A ‘prohibition order’ means an order prohibiting the person to whom it relates from carrying out teaching work (s 141B(4)). A prohibition order therefore prohibits a person from teaching for life, subject to any successful application for a review under reg 16 of the 2012 Regulations.
10. Schedule 11A contains powers to make regulations concerning teacher discipline, and the 2012 Regulations were made pursuant to this.
11. Regulation 4 provides that any decision made under the 2012 Regulations may take into account any failure by a teacher to comply with the personal and professional conduct standards set out in part two of *Teachers’ Standards Guidance for school leaders, school staff and governing bodies* (2011) (Teachers' Standards) published by the Secretary of State in July 2011.
12. Regulation 5 provides that where the Secretary of State considers that teacher may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute he must consider all relevant material (including representations from the teacher) and decide whether to discontinue the matter or refer it to a professional conduct panel.
13. Regulation 7 provides the professional conduct panel must consider cases referred to it by the Secretary of State under Regulation 5. Where it finds the teacher to have been guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute the panel must make a recommendation to the Secretary of State as to whether a prohibition order should be made (reg 7(5)).
14. Regulation 8(1)-(3) provide:

“(1) The Secretary of State must consider any recommendation made by a professional conduct panel before deciding whether to make a prohibition order.

(2) Where the Secretary of State decides to make a prohibition order, the Secretary of State must decide -

(a) whether an application may be made for a review of the order under regulation 16; and

(b) if the Secretary of State decides such an application may be made, the minimum period before the end of which no such application may be made.

(3) The minimum period under paragraph (2) must not be less than two years from the date on which the prohibition order takes effect.”

15. Reviews are thus dealt with in reg 16, the relevant part of which is:

“(1) Subject to regulation 8(2), a teacher in relation to whom a prohibition order has been made may apply to the Secretary of State for the order to be set aside.

(2) An application under paragraph (1) must be made in writing and must specify the grounds upon which it is made.

(3) The Secretary of State may require any person to produce documents or other material evidence for the purposes of an application under paragraph (1).

(4) The Secretary of State must decide whether the application should be—

(a) allowed; or

(b) referred to a professional conduct panel for a recommendation as to whether it should be allowed.”

16. In *Wallace v Secretary of State for Education* [2017 PTSR 675, [50] *et seq*, Holgate J described the decision making process thus:

“50. At this point it is necessary to return to the statutory scheme. As Mr Dunlop pointed out in his submissions, the scheme created by the amendments introduced by the 2011 Act is unusual. It splits the decision-making between two tiers. The first tier, the PCP, is responsible for

deciding whether or not relevant allegations against a teacher are proved. If they conclude that they are not, that is the end of the case. The Secretary of State has no power to review findings by a PCP that there was no unacceptable professional conduct, or no conduct bringing the profession into disrepute, or no relevant conviction. The Secretary of State has no power to substitute different findings or conclusions on those matters. Likewise, where a PCP concludes that there was misconduct within the ambit of section 141B(1) of the 2002 Act, the Secretary of State is not entitled to take a different view.

51. The Secretary of State accepted through her counsel, and I agree, that she has no power to interfere with any of the findings made by a PCP in reaching their conclusions as to the extent to which an allegation of misconduct within section 141B(1) is, or is not, made out. So, in the present case the Secretary of State was bound by the PCP's conclusions accepting allegations 1—4 but rejecting the allegations of dishonesty (allegations 5—7), and also bound by the findings upon which those conclusions were based.

Indeed, the practice followed to date of supplying the senior official who makes the decision under regulation 8 of the 2012 Regulations with nothing more than the report of the PCP, is consistent with that understanding. If, contrary to my view, the decision-maker in the NCTL has the power to alter any of the findings made by the PCP, he or she would generally need to examine the evidence before the PCP relevant to a particular finding before deciding to disagree with it or materially alter it. But, as I have said, given the Secretary of State's clear stance in this appeal and the views I have reached on the construction of the legislation, that issue does not arise.

52. The second stage of the decision-making process only arises if the PCP decides that one or more allegations of misconduct falling within section 141B(1) of the 2002 Act is made out. At that point the PCP has to consider whether or not to recommend that a prohibition order is made and, if so, whether a provision for review should be included (and on what terms). Regulation 8(1) obliges the Secretary of State to consider the PCP's recommendations on the 'prohibition order issue', or the 'sanction issue', but it is plain from the legislation that the decision on this subject is for the Secretary of State alone. She is not bound to

follow the recommendations made by the PCP. So the Secretary of State is entitled to accept or reject a recommendation that a prohibition order either is made, or is not made.

53. Because in this second stage, the legislation ascribes different functions to the PCP (of recommending) and to the Secretary of State (of determining), there is nothing in the statutory scheme which treats the Secretary of State as bound by any part of the PCP's reasoning on the 'sanctions issue' leading up to its recommendation. So it would appear that the Secretary of State is not restricted simply to deciding how much weight should be given to the conclusions on reasons set out in the PCP's report on the 'sanctions issue'. She may decide to disagree with, for example, factual conclusions drawn by the PCP when dealing with that separate issue. However, that legal freedom may also give rise to an issue in a future case as to whether the Secretary of State needs access to more material from the PCP hearing than the panel's report where she is minded to alter a factual conclusion of that kind. But that issue does not arise for decision in this case, because the Secretary of State did not disagree with any factual findings in the 'sanctions' part of the PCP's report. Instead, the Secretary of State simply decided to give different weights to the factors identified in that report."

17. At [56] he said:

"56. On the legal analysis by both counsel in this case, the seriousness of the misconduct for the purposes of deciding what sanction should be imposed will be influenced largely by the findings of the independent PCP in the first part of their report dealing with whether the allegations of misconduct have been made out, factual findings with which the Secretary of State could not interfere. In most cases the degree of seriousness of the misconduct will be self-evident from those findings. The second part dealing with the 'sanctions issue' will largely be concerned with how much weight to give to that misconduct as compared with the personal circumstances of the teacher. In many, if not most, cases before the NCTL it follows that the central issue when considering sanctions will be the weight to be given to the misconduct proved and whether it is so serious as to justify a prohibition order ..."

18. At [65]-[66] he said:

“65. Furthermore, I have not been shown anything on behalf of the appellant to suggest that in relation to the ‘appropriate sanction’ issue, a PCP has any superior level of expertise as compared with that of the Secretary of State and her officials, such that the scheme should require the latter to defer to the former, let alone be bound by the former. Important considerations include the maintenance of proper professional standards, the integrity of the profession and the confidence of the public in the teaching profession. A PCP typically comprises three members drawn from a pool of 90. One of the functions of the Secretary of State as the final decision-maker on sanctions is to provide oversight and consistency on that aspect (whilst taking into account differences between individual cases).

66. With those considerations in mind, I see no justification for a judge of the High Court to approach an appeal under regulation with deference towards, or preference for, the views on sanction of a PCP rather than those of the Secretary of State.”

19. The TRA’s publication *Teacher misconduct: the prohibition of teachers Advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession* (2022) (the Guidance) and the Teachers’ Standards informs the decision-making process of panel members at panel hearings and meetings and supports the decision-making when a panel’s recommendation is considered on behalf of the Secretary of State and consideration is given as to whether to make a prohibition order.

20. The Introduction to the Guidance states:

“This advice sets out the arrangements for the regulatory system relating to teacher misconduct which operates within a legislative framework which came into force on 1 April 2012. These arrangements are operated by the Teaching Regulation Agency (the TRA), an executive agency of the Department for Education, which acts on behalf of the Secretary of State for Education as regulator of the teaching profession.

This advice sets out the factors to be considered by a professional conduct panel (panel), which is an independent panel convened by the TRA for the purpose of the regulation of teacher misconduct. The primary

purpose of the advice is to inform panel considerations, findings and recommendations to the Secretary of State whether to impose a prohibition order on a teacher. A senior official, who acts as the decision maker on behalf of the Secretary of State, also uses this advice when considering the panel's recommendation and in deciding whether to make or set aside a prohibition order."

21. Paragraph 9 states:

"9. A prohibition order is likely to be appropriate when the behaviour of the person concerned has been fundamentally incompatible with being a teacher. The primary purpose of a prohibition order is to safeguard pupils and students, maintain public confidence in the teaching profession and uphold proper standards of conduct. Section 5 (iii) 'Is a prohibition order appropriate?' provides more detail about how this is considered."

22. Paragraphs 35-36 state:

"35. If a panel has found that there has been 'unacceptable professional conduct' and/or 'conduct that may bring the profession into disrepute' and/or a 'conviction, at any time, of a relevant offence', it must make a judgment about whether to recommend the imposition of a prohibition order by the Secretary of State.

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."

23. Paragraph 37 states:

"37. The panel will consider if it is in the public interest to prohibit the teacher. Public interest considerations may weigh both in favour of and against a teacher and include:

- the safeguarding and wellbeing of pupils and protection of other members of the public;

- the maintenance of public confidence in the profession – assessed by reference to the standard of the ordinary intelligent and well-informed citizen who both appreciates the seriousness of the proposed ‘sanction’ and recognises the high standards expected of all teachers, as well as other issues involved in the case;
- declaring and upholding proper standards of conduct within the teaching profession;
- that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

This is not an exhaustive list. A panel will first need to identify the public interest at stake in order to determine whether that public interest requires prohibition.”

24. Section 7 deals with panel recommendations on review period:

“48. Where a panel recommends prohibition, which is for life, it will also recommend whether the Secretary of State should consider allowing the teacher to make an application in the future to have the prohibition order reviewed and set aside.

49. In every case a panel will consider the evidence and mitigation before it and set out the rationale for its decision. If the panel recommends allowing an application for review, it will recommend a minimum period before which an application can be made. Any recommended period may not be less than two years from the date on which the order takes effect.

50. Where a case involved any of the following, it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period:

- serious sexual misconduct e.g. where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons;
- any sexual misconduct involving a child;

- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one off incidents;
- child cruelty and/or neglect;
- terrorism.

This is not an exhaustive list and panels should consider each case on its individual merits taking into account all the circumstances involved.

51. Where a case involved any of the following, it is likely that the public interest will have greater relevance and weigh in favour of a longer period before a review is considered appropriate:

- arson and other ‘major’ criminal damage;
- possession (including for personal use) of any class A drug;
- possession with intent to supply another person, supply (selling, dealing or sharing) and production of any class A, B, C or unclassified drugs;
- fraud or serious dishonesty;
- theft from a person or other serious cases of theft;
- intolerance and/or hatred on the grounds of race, religion, sexual orientation or protected characteristics;
- violence.

This is not an exhaustive list and panels should consider each case on its individual merits taking into account all the circumstances involved.

52. In deciding whether to recommend an opportunity for review, and if so the period after which that ought to be permitted, a panel will need to be satisfied that the recommended approach is necessary to protect the public interest and that the impact on the teacher is proportionate.”

25. Section 8 of the Guidance then deals with the Secretary of State’s decision (taken on his or her behalf by the TRA). Paragraph 53 states:

“Decisions on prohibition

53. Once a panel has made its recommendation on prohibition, including review, this will be forwarded to the decision maker at the TRA. The decision maker will, wherever possible within three working days starting the working day after receipt, consider the panel’s recommendations and make a final decision on the case. In reaching that decision they will have regard to this advice, in particular Sections 5(iii) [‘Is a prohibition order appropriate ?’], 6 [‘Panel recommendations on prohibition’] and 7 [‘Panel recommendations on review period’]. The decision maker records the reasons for their decision in sufficient detail (including where they disagree with the panel’s recommendation and the length of any review period) to allow the teacher to understand how the decision was reached. The teacher concerned will be notified of the final decision in writing before it is made public.”

Approach on appeal to the High Court

26. This appeal is brought under CPR Part 52. The test is whether the Decision was ‘wrong’ (CPR r 52.21(3)(a)). By CPR 52.21(1), an appeal proceeds by way of review unless a practice direction provides otherwise, or the court considers it will be in the interests of justice to hold a rehearing.
27. CPR PD52D lists statutory appeals from some professional regulatory bodies which are to be heard by way of rehearing, however appeals such as this under reg 17 of the 2012 Regulations are not included in the list.
28. Nonetheless, there was a conflict of authority as to whether such appeals should proceed by way of re-hearing or review. Steyn J considered these in depth in *Ullmer v Secretary of State for Education* [2021] EWHC 1366 (Admin), [52] – [70]. I need not set out the detail. It is not suggested on behalf of the Appellant that the issues involved in this appeal are such as to justify a rehearing in the interests of justice, and therefore it proceeds as a review.

Factual background

Proceedings before the Professional Conduct Panel

29. The allegations were that the Appellant was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, whilst he was employed as a teacher at William Hulme’s Grammar School, Manchester (the School). The allegations concerned a female former pupil, referred to as Former Pupil A. She was a pupil at the School between 2010 and 2014, when she left. The

allegations related to that period, and also to an incident five years later in 2019 (when Former Pupil A was 20) when she met the Appellant for a night out and they had sexual intercourse in a hotel. The Appellant was also alleged to have lied to the School Principal about his relationship with the former pupil once an investigation had started.

30. The allegations were that:

“1. He engaged in inappropriate professional conduct and/or failed to maintain appropriate boundaries in that:

a) During Former Pupil A’s time at the School, between 2010 and 2014, he:

i. engaged in frequent 1:1 contact with Former Pupil A;

ii. gave Former Pupil A gifts;

iii. gave Former Pupil A cards;

iv. gave Former Pupil A money so that she could purchase a bus ticket;

v. said words to the effect of ‘I know our relationship is inappropriate but I can help you and/or I just care about you so much and/or I adore you and/or I just feel like I need to be here for you and/or we have a connection’;

b) In or around 2014, whilst on a School trip to Austria he:

i. purchased and/or provided cigarettes to Former Pupil A;

ii. engaged in inappropriate physical contact with Former Pupil A by holding her hand;

c) On or around 17 April 2019 he:

i. attended a ‘night out’ with Former Pupil A;

ii. kissed Former Pupil A;

iii. arranged a hotel room for yourself (sic) and Former Pupil A;

iv. engaged in sexual intercourse with Former Pupil A;

2. On or around 4 July 2019, he was dishonest and/or deliberately misled Individual A in that he made the following statements to him when he knew them to be untrue:

a) He did not have any ‘affair’ or inappropriate relationship with Former Pupil A;

b) He ‘bumped into’ Former Pupil A in a bar in Manchester in April 2019 while he was with his friends in a chance meeting;

c) He did not have Former Pupil A’s phone number and had not made contact with Former Pupil A by text.

3. On one or more occasions between July 2019 and July 2020, he failed to inform Individual A:

a) About the full extent of his relationship with Former Pupil A; and/or

b) About the details of the event that occurred on 17 April 2019;

c) That he had spoken to Former Pupil A on or around 5 August 2019 for approximately 1 hour and 30 minutes;

d) That he had contacted Former Pupil A by text message on one or more occasions.”

31. Individual A was the School’s Principal.

32. Prior to the commencement of the evidence the Appellant admitted sub-allegations 1(a)(iii) (to the extent of one card), 1(c)(ii), 1(c)(iii), 2(c), (3b), 3(c) and 3(d). He denied that the admitted allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. Allegations 1(a)(i), 1(a)(ii), 1(a)(iv), 1(a)(v), 1(b)(i), 1(b)(ii), 1(c)(i), 1(c)(iv), 2(a), 2(b) and 3(a) were denied.

33. The Panel heard evidence on behalf of the TRA (which brings disciplinary proceedings on behalf of the Respondent) from Former Pupil A; Former Pupil B (Former Pupil A’s ex-boyfriend); Individual A; and Individual B (the School Vice-Principal).

34. On 8 November 2022 the Panel announced its determination.

35. It found that allegation 1(a) was not proven:

“With regard to allegations 1a(i)-(iii) the panel found that, Mr. MacCallum had engaged in frequent 1-2-1 contact and gave occasional cards and/or gifts. However, the panel found that the evidence from Individual A and Individual B did not suggest that these actions amounted to inappropriate professional conduct and that they did not cross any professional boundaries. Further, the panel found that these actions could be justified by Mr. MacCallum’s role as Pupil A’s Head of Year. With regard to allegations 1(a)(iv) and (v) the panel were not satisfied that there was sufficient evidence to substantiate these. Accordingly, the panel found allegations 1(a)(i)-(v) not proven”.

36. In essence, therefore, the Panel found that the factual allegations in 1a(i)-(iii) were made out, but that they did not cross the threshold of inappropriate professional conduct. They found that the factual allegations in 1a(iv)-(v) were not made out.

37. It also found that allegation 1(b) was not proven:

“The panel found that there was insufficient evidence to support allegation 1(b)(i). In relation to allegation 1(b)(ii) the panel were not satisfied that, during her treatment, (both in the context of the hospital and within the ambulance setting), Mr. MacCallum would have had the opportunity to engage in inappropriate physical contact in the manner alleged. Accordingly, the panel found allegations 1(b)(i)-(ii) not proven”.

38. It found allegations 1(c), 2 and 3 proven.
39. The Panel determined that the proven allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute and recommended a prohibition order with a minimum period of two years before the Appellant could apply for review. Its reasoning was as follows.
40. The Panel said:

“The panel concluded that Mr. MacCallum had continued a relationship outside school with a former pupil whom he had mentored and whom he knew had serious mental health problems and with whom he was in a position of trust, had had sexual intercourse with this former pupil and had then acted dishonestly when confronted with the facts of what he had done. In light of this, the panel was satisfied that the conduct of Mr MacCallum amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession”

Whilst the panel noted that some of the allegations related to conduct with a former pupil, Mr MacCallum’s lack of integrity and dishonesty did in fact take place within the education setting in the context of his meetings with Individual A.”

41. It said:

“The panel took into account the way the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that teachers can hold in pupils’ lives and the fact that pupils must be able to view teachers as role models in the way that they behave.”

The panel took note of the responses of Pupil B, Pupil B’s family member, Individual E and Individual A in relation to the proven allegations. The panel also took into account the public perception and concluded that Mr. MacCallum’s conduct fell significantly short of that

expected of a teacher who is responsible for the safeguarding and welfare of pupils.

The panel therefore found that Mr. MacCallum's actions constituted conduct that may bring the profession into disrepute"

Having found the facts of allegations 1(c)(i)-(iv), 2 and 3 proved, the panel further found that Mr. MacCallum's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute".

42. In making this determination the Panel had regard to the TRA's Guidance and (*per* reg 4) to Teachers' Standards.
43. The Panel then turned to consider what recommendation to make to the Secretary of State.
44. It said:

"Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was 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 had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so.

The panel were aware that prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely: the safeguarding and wellbeing of pupils and the protection of other members of the public; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In the light of the panel's findings against Mr MacCallum namely that he engaged in an unprofessional relationship with a former pupil there was a strong public interest consideration in respect of the protection of pupils.

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

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

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

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr MacCallum. The panel took further account of the Advice [ie, the Guidance], which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved.

In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk (although see paragraph below for the panel's assessment of this particular point);
- abuse of position or trust (particularly involving pupils);
- an abuse of any trust, knowledge or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or

former pupil; sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

- dishonesty or a lack of integrity, including the deliberate concealment of their actions or purposeful destruction of evidence, especially where these behaviours have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests; and
- collusion or concealment including:
 - any activity that involves knowingly substantiating another person's
 - statements where they are known to be false;
 - failure to challenge inappropriate actions, defending inappropriate actions or concealing inappropriate actions;
 - encouraging others to break rules; lying to prevent the identification of wrongdoing.

45. It went on:

“The panel noted that, although there was a finding of the above behaviour: ‘misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk’, the panel did not consider that there was a continuing risk in the circumstances. However, the panel did consider that Mr. MacCallum’s behaviour was inappropriate misconduct which did affect the wellbeing of Pupil A.”

46. In relation to mitigating factors the Panel said:

“The panel considered evidence which demonstrates that Mr. MacCallum has contributed significantly to the education sector in respect of his current role at Stockport County FC and the impact that he has had since taking up this post as Education Director effectively growing this provision from scratch. In particular, the panel noted a number of character references submitted on behalf of Mr. MacCallum...

Mr. MacCallum accepted that the incident in April 2019 and his subsequent dishonesty in his dealings with Individual A were matters of considerable regret. His dishonesty resulted from fear of the potential consequences of facing up to the foolish position he had

put himself in and, in particular, the risk of very serious damage to his long-term personal relationship. Mr. MacCallum stated that he has repeatedly expressed his regret at not being entirely open and forthcoming.”

47. The Panel then said:

“The Panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr. MacCallum. The extent of the list of proven behaviours and the insufficient insight that was shown by Mr. MacCallum, particularly in relation to the impact that they had an/or could continue to have on a vulnerable person were significant factors in forming this opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.”

48. The Panel then considered whether it would be appropriate for them to recommend a review period of the order by reference to the Guidance. It considered the factors likely to militate against the offering of any review period, and the factors likely to militate in favour of a longer period before review.

49. The behaviours militating against a review period of any sort in the Guidance are, in summary, serious sexual misconduct, sexual misconduct involving a child, activity involving indecent images, child cruelty and/or neglect and terrorism.

50. The behaviours militating in favour of a longer review period are, in summary, arson, drug possession, supply or production of drugs, fraud, theft or other serious dishonesty, intolerance and/or violence. Of these, the Panel found that ‘Mr MacCallum was not responsible for any such behaviours’.

51. The Panel recommended a period of review after two years (the minimum that could be ordered). It said:

“The panel decided that 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 provisions for a review period. The panel considered that a period of two years would give Mr MacCallum time to reflect on the impact of his conduct on former Pupil A and her ongoing perception of people in a position of trust. In the circumstances, the panel recommend a review period of two years from the date on which the order takes effect.”

The Secretary of State’s decision

52. As I have said, on 11 November 2022, Mr Meyrick, acting on behalf of the Secretary of State, agreed with the Panel that a prohibition order was appropriate in the Appellant's case. He did not merely adopt the Panel's reasons, but set out his own reasons at some length. However, he declined to follow the Panel's recommendation as to the review period, and determined instead that there should be a prohibition order with a minimum period of five years before the Appellant can apply for a review.
53. I can summarise Mr Meyrick's reasons for imposing a prohibition order as follows:
- a. He had given very careful attention to the Guidance.
 - b. He had put out of his mind the allegations which the Panel found not proven.
 - c. He noted the standards which the Panel found the Appellant to have breached.
 - d. 'The findings of misconduct are particularly serious as they include, "that Mr MacCallum had continued a relationship outside school with a former pupil whom he had mentored and whom he knew had serious mental health problems and with whom he was in a position of trust, had had sexual intercourse with this former pupil and had then acted dishonestly when confronted with the facts of what he had done."'
 - e. He had 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.'
 - f. He also asked himself, whether 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.
 - g. He had considered the extent to which a prohibition order would protect children and safeguard pupils. He also took into account the Panel's comments on insight and remorse, which it set out as follows, 'The extent of the list of proven behaviours and the insufficient insight that was shown by Mr MacCallum, particularly in relation to the impact that they had and/or could continue to have on a vulnerable person were significant factors in forming this opinion.'
 - h. In his judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this would put at risk the future wellbeing of pupils. He therefore gave this element considerable weight in reaching his decision.
 - i. He went on to consider the extent to which a prohibition order would maintain public confidence in the profession.
 - j. He was particularly mindful of the finding of dishonesty in this case and the

impact that such a finding has on the reputation of the profession. He had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order as a failure to uphold those high standards.

- k. He considered the impact of a prohibition order on the Appellant himself. He noted the Panel's comment, 'The panel considered evidence which demonstrates that Mr MacCallum has contributed significantly to the education sector in respect of his current role at Stockport County FC and the impact that he has had since taking up this post as Education Director effectively growing this provision from scratch. In particular, the panel noted a number of character references submitted on behalf of Mr MacCallum.' A prohibition order would prevent Mr MacCallum from teaching and would also clearly deprive the public of his contribution to the profession for the period that it is in force.
 - l. He placed considerable weight on the Panel's comments, 'The extent of the list of proven behaviours and the insufficient insight that was shown by Mr MacCallum, particularly in relation to the impact that they had and/or could continue to have on a vulnerable person were significant factors in forming this opinion.'
 - m. He also placed considerable weight on the Panel's observations that, "Pupil A described her relationship with Mr MacCallum as 'creating a situation of emotional dependency' during her time as a pupil at the School," and, 'in relation to the impact that they had and/or could continue to have on a vulnerable person.'
 - n. He therefore gave less weight in his consideration of sanction to the contribution that the Appellant has made to the profession.
 - o. In Mr Meyrick's view, it was necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by full insight, would not in his satisfy the public interest requirement concerning public confidence in the profession.
54. Mr Meyrick then moved to consider the review period. His reasons for imposing a five-year review period were these:

"I have considered the panel's comments. 'The panel considered that a period of two years would give Mr McCallum time to reflect on the impact of his conduct on former Pupil A and her ongoing perception of people in a position of trust. In the circumstances the panel recommend a review period of two years from the date on which the order takes effect.'

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 do not agree. In my view the panel has not placed sufficient weight on the specific

and close relationship that Mr. MacCallum had with the pupil and the vulnerability of that pupil. Although there was a gap between the departure of the pupil from school and the events being considered here, in my view that vulnerability and dependency has not been given sufficient weight. Coupled with the lack of full insight I believe that Mr. MacCallum will require a longer period to fully reflect on his behaviour and the impact that it had on a vulnerable person. I consider therefore that a five year review period is required to satisfy the maintenance of public confidence in the profession.”

55. Mr Meyrick also said:

“I have also placed considerable weight on the panel’s own observations that, “Pupil A described her relationship with Mr. MacCallum as ‘creating a situation of emotional dependency’ during her time as a pupil at the School,”” and, “in relation to the impact that they had and/or could continue to have on a vulnerable person”.

Grounds of appeal

56. I can summarise the nine grounds of appeal in the Amended Grounds of Appeal as follows:

- a. Ground 1: the Secretary of State followed the wrong approach by not carrying out an evaluation of the allegations of misconduct found proved; the evidence; the mitigation; and considering it according to Section 7 of the Guidance.
- b. Ground 2: the Secretary of State wrongly proceeded on the basis that there was a specific and close relationship between the Appellant and Former Pupil A despite the Panel having found the allegations relating to the period 2010-14 unproven and there were no findings about the period from 2014 (after Former Pupil A had left the School); or any findings of misconduct relating to this period.
- c. Ground 3: the Secretary of State wrongly relied on Former Pupil A’s description of her relationship with the Appellant as being a ‘situation of emotional dependency’ when the Panel found the allegations relating to the period when she had been a pupil unproven and there were no findings as to the nature of the relationship after that.
- d. Ground 4: In forming a view as to the nature of the relationship between the Appellant and Former Pupil A and/or the proved allegations of misconduct, the Secretary of State gave insufficient weight to the fact five years had elapsed since Former Pupil A had been a pupil at the school and that the Panel had found allegations against the appellant between 2010-2014 unproven.

- e. Ground 5: the Secretary of State gave insufficient consideration to the Panel's findings that the proved allegations did not amount to serious sexual misconduct and/or were not within the types of behaviours listed in the Guidance as being cases where the public interest would have greater relevance and weigh in favour of not imposing a review period or where the public interest would have greater relevance and weigh in favour of a longer period before review.
- f. Ground 6: The Secretary of State was motivated in giving the Appellant a longer period of time to reflect on his misconduct and the impact of the same on Former Pupil A as a vulnerable person, without linking that factor to a relevant public interest.
- g. Ground 7: the Secretary of State gave an insufficiently reasoned justification for altering the factual conclusion of the Panel that there was no continuing risk to the wellbeing of pupils.
- h. Ground 8: the Secretary of State placed insufficient weight on the Appellant's contribution to the profession.
- i. Ground 9: in all the circumstances the Decision was disproportionately harsh or excessive and was an evaluation decision that fell outside the bounds of what the Secretary of State could properly and reasonably have decided.

Submissions

- 57. I have had regard to all points made on behalf of both sides. The failure to mention a particular point does not mean that it has been overlooked.
- 58. On behalf of the Appellant, without abandoning any of the grounds of appeal, Mr Harper concentrated his oral submissions on Grounds 1, read with 2 - 4.
- 59. His essential submission was that the Secretary of State had gone behind the Panel's findings of fact in making his determination on the review period, which she did not have the power to do: *Wallace*, [50]-[51].
- 60. His core submission, as I noted it, was that what the Secretary of State had done when imposing a five year review period was to 'introduce a relationship between the Appellant and the former pupil which was not the basis of the findings of the Panel'. He said that the Secretary of State had not identified any evidence which was before the Panel that could justify such a conclusion. He said that the imposition of a five year review period in effect punished the Appellant 'for something over and above that which the Panel found.'
- 61. The Panel found there had been no misconduct by the Appellant during the period whilst Former Pupil A was a pupil at the School (2010-2014). The proven misconduct in 2019 occurred five years after she had left the School, when she was

20. The Panel found they had been for a drink together after she turned 18 (around 2017), but that was not the subject of any allegation.
62. The Appellant had denied any inappropriate relationship either during 2010-2014 or in the years that had followed. He stated that he had not seen Former Pupil A for five years by April 2019. The Appellant's evidence was that he and Former Pupil A had met by chance in April 2019.
63. The reliance by the Secretary of State on Former Pupil A's noted perception of her relationship with the Appellant whilst she was a pupil at the School between 2010-2014 was wrong. The Panel found that there had been no inappropriate relationship between the Appellant and Former Pupil A during this period.
64. Mr Harper therefore said I should allow the appeal and remit the matter to the Secretary of State for a fresh determination.
65. On behalf of the Secretary of State, Mr Steele submitted as follows.
66. His over-arching submission was that the Secretary of State was entitled to set the review period at five years. Mr Meyrick gave adequate reasons; there was no error of approach; and therefore the appeal should be dismissed.
67. He made two preliminary submissions. Firstly, both the Panel and the Secretary of State are expert and informed decision-makers who are particularly well placed to assess what constitutes professional misconduct (noting the broad terms used in the statutory scheme) and what measures are required to deal with teachers who commit misconduct and to protect the public interest. The Court should appropriately defer to that expertise. Second, it is the wrong approach simply to focus on that part of Mr Meyrick's reasons concerning the review period in isolation, as he said the Appellant had done. Mr Meyrick's reasons have to read as a whole, because some of what he set out in his reasons for agreeing with the recommendation that a prohibition order was necessary were relevant to, and had to be 'read across to', his decision on the review period. It would be overly formulistic to say that in that latter part of his decision he was required to set out the relevant matters all over again.
68. Orally and in writing Mr Steele dealt with the Amended Grounds of Appeal sequentially. He submitted as follows.
69. In relation to Grounds 1 and 2-4, he said that the Secretary of State had not gone behind what the Panel had found. She had been entitled to reach the view that the Panel had not attached enough weight, when considering the review period, to the nature of the dependent relationship between the Appellant and Former Pupil A, or her vulnerability, which was the context of the proven sexual misconduct in 2019.
70. In relation to Ground 5, the Secretary of State did not decide that this was a case where the sexual misconduct was so serious that there should be a lifetime ban from teaching with no possibility of review. She simply took a different view from the Panel on the length of time that should elapse before the Appellant is able to apply for a review of the prohibition order.

71. In relation to Ground 6, the Secretary of State acted in accordance with the Guidance and was guided by the principles of protecting the public interest and acting proportionately. She took all relevant matters into account.
72. In relation to Ground 7, the Secretary of State had been entitled to conclude that the Appellant's lack of insight (as found by the Panel) gave rise to a risk of repetition. It is axiomatic that insufficient insight into past misconduct creates a risk of repetition of the same or similar misconduct in the future. The Panel's finding of lack of risk of repetition related only to the risk of repetition in relation to Former Pupil A.
73. On Ground 8, the Secretary of State had acknowledged the Appellant's contribution to the profession, but had attached the weight she saw fit,
74. Finally, on Ground 9, this was dependent on the other grounds.

Discussion

Preliminary observations

75. I accept that both the Panel and the Secretary of State are expert decision-makers who were best placed both to assess what constitutes professional misconduct, and also what measures are required to deal with teachers who commit misconduct in order to protect the public interest, and so this Court must defer appropriately to them.
76. This is a general principle applicable to most schemes of professional discipline in different fields involving specialist decision makers. As was said in *O v Secretary of State for Education* [2014] ELR 232, [57]; 'On issues of professional judgment, the court may need to defer to expertise of the lower court or tribunal'. In *Brown v Secretary of State for Education* [2015] EWHC 643 (Admin), [26], [34], Collins J said:

“26. So far as a decision of this court is concerned, it is necessary, as has been made clear in a number of these cases which relate to appeals from disciplinary tribunals of one sort or another, that this court must pay respect to and thus give deference to the expertise of the tribunal concerned. That applies, as it seems to me, in this sort of case where, essentially, the Secretary of State is depending to a considerable extent upon the decision of the tribunal, just as much as it applies to a decision where there is a direct appeal from a tribunal and no need for the Secretary of State to make an independent decision.

...

34. I bear in mind, as I have to, that the decision on sanction that is made is one which is perhaps not to be

regarded as entirely at large, in the sense that there has to be consideration given and deference paid to the expertise of the tribunal and, indeed, to an extent of the Secretary of State, because one knows that these decisions are made on the Secretary of State's behalf by an individual who has developed, inevitably one hopes, considerable experience in dealing with these types of case.”

77. I also accept that it is not open to me to simply substitute my own view of the merits for those of the decision-makers: *Wallace*, [71]:

“71. ... I am not persuaded that it would be proper for the High Court on an appeal under regulation 17 to treat the decision of the Secretary of State as ‘wrong’ and therefore allow the appeal simply because the judge disagrees on the merits with some aspect of the Secretary of State’s reasoning or the final outcome: see *Lonnie’s* case [2014] EWHC 4351. The position may be different, however, where, instead of challenging matters of professional or expert judgment, the appellant asks the High Court to correct errors relating to findings of primary fact (eg, insufficient or no evidence, or mistake: see *O’s* case [2014] ELR 232, and contrast *Lonnie’s* case).”

78. In *McTier v Secretary of State for Education* [2017] PTSR 815, [86]-[89] Kerr J said:

“86. I fully recognise that the primary judgment is one for the Secretary of State and, before that, the panel; and that a decision is not wrong merely because the panel’s recommendation is not accepted; still less, merely because the court would itself have reached a conclusion different to that of the decision-maker.

87. I accept, furthermore, that the court should be slow to require reasoning in written decisions of this kind which descends into great detail. The reasons must be sufficient to demonstrate a fair and rational consideration of the issues, but they need not be discursive. It would be wrong for the court to give encouragement to ‘defensive’ decision writing.

88. The degree of deference to the judgment of the Secretary of State, even in a case where the decision-maker ventures to differ from the panel’s recommendation, should be considerable; but it is not identical to the *Wednesbury* standard (*Associated*

Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1KB 223) that is applied in judicial review cases. It is possible for the decision to be ‘wrong’ in a case where it might survive a challenge founded on classic public law principles.

89. Thus if the judge is persuaded that the decision is disproportionately harsh, even according considerable deference to the professional judgment of the decision-maker, the court can set it aside. Accordingly, the well known proposition in judicial review proceedings, that the weight to be attached to a particular material factor is for the decision-maker and not the court, must be appropriately qualified in this appellate jurisdiction.”

79. The third preliminary observation I would make relates to the bifurcated decision-making process of the Panel and the Secretary of State. It relates back to [53] of *Wallace*, which I set out earlier. The Secretary of State is generally bound by the findings of fact made by the Panel as to the allegations of wrongdoing against the teacher. Thus, for example, if the Panel finds that incident X did not happen, it is not open to the Secretary of State to find that X *did* happen. However, as we canvassed during the hearing, it is properly open to the Secretary of State to ascribe a greater level of seriousness to a proven allegation than that ascribed by the Panel. That is because s/he is the final decision maker.

80. The Appellant accepts this: see Skeleton Argument, [9(e)] and [53]:

“9(e) The Secretary of State is not bound by the panel’s recommendation or the reasoning underlying the same. This includes the weight attributed by the panel to conclusions it has drawn [*Wallace*, [53]].

...

53. The Appellant accepts that the Secretary of State was entitled to place a different degree of weight on Former Pupil A’s vulnerability and dependency ...”

81. Lastly, I consider that Mr Steele was right to submit that Mr Meyrick’s reasons have to be read flexibly and as a whole when the correctness of his imposition of a five year review period is being considered. I understand Mr Harper’s focus on the particular specific paragraphs of Mr Meyrick’s reasons where that issue was directly addressed, however the other parts of his decision are also relevant, and cannot be left out of account. It would be overly formalistic to require matters already set out in relation to the making of the prohibition order (eg the impact on the Appellant) to be slavishly repeated when the question of review period is being addressed. The whole decision has to be read flexibly, and not as if it were a statute. I can properly infer that when he came to the review period Mr Meyrick had in mind all of the matters he had already set out in the earlier part of his decision and that he did not suddenly forget them or leave them out of account.

Grounds 1, 2-4

82. Ground 1 is not a free-standing ground of appeal, but is bound up with Grounds 2-4 (Appellant's Skeleton Argument, [33]-[36]). I propose therefore to consider them together.
83. After careful consideration, I do not consider that the Secretary of State went behind the Panel's findings of fact or that, by imposing a five year review period, she was punishing the Appellant for misconduct in the period 2010-2014 which the Panel found had not been proven. On the Panel's findings, the Secretary of State was entitled to find that there had been a 'specific and close relationship' between the Appellant and Former Pupil A, and that she had been vulnerable.
84. The way the Appellant put it was this (Skeleton Argument, [46] et seq):

“46. By referring to ‘the specific and close relationship’ the Secretary of State was clearly seeking to refer to a relationship other than that of just a former pupil and a teacher who had appropriately acted as a mentor during the former pupil's attendance at the School (the fact of such relationship being the basis for the finding that allegation 1(c) amounted to unacceptable professional conduct and/or conduct that brought the profession into disrepute). The Panel had rejected the allegations that there was an inappropriate relationship in the period 2010 – 2014 and there were no allegations of misconduct founded on a relationship in the period post 2014 until the events of 17.04.19. As such, there was no basis upon which the Secretary of State could properly find such a relationship for the purposes of stage 2.

47. The Secretary of State's reference to ‘the pupil’ and not ‘the former pupil’, is further indication that the Secretary of State wrongly relied upon an unfounded state of affairs during Former Pupil A's attendance at the School and not on what the Panel determined was the nature of the relationship on 17.04.19, them having had the opportunity to evaluate all of the evidence before them.

48. The reliance by the Secretary of State on Former Pupil A's noted perception, in September 2019, of her relationship with the Appellant whilst she was a pupil at the School between 2010-2014 (see paragraph 31 above) was also wrong. The Panel did not make a finding in these terms. The Panel had found that there was no inappropriate relationship between the Appellant and Former Pupil A during this period (see paragraph 21(b) above). Further or alternatively, Former Pupil A's

description was not evidence that was relevant to the 17.04.19 Proven Allegation because at this point Former Pupil A had not been a pupil at the School for a period of 5 years.”

85. There is nothing in the point in [47]. The Secretary of State was well aware of the time-line, the period during which Former Pupil A had been a pupil at the School and, I assume, referred to Former Pupil A on occasion as ‘Pupil A’ for brevity.
86. More substantially, as to [46] and [48], I consider that these submissions confuses two separate matters: (a) the nature of the relationship which developed between Former Pupil A and the Appellant whilst she was a pupil at the School between 2010 and 2014; (b) whether the Appellant committed professional misconduct during that period. The Panel found that he had not, but that did not foreclose, and was not inconsistent with, the finding that the Appellant and Former Pupil A formed a close relationship during that time. The Panel’s reasons, read as a whole, plainly show that it accepted that there was such a relationship.
87. It is clear from the Panel’s decision that they accepted Former Pupil A’s description of her relationship with the Appellant as being a close emotional one. It recorded Pupil A’s description of the effect of her relationship with the Appellant as ‘creating a situation of emotional dependency’ during her time as a pupil at the school. This description was provided by her in September 2019, after the complaint had been made to the School which led to the present proceedings. The Panel did not disagree with this, or disbelieve Former Pupil A on this aspect of the case.
88. The Panel’s acceptance is reinforced by other evidence from Former Pupil A about the type of contact she had with the Appellant, which again the Panel did not reject. It said:

“The panel noted the witness statement and oral evidence of Pupil A. Pupil A explained that whilst she was a pupil at the School from 2010 until 2014, she was experiencing difficulties with her mental health; Pupil A was depressed and was self-harming and was under the care of Children and Adolescent Mental Health Services and was also hospitalised for a period of time as a result.

Pupil A explained that the School were quite accommodating to her needs in terms of giving her places to go if she did not want to be in a lesson. After the summer of Year 8, her therapist recommended a phased return to school which the School accommodated. Mr MacCallum was Pupil A’s head of year throughout the time she attended the School and Pupil A engaged in frequent 1:1 contact with Mr MacCallum towards the end of Year 8, which then continued throughout Year 9 and year 10.

Pupil A explained that the 1:1 contact with Mr MacCallum would take place during Mr McCallum's free periods as this would give them enough time to have a long conversation. Mr MacCallum would also often go into Pupil A's lesson and say to the teacher "can I have a word with [Pupil A]?", and they would then go to Mr MacCallum's office, the PE office, an empty classroom or just walk around the field/campus. Pupil A explained that they did not necessarily go anywhere private; the rooms would have windows and they could be seen by others.

Pupil A could not remember much of what she spoke about with Mr MacCallum, as she had tried to block a lot of the memories out. Pupil A submitted that they would mostly speak about her, but sometimes they would speak about him, his personal experience with his family in relation to mental health and generally about mental health as he was

trying to help her and provide guidance. Pupil A expressed that Mr MacCallum would make her feel valued and cared for as he was paying attention to how she felt. At times, At times, Pupil A would also stay after school if she had been particularly upset and Mr MacCallum would ensure she got home safely, either by providing her with a bus fare or giving her a lift home, although that would be with another staff member present.

Pupil A would also stay after school if she had been particularly upset and Mr MacCallum would ensure she got home safely, either by providing her with a bus fare or giving her a lift home, although that would be with another staff member present.

Pupil A explained that she misbehaved at school, but other staff members often left disciplinary conversations to Mr MacCallum as it was accepted that he was her 'guardian'; Mr MacCallum would often fight her corner against other staff members and protect her from consequences. Pupil A recalled once occasion where MacCallum said 'I just want to wrap you up in bubble wrap and protect you'.

Pupil A submitted that she and Mr MacCallum developed an affection for each other and became very close. Mr MacCallum told Pupil A how he cared about her, he sometimes got butterflies when he thought about her and would lie awake at night worrying about her. Pupil A stated that Mr MacCallum acknowledged that their

relationship was not appropriate but reassured Pupil A that he just wanted to help her. Pupil A submitted that Mr MacCallum would say things to the effect of ‘I know our relationship is inappropriate, but I just care about you so much’ and “we have a connection’.

Further, Pupil A submitted that Mr MacCallum would give her cards and gifts, lend her books, or buy her small things to make her feel better, for example, chocolates or a bottle of juice or nicotine gum because he wanted her to stop smoking. Pupil A stated that Mr MacCallum told her not to tell anyone about the gifts, although she stated that she had told her close friends.

With regard to allegations 1(a)(i)-(iii) the panel found that, Mr MacCallum had engaged in frequent 1-2-1 contact and given the occasional card and/or gifts.

However, the panel found that the evidence from Individual A and Individual B did not suggest that these actions amounted to inappropriate professional conduct and that they did not cross any professional boundaries. Further, the panel found that these actions could be justified by Mr MacCallum’s role as Pupil A’s Head of Year.

With regard to allegations 1(a)(iv) and (v) the panel were not satisfied that there was sufficient evidence to substantiate these.”

89. Thus, although the Panel did not find 1(a)(iv) (providing money for bus ticket) or 1(a)(v) (‘I know our relationship is inappropriate ...’ etc) proved, it is clear from what it did *not* reject that there was an ample evidential basis for the conclusion that the Appellant and Former Pupil A had formed a specific and close connection as a consequence of her vulnerability and their frequent 1:1 contact. The fact that it specifically rejected as not proven some of what Former Pupil A said happened underlines that it was aware of its task, and that what it did not specifically reject, it accepted.
90. The Secretary of State acknowledged the gap between Former Pupil A’s departure from the school and the proven sexual misconduct in April 2019 (‘... there was a gap between the departure of the pupil from school and the events being considered here ...’). However, and this is the key point, the Secretary of State took the view that Former Pupil A’s vulnerability and dependency had not been given sufficient weight

by the Panel when recommending a review period of only two years.

91. This was a matter for the Secretary of State's professional judgment. Hence, consistent with what said I earlier, I consider that the Secretary of State was entitled to reach this view because it was open her, whilst remaining faithful to the Panel's findings of fact, to attach a greater level of seriousness to those findings in her overall assessment of sanction and review period. That remains the case notwithstanding: (a) as I have said, that the Panel found that what the Appellant had done between 2010 and 2014 did not rise to level of misconduct, and (b) that there were no allegations about his conduct in the intervening period (2014-2019) having been inappropriate.
92. I do not read the Secretary of State's decision as including a finding that the Appellant's relationship with Former Pupil A during her time at the school had been inappropriate, contrary to the Panel's finding. Instead, as Mr Steele submitted and I agree, it was simply that the Secretary of State considered that the closeness of the relationship between the Appellant and Former Pupil A, and her vulnerability and dependency of (coupled with his lack of insight) needed to be given more weight than they had been given by the Panel when it came to assessing the seriousness of the Panel's findings on the proven allegations, in particular the finding that the Appellant subsequently had sexual intercourse with her in 2019. It was that relationship and that vulnerability which formed the context of the 2019 wrongdoing and increased its seriousness.
93. I am reinforced in this conclusion because the Secretary of State was fully aware that the Panel had found not proven the allegations of inappropriate behaviour by the Appellant in the period when Pupil A was at the school. Mr Meyrick specifically acknowledged as much, and said he had put these out of his mind. I accept that he did so.
94. It follows that I reject the suggestion in [48] of the Appellant's Skeleton Argument that the Panel did not accept Former Pupil A's evidence that her relationship with the Appellant created a situation of emotional dependency during her time at the school. If the Panel had intended to reject this evidence it would have said so. It made clear which parts of her evidence it was satisfied about (eg, the 1:1 contact; gifts; and, most importantly, that sexual intercourse took place in 2019); and those parts it was not satisfied about (hence the allegations in 1(a)(iii) and (iv) being found not proved. In the absence of a specific rejection of this aspect of Former Pupil A's evidence, the Panel in my judgment are to be taken as having accepted it. As I have explained, this was the plain thrust of the Panel's narration of this part of the evidence.
95. Mr Steele sought to place reliance on the Appellant's own statement which he called 'carefully worded' that he never 'made any *efforts* to create a dependency' (emphasis added), as opposed to denying that a situation of emotional dependency in fact arose, however I do not place any weight on this point.
96. In summary, for these reasons: (a) the Panel accepted Former Pupil A's evidence that she had become emotionally dependent on the Appellant whilst a pupil; (b) what the Appellant did, which in part contributed to the development of that dependency, was not misconduct within the statutory framework; (c) however, the Secretary of State

was entitled to conclude that there had been a ‘specific and close relationship’ and to view the Appellant’s later wrongdoing in the context of that relationship and attach more weight to it than the Panel had done in her assessment of the appropriate review period.

97. I agree with the Respondent that the vice of the Appellant’s subsequent conduct in having sexual intercourse with Former Pupil A lay not merely in the fact she was a former pupil who was still young (albeit, at 20, an adult), but also that she had had a particularly close relationship with the Appellant whilst she was at the school and particular vulnerabilities arising from the serious mental health problems she experienced. This is clear from the Panel’s findings:

“The panel concluded that Mr MacCallum had continued a relationship outside school with a former pupil whom he had mentored and whom he knew had serious mental health problems and with whom he was in a position of trust, had had sexual intercourse with this former pupil and had then acted dishonestly when confronted with the facts of what he had done. In light of this, the panel was satisfied that the conduct of Mr MacCallum amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.”

98. I am not therefore persuaded that the Secretary of State, in imposing a five year review period, improperly ‘went behind’ the Panel’s findings, or punished the Appellant for misconduct which had not been proven. He just took a different view of the weight to be attached the factors he identified, and their significance in light of the proven misconduct in 2019, which he was entitled to do.
99. I therefore reject these grounds of appeal.

Ground 5: ‘serious sexual misconduct’

100. The Appellant argues that the Panel found that he was not responsible for ‘serious sexual misconduct’ within the meaning of the Guidance, and that the Secretary of State failed to balance this non-finding in the Appellant’s favour against the vulnerability and dependency of Former Pupil A.
101. The context of this argument are the factors from the Guidance which I set out earlier, which are relevant to the length of the review period. Paragraph 50 identifies ‘serious sexual misconduct’ in the circumstances set out (eg, where it had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons) as weighing in favour of there being no review period at all. At [51] are listed other types of behaviour (eg, drugs offences; ‘fraud or serious dishonesty’; and violence) which may weigh in favour of a longer review period. However the Guidance also makes clear in relation to [51], ‘This is not an exhaustive list and panels should consider each case on its individual merits taking into account all the circumstances involved.’
102. I do not consider that the Decision was flawed for the reason suggested in Ground 5.

True it is that neither the Panel nor the Secretary of State found the Appellant to have committed serious sexual misconduct within [50]. However in both the Panel's decision and the Secretary of State's decision there were ample findings to support the imposition of a longer review period than the two year minimum.

103. To begin with, although the focus of the two decisions was on Former Pupil A, it must not be forgotten that the Appellant was also found to have behaved dishonestly by lying to the School Principal during the investigation. That, in and of itself, is a serious matter which is capable of justifying a longer review period (*per* [51] of the Guidance).
104. In recommending that a prohibition order be imposed, the Panel took account of the Guidance, which suggests that a prohibition order may be appropriate if certain behaviours have been proved. From that list of behaviours, the Panel identified the following as being applicable in the Appellant's case: 'abuse of position or trust (particularly involving pupils)'; 'an abuse of any trust, knowledge or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or former pupil'; and 'sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position'.
105. In its conclusion on the issue of whether to recommend a prohibition order, the Panel referred back to '[t]he extent of the list of proven behaviours and the insufficient insight that was shown by Mr MacCallum, particularly in relation to the impact that they had and/or could continue to have on a vulnerable person'. These were "significant factors in forming this opinion", ie, the Panel's opinion that prohibition was both proportionate and appropriate .
106. The Panel went on to consider whether to recommend that the Secretary of State make provision for the Appellant to be able to apply for a review of the prohibition order. Again the Panel had regard to the Guidance.
107. It said:

“ The Advice [ie, the Guidance] indicates that there are behaviours that, if proved, would militate against the recommendation of a review period.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weight in favour of a longer review period. The panel found that Mr MacCallum was not responsible for any such behaviours.”

108. The Panel did not explain why it considered that its findings of misconduct by the Appellant, which as included a finding of “*sexual misconduct*”, did not also constitute “*serious sexual misconduct*”. As Mr Steele said, I think it can be inferred that the Panel considered that the sexual misconduct in this case did not reach the level of seriousness that militates in favour of a prohibition order being made with no possibility of review, i.e. an absolute lifetime ban from teaching. Perhaps more surprising is its conclusion that there were no factors present which weighed in favour of a longer review, given the finding of sexual misconduct by the Appellant which it *did* make (see above). On

one view, that was unduly favourable to the Appellant.

109. I consider that it would have been open to the Secretary of State, and not inconsistent with *Wallace*, if she had said that the Panel had got this aspect of its decision wrong, which was a value judgment rather than a finding of fact, and that the proven episode of sexual misconduct was so serious that it potentially justified a longer review period. However, the Secretary of State did not adopt that line of reasoning.

110. What she said was:

“The findings of misconduct are particularly serious as they include, “that Mr MacCallum had continued a relationship outside school with a former pupil whom he had mentored and whom he knew had serious mental health problems and with whom he was in a position of trust, had had sexual intercourse with this former pupil and had then acted dishonestly when confronted with the facts of what he had done.”

...

I am particularly mindful of the finding of dishonesty in this case and the impact that such a finding has on the reputation of the profession.”

111. This assessment of the proven allegations as being ‘particularly serious’ was one that it was open for the Secretary of State to make, and is a clear pointer to a longer review period than the minimum imposed by the Panel. These statements were made in the context of the making of the prohibition order, but as I explained earlier, they were also plainly relevant to the fixing of the review period. As Mr Meyrick himself said in the section of his decision concerning the review period, ‘I have considered whether a 2 year review period reflects the seriousness of the findings ...’.

112. The Secretary of State did not fail to have regard to that which the Panel did *not* find, but instead, and in my view correctly, focussed on what the Panel *did* find, and assessed its seriousness. Nothing in the Secretary of State’s decision contradicts the findings which the Panel made. She did not decide that this was a case where the sexual misconduct was so serious that there should be a lifetime ban from teaching with no possibility of review. She took a different view from the Panel on the length of time that should elapse before the Appellant is able to apply for a review of the prohibition order.

113. The Secretary of State reasons, stripped to their essentials, came down to matters of weight. That assessment of weight was for her, as I have already explained, and she was entitled in her assessment to place greater (or indeed, lesser, if appropriate) weight to the matters found by the Panel. I consider that she adequately explained her reasons for taking the view that a period of five years was appropriate, in particular by reference to the vulnerability and dependency of Former Pupil A and the insufficient insight shown by the Appellant in relation to the impact of his actions (which the Panel had found).

114. I therefore reject this ground of appeal.

Ground 6: public interest considerations

115. The Appellant argues that the Secretary of State's decision to set the review period at five years 'was not linked to the public interest(s) underlying the sanction of the prohibition order' and must have been 'motivated by a desire to punish the Appellant' (Skeleton Argument, [55]).

116. I do not accept this. In deciding to impose a prohibition order, the Secretary of State was guided by what she thought the public interest required, and this was her primary consideration:

"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 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 MacCallum, and the impact that will have on the teacher, is proportionate and in the public interest"

117. In her decision on review period, the Secretary of State also had the public interest at the forefront of her mind:

"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."

118. Inevitably, the prohibition order does have a punitive impact on the Appellant because it stops him teaching for life, unless and until it is set aside. The Secretary of State explicitly recognised this ('I have also considered the impact of a prohibition order on Mr MacCallum himself ..'). But that punitive impact is inevitable, but was not the Secretary of State's intention. In *Bolton v Law Society* [1994] 1 WLR 512, 518-519 Sir Thomas Bingham MR (as he then was) said this in relation to solicitors, but which I think is equally applicable to teachers (at least in the context I am talking about):

"It is important that there should be full understanding of the reasons why the tribunal makes orders which might

otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention ...

...

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.”

119. I therefore reject this ground of appeal.

Ground 7: risk of repetition

120. The Appellant argues that the Secretary of State took a different view from the Panel on risk of repetition, without providing sufficient reasons for doing so. His Skeleton Argument argues at [59]:

“59. The Appellant’s submission is that the Secretary of State’s reasons failed to adequately express why a different conclusion to the Panel had been formed in respect of the risk of repetition and the consequent risk to the wellbeing of pupils. The Secretary of State’s reasons do not give a sufficiently reasoned justification for reaching a different conclusion on how the level of insight shown in relation to the Proven Allegations, contrary to the Panel’s conclusion, does demonstrate a risk of repetition.”

121. The relevant paragraph of the Secretary of State's decision is this:

"I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "The extent of the list of proven behaviours and the insufficient insight that was shown by Mr MacCallum, particularly in relation to the impact that they had and/or could continue to have on a vulnerable person were significant factors in forming this opinion." [Ie, the opinion that a prohibition order was necessary]. In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils'. I have therefore given this element considerable weight in reaching my decision."

122. In its decision, the Panel said

"The panel noted that, although there was a finding of the above behaviour: "misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk", the panel did not consider that there was a continuing risk in the circumstances. However, the panel did consider that Mr MacCallum's behaviour was inappropriate misconduct which did affect the wellbeing of Pupil A".

123. The Panel and the Secretary of State therefore reached different views on the question of risk.

124. Whether or not Mr Steele was right to say that the Panel's finding must have been a reference to a risk of repetition vis-à-vis Former Pupil A specifically, rather than risk generally, in my judgment it was open to the Secretary of State to take a different view on risk of repetition generally, based upon the Panel's finding of a lack of insight on the part of the Appellant.

125. I do not consider that in doing so the Secretary of State was improperly departing from, or going behind, the Panel's findings of fact. The assessment of risk is a predictive evaluative exercise, based upon evidence, about which views can properly differ. Here, the Secretary of State reached a different view from the Panel and I consider she was entitled to do so. It seems to me plain that a person who has been found to have committed misconduct, and to lack insight in relation to it, is obviously at risk of repeating that behaviour until sufficient time has passed for them to have a proper understanding of what they have done.

126. I therefore reject this ground of appeal.

Ground 8: the Appellant's contribution to the profession

127. The Appellant argues that the Secretary of State should have attached more weight to

his contribution to the teaching profession. Paragraph 61 of his Skeleton Argument argues:

“61. It is submitted that the Secretary of State placed insufficient weight on the Appellant’s contribution to the teaching profession in the sanction decision making process. Before the Panel, reliance was placed on a number of testimonials from individuals who knew the Appellant professionally and had worked with him. The Panel noted, in particular, the significant contribution he had made in his current employment:

“The panel considered evidence which demonstrates that Mr MacCallum has contributed significantly to the education sector in respect of his current role at Stockport County FC and the impact that he has had since taking up this post as Education Director effectively growing this provision from scratch”

128. I reject this argument for a number of reasons. Firstly, weight was for the Secretary of State and this Court will not readily intervene for the reasons I gave earlier. Second, as Sir Thomas Bingham MR said in *Bolton*, mitigation has a lesser role to play in the disciplinary context for all of the reasons he set out. Third, the Secretary of State expressly acknowledged his contribution, but attached less weight to it. It seems to me that the following approach was impeccable, and fully consistent with *Bolton*:

“I have given less weight in my consideration of sanction therefore, to the contribution that Mr MacCallum has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession.”

129. I therefore reject this ground of appeal.

Ground 9: proportionality of review period

130. Grounds 1-8 having failed, Ground 9 cannot succeed.

Conclusion

131. It follows that this appeal is dismissed.