



National College for
Teaching & Leadership

Mr David Tomkins: Professional conduct panel outcome

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

January 2018

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

Teacher: Mr David Tomkins

NCTL case reference: 16002

Date of determination: 16 January 2018

Former employer: The Robert Napier School, Kent

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 15 January 2018 to 16 January 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr David Tomkins.

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

The legal adviser to the panel was Ms Trish D’Souza of Eversheds-Sutherland (International) LLP.

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

Mr David Tomkins was present and was represented by Mrs Elaine Abbs of the National Education Union (NUT section).

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 8 August 2017.

It was alleged that Mr David Tomkins was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed at The Robert Napier School he:

1. On or around 18 November 2016 displayed inappropriate behaviour towards Pupil A in that he:
 - a. Pushed his hand off a classroom door;
 - b. Used threatening language towards Pupil A;
 - c. Swore at or in the vicinity of Pupil A.

The statement of agreed facts dated 2 January 2018, signed by Mr Tomkins, indicated that Mr Tomkins admitted the factual particulars of these allegations and that his conduct amounted to unacceptable professional conduct and/or conduct which may bring the profession into disrepute.

C. Preliminary applications

Application to admit further documentation

The presenting officer made an application to admit further documentation to the bundle in advance of the substantive part of the hearing. This comprised approximately 10 pages. These documents provided some detail about two previous incidents relating to Mr Tomkins referred to in the bundle, but which did not form part of the allegations before the panel. In the presenting officer's view, they provided probative value for the panel. The presenting officer submitted that if the panel considered these documents did not have a sufficient nexus to the conduct which forms part of the allegations, then the panel was free not to admit them. The presenting officer submitted that, in his experience, panels often wish to receive evidence relating to a teacher's previous teaching history.

The teacher's representative opposed the presenting officer's application. The teacher's representative submitted that there was no sufficient nexus between the matters referred to in these documents and the substance of the allegations in this case. She suggested it would be prejudicial for these documents to be placed before the panel, as the full context of the incidents would not be apparent. If the panel admitted these documents, the teacher's representative submitted that she would expect the panel to question Mr Tomkins about these incidents, which occurred at a time when Mr Tomkins considered that he was unsupported in the relevant school. The teacher's representative confirmed

she opposed the addition of these documents to the bundle when she discussed the matter with the presenting officer last week.

The teacher's representative also applied to admit a signed version of Mr Tomkins' witness statement into the bundle. This was in the bundle in an unsigned form. The signed version included four appendices which were not already included in the bundle. The teacher's representative submitted that the four appendices provided helpful information to the panel's decision making process because they related to a description of matters referred to in the witness statement. The presenting officer did not oppose the teacher's representative's application.

The documents which formed part of the presenting officer's and teacher's representative's respective applications were not served on the panel in accordance with the requirements of paragraph 4.20 of the Teacher Misconduct – Disciplinary Procedures for the Teaching Profession ("the Procedures"), and as such the panel was required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures at the discretion of the panel.

In relation to the presenting officer's application, the panel took into account the representations from the presenting officer and the objections raised by the teacher's representative to the admission of the documents.

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

The panel was satisfied that the documents could reasonably be considered to be relevant to the case, as previous incidents had already been referred to in the documents which formed part of the National College's case.

Following advice from the legal advisor, the panel considered that the central question was whether it was fair in the circumstances to allow evidence to be put forward by the presenting officer without the opportunity for any witness of the alleged incidents to be cross-examined by Mr Tomkins' representative. The panel had regard to the seriousness of the allegations in this case, and that it is open to the panel to recommend a prohibition order in this case if the allegations were found proven. In addition, the panel especially noted that the information the presenting officer wished to admit related to incidents which do not form part of the allegations. The panel also considered the importance of the evidence and whether it constituted a critical part of the evidence against Mr Tomkins. It could have related to his teaching history. The panel considered that the information relating to previous incidents could be relevant to the question of mitigation if the panel was required, at the appropriate stage in these proceedings, to consider whether to recommend to the Secretary of State for Education that a prohibition order should be imposed.

The panel decided that there were sufficient safeguards to protect Mr Tomkins against any unfairness caused by being unable to cross-examine any witness of the alleged incidents referred to in the documents. The panel would be provided with a hearsay warning in due course, and the panel would determine what weight, if any it should attach to the evidence. In any event, the panel could question Mr Tomkins about the content of this information to determine what weight to place on this evidence. The panel therefore accepted the presenting officer's application.

The panel was content to admit the signed version of Mr Tomkins' unsigned statement to its bundle, and the four appendices which do not currently form part of the bundle as it agreed that this provided helpful context to the content of the statement. In addition, the panel noted that this evidence was not hearsay evidence as Mr Tomkins was present to be questioned about the content. The panel therefore accepted the teacher's representative's application.

In the course of the hearing, the panel agreed to admit two character references on behalf of Mr Tomkins. The presenting officer submitted that the National College had erroneously omitted this from the bundle. In addition, the panel also agreed to admit a copy of Mr Tomkins' employment contract, the letter terminating his contract and a full version of the relevant school's 2016 Ofsted report. The presenting officer confirmed he had no objection to placing these documents before the panel. The panel was content to admit these documents to the bundle as it was both relevant and fair to do so, as this information could provide helpful mitigation or character evidence on behalf of Mr Tomkins which the panel could consider at the appropriate stage in these proceedings.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list and list of key people – pages 1 to 4

Section 2: Notice of Proceedings and response – pages 5 to 13

Section 3: NCTL documents – pages 14 to 89

Section 5: Teacher documents – pages 90 to 101

By reason of the above preliminary applications, the panel decided to admit each of the following documents which were paginated as follows:

Section 6: Additional documents:

Signed witness statement on behalf of Mr Tomkins – pages 102 to 107

Appendices to Mr Tomkins' statement – pages 108 to 123

Documents relating to previous incidents – pages 124 to 141

Character references – pages 142 to 143

Employment contract – pages 144 to 159

Termination letter – pages 160 to 161

Ofsted Report 2016 (full version of Appendix A to Mr Tomkins' statement) – pages 162 to 175.

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

Witnesses

No witnesses gave oral evidence on behalf of the National College. The panel heard oral evidence from Mr Tomkins.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Tomkins had been employed at The Robert Napier School ("the School") since 1 September 2016 as a teacher of product design and technology (engineering and resistant materials). He was initially on a probationary period for the role. During his time at the School he also taught GCSE food technology and GCSE textiles. Towards the end of a Year 8 design and technology lesson, there was an altercation between Mr Tomkins and Pupil A who had returned unexpectedly having previously been removed from the class for misbehaviour. Following the altercation, Mr Tomkins immediately left the School that day and was notified by the headteacher in person that he would not pass his probation. Mr Tomkins was issued with a letter terminating his employment on 1 December 2016.

Findings of fact

The panel's findings of fact were as follows:

The panel found the following particulars of the allegations against you proven, for these reasons:

Whilst employed at the Robert Napier School you:

1. On or around 18 November 2016 displayed inappropriate behaviour towards Pupil A in that you:

a. Pushed his hand off a classroom door;

In his written and oral evidence, Mr Tomkins stated that 18 November 2016 was the third time that he had taught the Year 8 class at the School since he joined the School in September 2016. Mr Tomkins further indicated in his statement that the pupils' behaviour during the previous two lessons was "very poor" and he had sent out several students from the class for "completely antisocial" and "anti-learning" behaviour. All of the students were behind schedule in their work. Following a discussion with the head of department about the pupils' poor behaviour, Mr Tomkins devised a new seating plan for the pupils in advance of the lesson on 18 November 2016.

Mr Tomkins' statement further indicated that in the lesson on 18 November 2016, Pupil A was loudly, "defiant, disruptive", "rude to [his] face" and "attention seeking" in class. Pupil A had to be removed within 10 minutes of each of the three lessons that Mr Tomkins had taught to the Year 8 class for talking over him and not letting Mr Tomkins talk to the class.

Further, in his statement, Mr Tomkins stated that Pupil A refused to sit in his allocated seat, in accordance with the new seating plan, he kept changing places and sat next to other disruptive children. Following this disruption, Mr Tomkins stated that he called the School "patrol" in accordance with the School's policies. Pupil A was removed when a member of the patrol arrived.

The panel noted from the statement of agreed facts that the classroom in which Mr Tomkins taught the Year 8 class had two entrances or exits. One door led to a corridor in the School building and the other door led onto the playground.

Mr Tomkins further indicated in his statement that at the end of the lesson, Pupil A returned to Mr Tomkins' classroom and he began to walk around the classroom singing the lyrics, "You're ugly," loudly whilst staring and directing his lyrics at Mr Tomkins.

Mr Tomkins' statement said that he had locked the door which led out to the playground as he had caught pupils trying to sneak out of the class early. Mr Tomkins asked Pupil A to leave via the door that led out to the corridor but Pupil A did not follow Mr Tomkins' instruction; he "barged" past Mr Tomkins and unlocked the playground door and exited that way. Mr Tomkins went to close the playground door behind Pupil A. However, Pupil A kept his hand on the playground door as he was calling to his friends inside the classroom. Mr Tomkins' further said that he "snapped" and then with a "vertical open palm" he moved his hand upwards in order to slide his hand up over the outer handle of the door and he pushed Pupil A's hand off the door handle. Pupil A looked shocked and stated to Mr Tomkins, "You can't touch me, you can't do that." When cross-examined by the presenting officer, Mr Tomkins indicated that he did not use any force to push Pupil A's hand; he simply wished to close the door.

The panel noted from the statement of agreed facts that Mr Tomkins admitted the factual particulars of this allegation and that he accepted that it was inappropriate to physically touch Pupil A in this manner. Mr Tomkins also reiterated this during the hearing and that he regretted this incident. Taking all of the above evidence into account, this allegation was found proven.

b. Used threatening language towards Pupil A;

In the statement of agreed facts, Mr Tomkins stated that he followed Pupil A out into the playground when Pupil A left the classroom after the events referred to in allegation 1.a. Mr Tomkins admitted, in the statement of agreed facts, that he told Pupil A, "I don't care if I get sent to prison I'll knock your fucking lights out."

In his oral evidence, Mr Tomkins stated that another member of staff put his arm out to stop Mr Tomkins from walking towards Pupil A. The panel noted from a typed statement included in the bundle from a member of staff at the School, that this member of staff stated that he managed to, "restrain" Mr Tomkins and return him to his classroom...". In his oral evidence, Mr Tomkins stated that he was not restrained by a member of staff and he was not forced back to the classroom. He accepted, in his oral evidence, that he had, "tunnel vision" and he was only concerned that Pupil A should be made aware of the inappropriateness of his behaviour. In her closing submissions, the teacher's representative submitted that Mr Tomkins walked towards Pupil A but he had no intention to use any force against Pupil A. She further submitted that once Mr Tomkins had observed a change in Pupil A's demeanour, Mr Tomkins walked back into the classroom. She further submitted that the presenting officer's inference that Mr Tomkins needed to be restrained was incorrect.

The statement of agreed facts stated that Mr Tomkins accepted that he used threatening language towards Pupil A which was inappropriate. In addition, the panel noted that various written accounts of this incident from staff and pupils at the School, included in the bundle, corroborated Mr Tomkins' admission. This allegation was found proven.

c. Swore at or in the vicinity of Pupil A.

The panel noted from the statement of agreed facts that Mr Tomkins admitted that he swore at Pupil A and he accepted this was inappropriate. This was supported by Mr Tomkins' oral evidence. This allegation was found proven.

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

Having found all of the allegations proven, the panel went on to consider whether the facts of those proven allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The panel noted from the statement of agreed facts that Mr Tomkins admitted that his conduct, as set out at allegations 1.a to 1.c, amounted to both unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

The panel noted from Mr Tomkins' oral evidence, that whilst at the School he worked long hours during the day and worked late into the evening to prepare lessons, particularly GCSE food technology and GCSE textiles which he was not trained to teach and had not taught at that level. Mr Tomkins also considered that he taught a high number of disruptive pupils. Mr Tomkins' further oral evidence was that he was feeling stressed when covering the demands of his role and teaching subjects with which he was not familiar. In his closing submissions, the presenting officer submitted that most teachers suffer stress and long hours and the panel should not consider that this was sufficient cause for his behaviour. The teacher's representative submitted, in her closing submissions, that Mr Tomkins felt unsupported by the School at the time the incident occurred. There were insufficient members of staff in his department to teach the range of subjects he was required to teach and, despite discussions with staff about behaviour management issues with pupils, insufficient support had been put in place. The panel had sight of the contemporaneous Ofsted report which stated that behaviour of pupils at the School required improvement. The panel also had regard to a letter from the School to parents dated 2017 which expressed concern at the "low-level disruption and some element of defiance from a small, but loud, minority of students,..."

In accordance with the advice from the legal advisor, the panel had regard to the document Teacher misconduct: The prohibition of teachers, which the panel refers to as "the Advice".

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

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

In his closing submissions, the presenting officer submitted that Mr Tomkins, in his statement, indicated that the pupils who witnessed his behaviour could have been "shocked" by his behaviour. The panel noted from his oral evidence, that Mr Tomkins stated that pupils might have not wanted to be present in any of his lessons again and might lose enthusiasm for his subject as a result of witnessing his behaviour. Mr Tomkins accepted, in his oral evidence, that another member of staff placed a hand on him to stop him advancing towards Pupil A when in the playground.

The presenting officer submitted that the panel should consider the way members of the public and pupils would view Mr Tomkins' conduct in threatening a pupil.

The panel was satisfied that the conduct of Mr Tomkins in relation to allegations 1.a to 1.c was misconduct of a serious nature which fell significantly short of the standards expected of the profession. Mr Tomkins' losing his temper and moving Pupil A's hand off the door of the classroom, then using offensive language and swearing at Pupil A and subsequently threatening to "knock" Pupil A's "block off" were inappropriate.

The panel also considered whether Mr Tomkins' conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The Advice indicates that where behaviours associated with any of the offences listed exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct. The panel found that none of these offences were relevant in this case.

However, in light of the evidence considered, the findings of fact and breaches of the Teachers' Standards, the panel was satisfied that Mr Tomkins was guilty of unacceptable professional conduct.

The panel took into account the way in which 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 took account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. The behaviour exhibited by Mr Tomkins, in terms of the language he used and his threat to harm Pupil A was not the behaviour of a role model.

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

Having found the facts of particulars 1.a, 1.b and 1.c proved, the panel further found that Mr Tomkins' conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

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

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

The panel considered the particular public interest considerations set out in the Advice and having done so found a number of them to be potentially relevant in this case, namely: the protection of pupils; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and the interest of retaining Mr Tomkins in the profession.

In light of the panel's findings against Mr Tomkins, there was a potential public interest consideration in respect of the protection of pupils given the finding that Mr Tomkins threatened to "knock" Pupil A's "block off".

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

The conduct found against Mr Tomkins was outside that which could reasonably be tolerated. Therefore there was a potential public interest consideration in declaring proper standards of conduct in the profession.

The panel also considered the public interest in retaining Mr David Tomkins in the profession. By reference to the evidence before the panel, Mr Tomkins had been a good teacher over the course of a 17 year career. No doubt had been cast upon his abilities as an educator and he was able to continue to make a valuable contribution to the profession.

The panel noted that Mr Tomkins was asked to teach subjects he was not trained to teach at GCSE level. It would appear to the panel that behaviour and discipline were a challenge for the School and this was supported by the 2016 Ofsted report and letters sent by the head teacher to the parents of the School, albeit after Mr Tomkins left the School. The panel noted from his oral evidence, that Mr Tomkins sought information and advice from the School about children with special educational needs. However, he found the limited information provided unhelpful. The teacher's representative drew the panel's attention to the letter from Kent Police included in the bundle which indicated that Pupil A confirmed that he "played up" in Mr Tomkins' class on 18 November 2016 and had a history of exclusions. Mr Tomkins' oral evidence was that he was not aware of Pupil A's previous history and he was given no strategies for managing his behaviour.

In view of the 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 Tomkins.

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 Tomkins. The panel took further account of the Advice, which suggests that a prohibition

order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that could potentially be relevant in this case are:

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

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

The presenting officer submitted that Mr Tomkins accepted that his behaviour was deliberate. This was disputed by the teacher's representative as Mr Tomkins had no idea that he would react to Pupil A's poor behaviour in the way set out in allegation 1.a to 1.c. However, the panel concluded that Mr Tomkins' actions were deliberate as he knew what he was doing.

The panel noted Mr Tomkins' oral evidence relating to the significant stress he was under when he taught at the School. The teacher's representative submitted that Mr Tomkins was under a form of "duress" as he taught a number of disruptive pupils and he was very tired from having worked long hours both the day before the incident and on the day of the incident. The teacher's representative further submitted that Mr Tomkins' behaviour was in response to Pupil A's disruption of the learning of other pupils. The legal advisor told the panel that there is no definition of duress in the Advice; however, a definition could be "Unlawful pressure exerted upon a person to coerce that person to perform an act that he or she ordinarily would not perform". The presenting officer agreed with the definition provided by the legal advisor and submitted that there was no duress in this case. The panel considered that although Mr Tomkins was under pressure in his role as a teacher, he was not under any "unlawful pressure" that coerced him into behaving as he did towards Pupil A. Therefore, there was no evidence to suggest that Mr Tomkins was acting under duress.

The presenting officer confirmed to the panel that there were no previous disciplinary orders imposed by the Secretary of State or any other relevant body relating to Mr Tomkins. In addition, the panel considered that Mr Tomkins had a previous good teaching history which extended over 17 years. The panel noted that the evidence in the bundle indicated that the head of department and assistant head teacher of the School had spoken to Mr Tomkins on two prior occasions about his use of inappropriate

language and management of the behaviour exhibited by pupils. However, the panel noted that these previous incidents were minor.

The panel noted from the response to the request for information from Kent Police, included in the bundle, that references taken up by the School prior to providing Mr Tomkins with an offer of employment raised no concerns. One of the references, in the bundle, indicated that there were no concerns regarding Mr Tomkins' teaching ability or character. In addition, the panel noted that the two character references admitted in the course of the hearing, stated that Mr Tomkins' lessons were well-organised with high standards of discipline and he showed strong subject knowledge. He was clearly committed to getting the best from students as he enjoyed successful exam results and he frequently gave up time after school to help students complete design projects. He also gave valuable technical and audio-visual support to other departments in the School. Both character referees considered Mr Tomkins to be a good teacher who would be a great loss to the teaching profession.

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

The panel found Mr Tomkins a credible witness who gave frank and honest oral evidence as to the reasons why he behaved inappropriately towards Pupil A. The panel considered that Mr Tomkins showed considerable insight. It was persuaded that Mr Tomkins would be very unlikely to repeat the behaviour in the future. He would recognise signs of stress and seek more appropriate support from other members of staff or senior leaders within the School. Mr Tomkins further stated, in oral evidence, that he now understood not to take any misbehaviour by pupils personally and as a result he would be able to act towards pupils in a calm manner.

The panel was of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order would be a proportionate and appropriate response.

The panel considered that the publication of its adverse findings of unacceptable professional conduct and conduct that may bring the profession into disrepute would be sufficient to send an appropriate message to Mr Tomkins. It was also sufficient to meet the public interest requirement of declaring proper standards of conduct for the profession and maintaining public confidence. The panel considered that Mr Tomkins did not present a continuing risk to pupils. In light of the mitigating factors that were present in this case, the panel determined that a recommendation for a prohibition order would not be appropriate in this case.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of no sanction.

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

In this case, the panel has found the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr Tomkins should not be the subject of a prohibition order.

In particular, the panel has found that Mr Tomkins is in breach of the following standards:

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

The panel finds that the conduct of Mr Tomkins in relation to allegations 1.a to 1.c fell significantly short of the standards expected of the profession.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Tomkins, and the impact that will have on him, is proportionate.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed the, "potential public interest consideration in respect of the protection of pupils given the finding that Mr Tomkins threatened to "knock" Pupil A's "block off". A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel's comments on insight and remorse which the

panel sets out as follows, “The panel found Mr Tomkins a credible witness who gave frank and honest oral evidence as to the reasons why he behaved inappropriately towards Pupil A. The panel considered that Mr Tomkins showed considerable insight. It was persuaded that Mr Tomkins would be very unlikely to repeat the behaviour in the future.” The panel has also commented that Mr Tomkins said he would, “recognise signs of stress and seek more appropriate support from other members of staff or senior leaders within the School.” In my judgement, the insight shown means that the risk of repetition of this behaviour is slim. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “The conduct found against Mr Tomkins was outside that which could reasonably be tolerated.”

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

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

I have also considered the impact of a prohibition order on Mr Tomkins himself. The panel considered character references and references taken up by the school, these considered, “Mr Tomkins to be a good teacher who would be a great loss to the teaching profession.” The panel observed evidence that supported, “Mr Tomkins’ lessons were well-organised with high standards of discipline and he showed strong subject knowledge.”

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

In this case, I have placed considerable weight on the panel’s comments concerning the insight and remorse Mr Tomkins had shown. I note that the panel heard from Mr Tomkins “that he now understood not to take any misbehaviour by pupils personally and as a result he would be able to act towards pupils in a calm manner.” I have also placed considerable weight on the evidence put before the panel that Mr Tomkins was a teacher with a good work history. I note the character references stated Mr Tomkins was, “clearly committed to getting the best from students as he enjoyed successful exam results and he frequently gave up time after school to help students complete design projects.”

I have given considerable weight in my consideration of sanction therefore, to the contribution that Mr Tomkins has made to the profession.

I have considered the panel's comments that, "The panel was of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order would be a proportionate and appropriate response." Also that the panel concluded, "the publication of its adverse findings of unacceptable professional conduct and conduct that may bring the profession into disrepute would be sufficient to send an appropriate message to Mr Tomkins." The panel went on to say a published decision of unacceptable professional conduct and conduct that may bring the profession into disrepute would be, "sufficient to meet the public interest requirement of declaring proper standards of conduct for the profession and maintaining public confidence." I further note that the panel was of the view that Mr Tomkins did not present a continuing risk to pupils.

My view is the same as the panel's, I believe that a published decision backed up by remorse and insight, shown to the degree it is in the case of Mr Tomkins, does satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that no prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.



Decision maker: Dawn Dandy

Date: 19 January 2018

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