



Teaching  
Regulation  
Agency

# **Mr Yankel Shepherd: Professional conduct panel outcome**

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

**January 2022**

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

**Teacher:** Mr Yankel Shepherd

**Teacher ref number:** 1985038

**Teacher date of birth:** 8 August 1964

**TRA reference:** 17298

**Date of determination:** 12 January 2022

**Former employer:** Oholei Yosef Yitzchok Lubavitch School, Salford, Talmud Torah Yetev Lev, Salford

## **Introduction**

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 10 January to 15 January 2022 to consider the case of Mr Yankel Shepherd.

The panel members were Ms Maxine Cole (lay panellist – in the chair), Mr Steve Woodhouse (teacher panellist) and Mr Peter Ward (lay panellist).

The legal adviser to the panel was Mrs Luisa Gibbons of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Ms Sarah Vince of Browne Jacobson LLP solicitors.

Mr Shepherd was not present and was not represented.

The hearing took place in public, save for the evidence of Child A which was heard in private. The hearing was recorded.

## **Allegations**

The panel considered the allegations set out in the notice of proceedings dated 12 October 2021.

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

1. In or around the 1980s he had inappropriate physical contact with Child A at a Jewish Community Centre and/ or a Synagogue, in particular he:
  - a. touched Child A on one or more occasions;
  - b. permitted and or encouraged Child A to touch him on one or more occasions;
  - c. kissed Child A on one or more occasions;
  - d. engaged in sexual activity with Child A on one or more occasions;
2. In or around 2018, he had inappropriate contact with Pupil X, including by:
  - a. kissing Pupil X;
  - b. hugging and/or stroking Pupil X;
3. His behaviour as may be found proven at 1 and/or 2 above was conduct of a sexual nature and/or was sexually motivated.

Mr Shepherd has not admitted either the facts of the allegation or that such conduct constituted unacceptable professional conduct or conduct that may bring the profession into disrepute.

## **Preliminary applications**

### Applicable Procedures

The panel noted that since the date of the referral to the TRA in this case, new Teacher Misconduct Disciplinary procedures for the teaching profession were published in May 2020 (the “May 2020 Procedures”). The panel understands that the earlier provisions contained within the Teacher misconduct disciplinary procedures for the teaching profession updated in April 2018 (the “April 2018 Procedures”) apply to this case, given that those provisions applied when the referral was made. Although the panel has the power to direct that the May 2020 Procedures should apply in the interests of justice or the public interest, the panel had received no representations that this should be the case. For the avoidance of doubt, therefore, the panel confirms that it has applied the April 2018 Procedures in this case.

### Application to proceed in the absence of Mr Shepherd

The panel has considered whether this hearing should continue in the absence of the teacher.

The panel is satisfied that TRA has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

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

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

The panel has taken as its starting point the principle from *R v Jones [2003] 1 AC 1*. that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one. In considering the question of fairness, the panel has recognised that fairness to the professional is of prime importance but that it also encompasses the fair, economic, expeditious and efficient disposal of allegations against the professional, as was explained in *GMC v Adeogba & Visvardis*.

In making its decision, the panel has noted that the teacher may waive his right to participate in the hearing. The panel has firstly taken account of the various factors drawn to its attention from the case of *R v Jones*.

- 1) Mr Shepherd completed a virtual hearings form to state that he did not intend to be present at the hearing. He was contacted on 13 September 2021 by the presenting officer's firm and asked whether he voluntarily waived his right to attend the hearing; whether he was content for the panel to make a decision in his absence; that he understood that the panel may make findings against him which may lead to the imposition of a prohibition order; and that he was content with the hearing being listed as a virtual hearing. He responded on 14 September 2021 to state that, "I can confirm the above points". Mr Shepherd was subsequently sent the notice of hearing on 12 October 2021 and has made no further contact to suggest he wished to attend the hearing. The panel therefore considers that the teacher has waived his right to be present at the hearing in the knowledge of when and how the hearing is taking place.
- 2) In the circumstances, the panel did not consider that there was any likelihood that an adjournment would result in Mr Shepherd attending the hearing. He has given no indication that he wishes to be legally represented.

- 3) The panel understands from Mr Shepherd's communications that he denies the allegations made against him. The panel has noted that Child A and a social worker are to be called to give evidence. The panel can test their evidence in questioning those witnesses, considering such points as are favourable to the teacher, as are reasonably available on the evidence. Although Pupil X is not to give live evidence, the panel has his Achieving Best Evidence video recorded interviews with the police. The panel are able to take into account the fact that Pupil X will not be cross-examined when considering the credibility of Pupil X's account and the weight it places upon that evidence. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard Mr Shepherd's account.
- 4) The only explanation that Mr Shepherd has given for not attending the hearing is that he has left the education sector and will not return.
- 5) The panel has recognised that the allegations against the teacher are serious and that there is a real risk that if proven, the panel will be required to consider whether to recommend that the teacher ought to be prohibited from teaching.
- 6) The allegations include reference to Child A and Pupil X who it is alleged the teacher has inappropriately touched. Both will have an interest in having the allegations determined within a reasonable time. The panel also recognises that the efficient disposal of allegations against teachers is required to ensure the protection of pupils and to maintain confidence in the profession.
- 7) The panel also notes that Child A and a social worker will give oral evidence, and that it would be inconvenient and distressing for them to return again. The allegations relating to Child A are historic and it is in the interests of justice for them to now be heard, to avoid any further impact that the passage of time may have on the memories of the witnesses.

The panel has therefore decided, in view of the above, to proceed with the hearing in the absence of Mr Shepherd.

#### Application for Vulnerable Witness Measures in respect of Child A

Child A is not a child witness as although he was a child at the time of the matters alleged, at the time of this hearing, Child A is over the age of 18. However, the panel directs that Child A is to be treated as a vulnerable witness. The panel is satisfied that the quality of his evidence is likely to be adversely affected given that the allegation is of a sexual nature and he is the alleged victim, and because of the intimidation that Child A complains he has suffered from [redacted].

The panel has considered paragraph 4.71 of the Procedures and has noted that there is no evidence that the welfare of Child A will be prejudiced by him giving evidence. Child A has indicated that he wishes to give evidence, provided that the vulnerable witness measures requested are made available to him.

The panel went on to consider the presenting officer's request for:

- 1) Child A's evidence to be given in private; and
- 2) for Child A to be accompanied by two witness supporters, [redacted] and a support worker.

Pursuant to paragraph 4.72 of the Procedures, the panel will adopt such measures as they may consider necessary to safeguard the interests of a vulnerable witness.

Paragraph 4.72 sets out a list of non-exhaustive measures that the panel may consider adopting which includes both the hearing of evidence by the panel in private and the attendance of a witness supporter.

The panel has carefully considered whether Child A should be permitted to give evidence in private. The panel noted that it has a discretion under paragraph 11 of the Regulations and under paragraph 4.57 of the Procedures to exclude the public from all or part of the hearing. The circumstances in which such a discretion is available includes where it appears necessary in the interests of justice; or where it is necessary to protect the interests of vulnerable witnesses.

The panel has determined to exercise its discretion to hear Child A's evidence in private. The panel has taken into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings, and also to maintain confidence in the teaching profession. On this occasion, however, the panel considers that the request for Child A's evidence to be heard in private is a reasonable one to safeguard his interests as a vulnerable witness. The panel has had in mind that hearing Child A's evidence in private would affect only a limited period of the hearing. The panel considered whether it would be sufficient to grant anonymity to Child A without the need to exclude the public from the hearing for the duration of his evidence, but does not consider that this would be sufficient to satisfy Child A that his interests would be safeguarded. The panel was informed by the presenting officer that Child A did not know if he would be able to continue with giving evidence if it was in public due to the risk of him being identified now or in the future. It is in the interests of justice for Child A's evidence to be heard. Although the panel has not made any determination regarding the credibility of Child A's account, if his reports of intimidation are accurate, then the panel did not consider it would be sufficient to safeguard Child A's interests if his evidence proceeded in public.

The panel considers that, in the circumstances of this case, the public interest will be satisfied by the remainder of the hearing being heard in public, and by the public announcements that the panel will be required to make in due course.

The panel also decided that Child A could have present during his evidence the two witness supporters that he has requested. That would replicate the position if this hearing was to take place in person and in public, since those individuals would be entitled to be present as members of the public. There will be someone present from the presenting officer's firm to ensure that there is no interference with the giving of Child A's evidence by the witness supporters.

## **Summary of evidence**

### **Documents**

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

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

Section 2: Notice of proceedings and response – pages 5 to 16

Section 3: Teaching Regulation Agency witness statements – pages 17 to 34

Section 4: Teaching Regulation Agency documents – pages 35 to 289

Section 5: Teacher documents – pages 290 to 297

The panel also received and viewed two ABE video interviews of Pupil X, the transcripts of which were contained at pages 122 – 177 and pages 236 to 257 of the bundle.

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

### **Witnesses**

The panel heard oral evidence from Child A and the [redacted] at Salford City Council, both called by the Presenting Officer.

## **Decision and reasons**

The panel announced its decision and reasons as follows:

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

From 4 September 2009, Mr Shepherd was employed as a class teacher at the Talmud Torah Chinuch N'Orim School. On 14 November 2012, Child A provided an account to

the police of allegations against Mr Shepherd. Mr Shepherd was arrested by the police on 12 December 2012. Mr Shepherd ceased working at the Talmud Torah Chinuch N'Orim School in the week ending 8 February 2013. The police investigation of the allegations made by Child A came to an end in the Summer of 2013 after Child A decided that he did not wish to proceed to give evidence against Mr Shepherd.

From 1 October 2013, Mr Shepherd was employed as a teacher at Talmud Torah Yetev Lev School. From 21 September 2015, Mr Shepherd's job title was Class Teacher – SENCO Assistant. From 18 October 2016, Mr Shepherd's job title was Class Teacher – SENCO Assistant – Early Years Foundation Stage Assistant Manager. From the end of 2014 until August 2018, Mr Shepherd also worked as a Learning Support Assistant and assisted with SENCO related tasks at Oholei Yosef Yitzchok Lubavitch School.

Allegations were made that Mr Shepherd had behaved inappropriately towards Pupil X whilst working at Oholei Yosef Yitzchok Lubavitch School. Mr Shepherd was suspended on 23 October 2018 from his role at Talmud Torah Yetev Lev School. He resigned from that School. On 31 July 2019, the Crown Prosecution Service decided not to prosecute Mr Shepherd in respect of alleged offences relating to Pupil X.

## **Findings of fact**

Before making any findings of fact in relation to Child A, the panel invited the presenting officer to address it regarding the issue of Mr Shepherd not having been a teacher at the time of the matters alleged.

The panel noted that under Paragraph 7 of the Regulations, “a professional conduct panel **must** consider cases referred to it by the Secretary of State...” [emphasis added]. This is a case that has been referred to it, and the panel was therefore entitled to assume that it had jurisdiction to determine the allegations.

In any event, the panel concluded it is entitled to consider the allegations in relation to Child A. In reaching this conclusion, the panel’s attention was drawn to the decision of the High Court in *Alsaifi v Secretary of State for Education* [2016] EWHC 1591. In that case, it was noted that in respect of a conviction case, under s141B(1)(b) of the Education Act 2011, a teacher’s conviction *at any time* could trigger a referral. The court, in *Alsaifi* distinguished this from the situation where a person was not a teacher at the time of the alleged misconduct, but was at the time of the referral (as is the circumstance in the present case). The court noted that s141B(1)(a) of the Education Act 2011 contained no reference to the conduct being *at any time*. However, the court in *Alsaifi* did not need to reach a determination as to whether it was the intention of Parliament that someone who was not a teacher at the time of the alleged misconduct should be subject to investigation. Whilst there is no specific authority on this point, the panel noted that at paragraph 65 of the *Alsaifi* judgment, it was stated:

*“There are respectable arguments for and against that interpretation. Unfortunately because of the way this case developed, I did not hear them. I have already mentioned*

*the indications in this statute itself and in the interpretation of the regulations in the guidance to the NCTL that favour the more restrictive interpretation. On the other hand, if the conduct in question casts doubt on such a person's suitability to teach children and young persons, then arguably it should qualify for investigation – dishonesty of any kind, for example, or inappropriate behaviour towards someone in respect of who the individual concerned was in a position of authority or trust, even in a different kind of job".*

The panel considered that the case before it falls squarely within the example of the case cited where, if proven, the allegations would cast doubt on Mr Shepherd's suitability to teach children. Child A describes Mr Shepherd's actions having developed from his attendance at an [redacted], where Mr Shepherd was one of the adults [redacted] and therefore in a position of trust . The panel was satisfied that in such a case, where the allegations related to engaging in conduct of a sexual nature and/or conduct that was sexually motivated, that safeguarding concerns are paramount. It is therefore in the public interest that such allegations are considered, even if the conduct concerned occurred at a time prior to Mr Shepherd joining the profession.

Taking a hypothetical example, if allegations of this nature could not be considered, it would produce an anomaly in the sense that it would preclude prohibition being considered and imposed in circumstances where an individual has a history of grooming a child, prior to joining the very profession that would allow that individual access to children.

The findings of fact are as follows:

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

- 1. In or around the 1980s you had inappropriate physical contact with Child A at a Jewish Community Centre and/or a Synagogue, in particular you:**
  - a. touched Child A on one or more occasions;**
  - b. permitted and/or encouraged Child A to touch you on one or more occasions;**
  - c. kissed Child A on one or more occasions;**
  - d. engaged in sexual activity with Child A on one or more occasions;**

Child A has stated that when he was around 12 years old and attending the synagogue, Mr Shepherd invited him to help with some jobs at the offices of the Jewish Community Centre. He stated that Mr Shepherd had been one of the adults running an activities group for boys that Child A had attended from when he was around 7 or 8 years old. Child A described attending on a Sunday afternoon and whilst there, they looked at a magazine for religious youths. He recalled sitting on Mr Shepherd's lap, and Mr Shepherd touching him on his thighs and over his groin. Child A described meeting with Mr Shepherd on Sunday afternoons over the period of the following 12 to 18 months. He

stated that within a few months, this had progressed to Mr Shepherd unzipping Child A's trousers, putting his hands inside Child A's underwear and fondling his penis and testicles. He stated that Mr Shepherd asked him to fondle him and pretended to read through a magazine whilst Child A touched Mr Shepherd's penis and fondled his testicles.

Child A explained in oral evidence that, at the time, he didn't really have any friends, was a loner and had been very quiet. He had started school without speaking English and that had impacted upon his confidence. He explained that he didn't have the attention of his parents. He stated that he felt pressured and complied with Mr Shepherd's requests, and felt confused as he had not had any sexual experiences prior to this, nor did he know anything about sex.

Child A stated that a few months after the visits to the Jewish Community Centre began, Mr Shepherd tried to masturbate him but that this was unsuccessful and Mr Shepherd gave up. Child A explained that Mr Shepherd tried this once or twice. He stated that it became a regular feature that Mr Shepherd would push him against the wall at the Jewish Community Centre and kissing would take place, that Mr Shepherd put his tongue in Child A's mouth and rubbed his genitals against him, telling Child A to push harder.

Child A stated that around 2 to 3 months into the visits to the Jewish Community Centre, Mr Shepherd asked Child A to lie on the floor and Mr Shepherd lay on top of him and this became a regular occurrence. He stated that Mr Shepherd kissed him and masturbated himself against him, asked Child A to put his hand into his unzipped trousers onto his penis and it ended with Mr Shepherd ejaculating.

It was when Child A started developing himself sexually and was going through puberty that Child A states that he began to have some inkling that something was wrong with his contact with Mr Shepherd. He felt more and more uncomfortable and stopped attending the Jewish Community Centre on Sundays.

Child A stated that he continued to see Mr Shepherd at the synagogue, and Mr Shepherd took him upstairs to study some religious texts alone with him in the women's gallery, whilst the other children were playing and having fun. He stated that this happened on a number of occasions. Whilst in the women's gallery, Mr Shepherd unzipped Child A's trousers and put his hand under Child A's underwear. Child A stated that he touched Mr Shepherd underneath his underwear although later he refused to do this. Child A said that on one occasion, when he attended the synagogue, the women's gallery was full and they went into a different room and touched each other.

On one of the final occasions, Child A stated that he showed Mr Shepherd a text that spoke of the sin of masturbation. Child A stated that he decided not to allow himself contact or engage with Mr Shepherd at the synagogue. Notwithstanding this, Mr Shepherd called him at home, asking him to go to the office at the Jewish Community

Centre, and asked to visit Child A at home. Child A stated that he refused and the contact between them stopped.

Child A gave oral evidence and notwithstanding Child A was not subject to cross-examination, the panel found him to be a truthful and credible witness. The panel considered that the level of detail contained within his statement was consistent with being an honest account. His evidence now is consistent with the evidence he had provided when he reported the matter to the police. The panel considered that Child A's explanation as to the period of time that lapsed before he reported the matter to the police was a reasonable one, and that his numerous attempts to pursue this matter with the religious authorities had been frustrated. The ongoing impact upon Child A of the events was evident to the panel.

The panel also accepted Child A's explanation of why, having reported the matter to the police, he later made a retraction statement to the police stating that he could no longer support the case by attending court, albeit that the matters he had told them were true. The panel understood the decision made by Child A, given the pressure that he has described being exerted by [redacted] and Child A's emotional state at that time.

In contrast, Mr Shepherd, being aware of the allegations and having all of the documentary evidence before this panel has chosen not to provide an account to the panel, by either attending this hearing, or in a written statement, save for denying the allegations against him.

The panel has seen a police statement written by a children's social worker who visited Mr Shepherd on 16 November 2012. That social worker has recorded that Mr Shepherd said to her words to the effect of "what if someone had made a foolish mistake all of those years ago, when not married, but had learnt from that". She stated that she asked if Mr Shepherd was saying something had happened and he responded "no". She asked if he could think of any incident which may have happened and again, he said "no". She has also stated that during a second meeting with Mr Shepherd on 22 November 2012, Mr Shepherd, "admitted that there had been some incidents with a boy when he lived in London. He said he deeply regrets it and he is remorseful. He said he was young and confused." Her statement went on to state that Mr Shepherd said that "he saw the boy at a function and he had tried to speak to him about it. The boy (who is now a man) had told him that, 'it will catch up with you'."

Another social worker who attended the second meeting with Mr Shepherd on 22 November 2012 gave evidence to the panel. She also gave a statement to the police on 7 January 2013. In that police statement she recorded that Mr Shepherd "said to us, he could remember an incident with one boy years ago in London which he is remorseful for. He felt at the time he was a young boy and he was confused. This was before he got married. He told us that he had recently seen the boy in question at a Jewish function in 2012. This male approached him and said to him, 'This will catch up with you'. Mr

Shepherd thinks this is who has made the allegations as there have been no other incidents.”

The panel believed that Mr Shepherd’s comment related to Child A. Child A had explained that around September 2012, he had seen Mr Shepherd, he believed this was likely to have been at a celebration, although could not recall precisely. He stated that he had told Mr Shepherd, “I’ll get you one day”.

In the social worker’s police statement, she recorded that Mr Shepherd agreed to comply with a [redacted] and [redacted]. In oral evidence, the social worker confirmed to the panel that Mr Shepherd would have had to admit an incident had occurred (or be convicted of a sexual offence), in order to be offered this programme.

Although Mr Shepherd has subsequently denied the allegations, the panel was satisfied that he had made an admission that an incident had taken place and that admission was more likely than not to relate to Child A.

Whilst the details of the incident were not relayed by Mr Shepherd during either meeting with the social workers, the panel considered it more likely than not, given the partial admission, that Mr Shepherd had acted inappropriately towards Child A. Given the compelling account that Child A had provided, the panel was satisfied that matters alleged by Child A had taken place. The panel also considered that it was inappropriate for Mr Shepherd, in a position of trust, to have acted in this way. The panel, therefore, found allegation 1 proven in its entirety.

**2. In or around 2018, you had inappropriate contact with Pupil X, including by:**

- a. kissing Pupil X;**
- b. hugging and/or stroking Pupil X;**

Although Pupil X was not called to give evidence, the panel observed the video recordings of two “Achieving Best Evidence” (“ABE”) interviews of Pupil X conducted by the police on 27 November and 17 December 2018. In those circumstances, the panel took particular care in reaching its findings in relation to Pupil X’s evidence given that the panel was not able to ask questions of Pupil X, nor could it see how Pupil X’s evidence would have withstood any form of cross-examination. Although it was evident to the panel that Pupil X’s special educational needs caused him difficulties in communicating what had happened, the panel found his evidence to be credible and truthful in relation to the facts alleged that Mr Shepherd had kissed him, hugged him and stroked his face. During the interview, Pupil X was particularly able to articulate the relief he felt after Mr Shepherd’s contact stopped, when Pupil X’s parents had confronted Mr Shepherd about his behaviour and also his dismay when that physical contact had begun again three weeks later. Pupil X was clearly able to distinguish between such contact from his parents, which he enjoyed, and Mr Shepherd behaving in the same way towards him, which he described as being inappropriate for a teacher. Pupil X was clearly able to

describe the locations where the actions had taken place, and also that they had not recurred once Mr Shepherd was told to hold his sessions with Pupil X in a location where there was a camera present.

The panel noted that there were striking similarities with the matters found proven in respect of Child A. Both children were individuals who were vulnerable and who Mr Shepherd managed to have access to on a one to one basis. Mr Shepherd may well have formed the view that neither child was likely to report the behaviour, or that they would be unlikely to be believed, if they had.

In Mr Shepherd's police interview, he accepted that there would have been physical contact with Pupil X in relation to his preparation for Pupil X's bar mitzvah, when he would have assisted Pupil X with certain garments. He explained that would have been the extent of any physical contact. The panel did not believe Pupil X could have been confused with this physical contact and the contact that Pupil X described of kissing, hugging and stroking his cheek.

Furthermore, the panel noted the evidence of a Special Educational Needs and Disability Case Worker who gave evidence to the police. She provided a professional assessment of her observations of Pupil X during a visit with him and stated, "in my opinion he doesn't have the skills to be dishonest about how support is/isn't provided to him" and that Pupil X "has the ability to say what he likes and what he doesn't like". The panel placed some weight on this professional view which reinforced its own view of observing Pupil X during the video recordings of his ABE interviews. Pupil X was very clear that he did not like the unwanted physical contact from Mr Shepherd and that he not only wanted it to stop, but had reported it on several occasions in an effort to make it stop.

Having found Pupil X to be credible and truthful in his account of the physical contact Mr Shepherd had made, the panel was satisfied that this was inappropriate for a teacher and found Allegation 2 proven in its entirety.

### **3. Your behaviour as may be found proven at 1 and/or 2 above was conduct of a sexual nature and/or was sexually motivated.**

With regard to Child A, the panel was satisfied that Mr Shepherd's behaviour was conduct of a sexual nature and/or sexually motivated. The culmination of the contact between Child A and Mr Shepherd in sexual acts indicated that a reasonable person would consider that contact to be by its nature sexual, and that both his actions in the lead up to and during those sexual acts were in pursuit of his own sexual gratification.

With regard to Pupil X, the panel was satisfied that Mr Shepherd's behaviour was conduct of a sexual nature and/or sexually motivated. The panel asked itself whether a reasonable person would consider that, because of its nature, his conduct may be sexual, and because of its circumstances or his purpose in relation to it, it is sexual. The panel understood that the state of Mr Shepherd's mind could not be proven by direct observation, and that it could only be proved by inference or deduction from surrounding

evidence. The panel was satisfied that hugging, stroking Pupil X's cheek and kissing Pupil X during their one to one sessions was conduct of a sexual nature. There could be no other explanation for him to do this, other than a sexual one. Pupil X clearly felt uncomfortable with the contact which he described as inappropriate.

It was apparent to the panel that Mr Shepherd developed an intimacy with Pupil X through his one to one sessions and by assisting him with his preparation for his bar mitzvah, taking advantage of the sessions when they were alone. The panel found Mr Shepherd's actions to be calculated, and were more likely than not for his own sexual gratification. Even after Pupil X's parents told him to stop, Mr Shepherd does not appear to have been able to control his behaviour and resumed the physical contact some three weeks later.

The panel found that Mr Shepherd's behaviour in respect of the conduct found proven at allegation 1 and 2 was both conduct of a sexual nature and sexually motivated.

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

Having found the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as "the Advice".

With regard to Child A, Mr Shepherd was not a teacher at the time, and this was conduct outside of the education setting. However, given the abhorrent nature of the conduct, it clearly affects the way Mr Shepherd now fulfils his teaching role with the concerns that such conduct gives rise to regarding his access to children. His actions clearly led to Child A being exposed to or influenced by his behaviour in a harmful way. The emotional and psychological impact of Mr Shepherd's actions continue to affect Child A today, many years on from those events. Mr Shepherd's conduct clearly fell short of the standards of behaviour of the profession that he went on to join.

The panel also considered whether Mr Shepherd's conduct in relation to Child A displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found that the offence of sexual activity was relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to "unacceptable professional conduct".

The panel therefore found Mr Shepherd's actions towards Child A constituted unacceptable professional conduct.

With regard to the conduct found proven in respect of Child A, 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 conduct displayed by Mr Shepherd prior to his joining the profession would likely have a negative impact on his status as a teacher, and would in all likelihood damage the public's perception of him, thereby bringing the profession that he went on to join into disrepute. The panel had no doubt that pupils, parents and others in the community would not consider it acceptable for a member of the teaching profession to have a history of engaging in sexual activity with a child, and that this would cause concern about the safeguarding of children of a similar age in his care.

The panel was satisfied that with regard to Pupil X, the conduct of Mr Shepherd, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Shepherd 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
- showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Mr Shepherd in relation to Pupil X amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Shepherd's conduct in relation to Pupil X displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found that the offence of sexual activity was relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

Accordingly, the panel was satisfied that Mr Shepherd was guilty of unacceptable professional conduct in respect of his conduct in relation to Pupil X.

With regard to the conduct found proven in respect of Pupil X, 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 findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore found that Mr Shepherd's actions with regard to Pupil X constituted conduct that may bring the profession into disrepute.

Having found the facts of all the particulars proved, the panel further found that Mr Shepherd's conduct in relation to Child A and Pupil X 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 had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found the following to be relevant in this case, the protection of pupils; the maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct.

In the light of the panel's findings against Mr Shepherd, which involved engineering situations where he would be alone with Child A, and later with Pupil X, both of whom were vulnerable pupils, for his own sexual gratification; 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 Shepherd 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 Shepherd was outside that which could reasonably be tolerated.

The panel considered that the adverse public interest considerations above outweigh any interest in retaining Mr Shepherd in the profession as although he may have had some ability as an educator, he fundamentally breached the trust placed in him.

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 Shepherd.

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 Shepherd. 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 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;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- ...other deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- 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;

The panel considered that Mr Shepherd had a deep-seated attitude since he had demonstrated a sexual interest in boys of a similar age over a sustained period of time, beginning with Child A in the late 1980s and continuing this behaviour in 2018 demonstrated by his actions with regard to Pupil X. This is despite the [redacted] [redacted] having advised on 15 August 2013 that Mr Shepherd [redacted]. It is also despite Mr Shepherd having agreed to participate in a [redacted] in 2012.

His actions towards Pupil X breached his position of trust as a teacher. As an adult in a position which gave him access to children, he abused that position by engaging in sexual conduct with Child A.

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors.

Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

The panel has found that Mr Shepherd's actions were deliberate, calculated and sexually motivated.

There was no evidence to suggest that Mr Shepherd was acting under duress.

The panel did not consider Mr Shepherd to have a previously good history given its findings with regard to Child A. However, the panel accepted that there were no findings by any previous teacher misconduct panel and that as an educator, the headteacher of Talmut Torah Yetev Lev school described him as having "excelled" in the areas of planning and preparing lessons and courses for pupils; delivering lessons to pupils; assessing the development, progress and attainment of pupils; and reporting on the development, progress and attainment of pupils.

No testimonial statements have been produced by Mr Shepherd attesting to his good character or ability as a teacher.

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 was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Shepherd of prohibition.

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 Shepherd. These matters have had a significant long term impact on Child A. Child A spoke of the impact of Mr Shepherd's actions on his emotional state during his teenage years and adult life for which Child A continues to receive therapy. Child A has had to recount what has happened to him for the purpose of reporting to the religious authorities, the police investigation and now for the purpose of these proceedings. Pupil X has had to endure the experience of two video interviews that would be unsettling for any child. These were all significant factors for the panel in forming its opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

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

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. One of these behaviours is serious sexual misconduct, such as 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 his professional position to influence or exploit a person or persons. The panel found that Mr Shepherd was responsible for the most serious degree of sexual misconduct, having abused his position as a teacher to exploit Pupil X, a pupil he knew to be vulnerable, and having engaged in sexual acts with Child A when he was a child.

Mr Shepherd has demonstrated no acceptance of guilt, and no remorse or contrition for his behaviour to this panel. Whilst he stated he felt remorseful in relation to a partial admission he made to social workers in relation to Child A, he has gone on to deny the allegations, leading to Child A giving evidence in these proceedings. The panel was of the view that given the absence of insight, the repeated occurrences of such behaviour and his failure to address those behaviours, there is a substantial risk of repetition.

The panel decided that the findings indicated a situation in which a review period would not be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended without provision for a review period.

## **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 both sanction and review period.

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

In this case, the panel has found all of 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 Shepherd should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Shepherd 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
- showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was also "satisfied that the conduct of Mr Shepherd in relation to Pupil X amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession."

The findings of misconduct are particularly serious as they include a finding of inappropriate physical contact with a child.

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 Shepherd, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed, "His actions clearly led to Child A being exposed to or influenced by his behaviour in a harmful way. The emotional and psychological impact of Mr Shepherd's actions continue to affect Child A today, many years on from those events." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "Mr Shepherd has demonstrated no acceptance of guilt, and no remorse or contrition for his behaviour to this panel. Whilst he stated he felt remorseful in relation to a partial admission he made to social workers in relation to Child A, he has gone on to deny the allegations, leading to Child A giving evidence in these proceedings". In my judgement, the lack of full remorse means that there is some risk of the repetition of this behaviour and this puts at risk the future well-being of children, including pupils. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Shepherd was not treated with the utmost seriousness when regulating the conduct of the profession."

I am particularly mindful of the finding of sexual misconduct with children in this case and the impact that such a finding has on the reputation of the profession.

I have 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. 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 Shepherd himself. The panel comment "The panel did not consider Mr Shepherd to have a previously good history given its findings with regard to Child A. However, the panel accepted that there were no findings by any previous teacher misconduct panel and that as an educator, the headteacher of Talmut Torah Yetev Lev school described him as having "excelled" in the areas of planning and preparing lessons and courses for pupils; delivering lessons to pupils; assessing the development, progress and attainment of pupils; and reporting on the development, progress and attainment of pupils."

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

In this case, I have placed considerable weight on the panel's comments, "These matters have had a significant long term impact on Child A. Child A spoke of the impact of Mr Shepherd's actions on his emotional state during his teenage years and adult life for

which Child A continues to receive therapy. Child A has had to recount what has happened to him for the purpose of reporting to the religious authorities, the police investigation and now for the purpose of these proceedings. Pupil X has had to endure the experience of two video interviews that would be unsettling for any child."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Shepherd 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. A published decision, in light of the circumstances in this case, that is not backed up by full remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

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

I have gone on to consider the matter of a review period. In this case, the panel has recommended a that no provision should be made for a review period.

I have considered the panel's comments "The panel was of the view that given the absence of insight, the repeated occurrences of such behaviour and his failure to address those behaviours, there is a substantial risk of repetition."

I have considered whether allowing for a no review reflects the seriousness of the findings and is proportionate to achieve the aim of maintaining public confidence in the profession. In this case, the factors which mean that a no review is proportionate and in the public interest are the serious nature of the findings, the repeated nature of the offences and the absence of full remorse or insight.

I consider therefore that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

**This means that Mr Yankel Shepherd is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England.** Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Yankel Shepherd shall not be entitled to apply for restoration of his eligibility to teach.

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

Mr Yankel Shepherd has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.



**Decision maker: <Alan Meyrick**

**Date: 14 January 2022**

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