



Teaching
Regulation
Agency

Dr Tom Kershaw: Professional conduct panel outcome

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

July 2023

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

Teacher:	Dr Tom Kershaw
Teacher ref number:	0981221
Teacher date of birth:	08 February 1983
TRA reference:	0019752
Date of determination:	20 July 2023
Former employer:	Ivybridge Community College, Devon

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 17 July 2023, to consider the case of Dr Tom Kershaw (“Dr Kershaw”).

The panel members were Mr Martyn Stephens (lay panellist – in the chair), Mrs Maxine Cole (lay panellist) and Mr Brendan Stones (teacher panellist).

The legal adviser to the panel was Miss Carly Hagedorn of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Charles Drinnan of Kingsley Napley LLP.

Dr Kershaw was present and was represented by was represented by Mr Nick Kennan of Counsel.

The hearing took place in public and was recorded, save for parts of the hearing that were heard in private.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 2 May 2023.

It was alleged that Dr Kershaw was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that while employed as a teacher at Ivybridge Community College, Devon, England (the "School"):

1. On or around 29 June 2018, while attending the School Prom he:
 - a. Was under the influence of alcohol;
 - b. Engaged in a 'drinking game' with Year 13 boys;
 - c. Had to be monitored by one or more colleagues given concerns about his behaviour.
2. On or around 29 June 2018, while attending the School Prom he:
 - a. Slid his hand along Colleague A's body;
 - b. Cupped and/or grabbed Colleague A's left breast;
 - c. Said "if it wasn't for her wedding ring, I'd fuck her in a heartbeat", or words to that effect, in respect of Colleague A.
3. Between 2017 and 2018, he failed to maintain appropriate professional boundaries with Pupil B, in that he:
 - a. Exchanged one or more emails with Pupil B which were unprofessional and/or inappropriate, including;
 - i. On or around 23 June 2018 at 5.56pm, he emailed Pupil B stating he had to catch up on work which has "been poo", or words to that effect;
 - ii. On or around 23 June 2018 at 21:21pm, he emailed Pupil B "I love getting a rise!" to which Pupil B responded "Yh me too that's the base of this entire friendship mate", to which he replied with an emoji with tongue out.
 - iii. On or around 23 June 2018 at 5.51pm, he emailed Pupil B "I knew this would happen – leave school and forget about me. *sobs* ";
 - iv. On or around 23 June 2018 at 5.10pm he emailed Pupil B "Well my dear, you're obviously hard to get over! Hehe!"
 - v. he referred to Pupil B as 'hun' in your email of 19 June 2018 at 20.04pm where he said "Tell me something I don't already know, hun!".
 - vi. On or around 23 September 2017 at 12.57, he emailed Pupil B "[redacted] told me you tried to see me at lunch. Will make time for you on Monday. Promise. X".

b. Purchased jewellery for Pupil B.

4. His conduct as set out in allegation 2 and/or 3 was sexually motivated.

Dr Kershaw admitted to the facts of allegations 1 and 2. Dr Kershaw admitted the facts in the sub headings of allegations 3(a)(i) to (vi) and 3(b), but denied that he failed to maintain appropriate professional boundaries or that his conduct was unprofessional and/or inappropriate in respect of these allegations. Dr Kershaw denied the facts of allegation 4.

Mr Kershaw accepted that for the admitted allegations, his behaviour may have constituted unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Preliminary applications

Excluding the public

The panel considered whether to exercise its discretion under paragraph 11 of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and paragraph 4.57 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession 2018 (the "Procedures") to exclude the public from all or part of the hearing. This followed a request by the teacher's representative that any part of the hearing pertaining to Dr Kershaw's [REDACTED] should be heard in private.

The panel also considered whether to exercise its discretion to exclude the public from any part of the hearing pertaining to Pupil B's [REDACTED] and the circumstances arising from Pupil B's [REDACTED]. The panel invited the presenting officer and teacher's representative for their submissions on the panel's consideration whilst in private session. The presenting officer and teacher's representative were satisfied that as Pupil B's name was anonymised, there was limited risk of the pupil becoming identifiable by such [REDACTED] matters being disclosed in the public domain. The panel recognised that even though the pupil's name had been anonymised, some individuals from the School could still identify the pupil. Therefore, the panel considered that it was in the interests of justice and public interest to exclude matters relating to Pupil B's [REDACTED] from the public.

The panel determined to exercise its discretion under paragraph 11(3)(b) of the Regulations (in respect of the teacher representative's application) and 11(3)(a) of the Regulations (in respect of the panel's consideration regarding Pupil B's [REDACTED]). In addition, the panel determined to exercise its discretion under the second bullet point of paragraph 4.57 of the Procedures (in respect of the teacher representative's application)

and the first bullet point of paragraph 4.57 (in respect of the panel's consideration regarding Pupil B's [REDACTED]) that the public should be excluded from the hearing.

The panel took 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 considered that the request by the teacher's representative was a reasonable one given concerns about confidential matters relating to the teacher's [REDACTED] being placed in the public domain. The panel also considered that it was reasonable to exclude the public from part of the hearing which related to Pupil B's [REDACTED] given the concerns arising from the confidential matters relating to the pupil's [REDACTED] being placed in the public domain, especially given that some individuals from the School could identify the pupil.

The panel did not consider that there were any steps short of excluding the public from these parts of the hearing that would serve the purpose of protecting the confidentiality of matters relating to the teacher's [REDACTED] and Pupil B's [REDACTED]. In respect of the teacher representative's application, the panel took account of a letter from Dr Kershaw's [REDACTED] along with various references in his witness statement to his [REDACTED]. In respect of the considerations regarding Pupil B's [REDACTED], the panel took into account the School notes from a meeting with Pupil B and the various references in email communications between Dr Kershaw and Pupil B regarding Pupil B's [REDACTED] [REDACTED].

The panel had regard to whether the teacher's request and the determination in respect of Pupil B's [REDACTED] ran contrary to the public interest. The panel is required to announce its decisions in public as to whether the facts have been proven and whether those facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In the event that the case continues, any decision of the Secretary of State will also be in public. The panel considered that in the circumstances of this case that the public interest will be satisfied by these public announcements. Those public announcements will ensure that public confidence in these proceedings and in the standards of the profession are maintained.

Amendment to allegation 3(a)

During the course of the hearing, when the panel was considering questions for Dr Kershaw, the panel examined the scope of allegation 3(a). The panel noted that allegation 3(a) contained the word "including" before particularising the sub allegations in 3(a)-(vi). The panel asked the presenting officer to clarify whether the wording of the allegation encompassed all email communications between Pupil B and Dr Kershaw within the bundle or whether the allegation was specifically referring to the sub allegations 3(a)(i)-(vi).

After taking instructions, the presenting officer confirmed that the wording of 3(a) included all of the email communications in the bundle between Pupil B and Dr Kershaw.

The panel informed the parties that the panel may need to consider an amendment to the allegations given the fact that the oral evidence so far in the hearing had only been in relation to the particularised sub-allegations.

The panel has the power to, in the interests of justice, amend an allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case have been proved. The panel suggested changing the wording of allegation 3(a) to remove the word “including” and replace it with “namely”. Before making an amendment, the panel was required to consider any representations by the presenting officer and by the teacher’s representative, and the parties were afforded that opportunity.

The presenting officer objected to the suggested amendment. The presenting officer said that such amendment would not give the panel the necessary context to the emails referenced in the allegations and that it was in both parties interests to leave the allegation as currently drafted.

The teacher’s representative made no criticism of the TRA’s case. He offered the view that it would be unfair to Dr Kershaw were the panel to make findings beyond the particularised allegations without giving Dr Kershaw the opportunity to first address it in his evidence. The teacher’s representative adopted a neutral stance on the panel’s suggestion to amend the allegation.

The panel exercised caution to ensure that there was no unfairness to Dr Kershaw. The panel had regard to legal adviser’s advice and noted that the right to a fair trial under Article 6 of the European Convention on Human Rights includes:

- the right to be informed promptly and in detail of the nature and cause of the accusation against the accused;
- the right to have adequate time and the facilities for the preparation of the defence;
- the right to obtain the attendance and examination of witnesses on the behalf of the defence.

The panel noted that Dr Kershaw’s written evidence submitted prior to the hearing specifically addressed those email communications listed in 3(a)(i) to 3(a)(vi). The panel

also noted that the evidence heard during the hearing so far, specifically related to those email communications listed in 3(a)(i) to 3(a)(vi). As a result, the panel was of the view that Dr Kershaw understood the allegations to be limited to those contained in 3(a)(i) to 3(a)(vi).

The panel noted the comments from the presenting officer regarding the need to consider the context of the emails in fairness to both parties.

The panel decided to amend allegation 3(a) to remove the word 'including' and replace with the word 'namely'. The panel noted when announcing its decision to the parties that the change of the word did not preclude the panel from considering the context of those emails cited at 3(a)(i) to 3(a)(iv) within the wider email chains or any other evidence contained within the bundle.

The wording of allegation 3(a) as amended read as follows:

3. *Between 2017 and 2018, you failed to maintain appropriate professional boundaries with Pupil B, in that you:*
 - a. *Exchanged one or more emails with Pupil B which were unprofessional and/or inappropriate, namely;*

Summary of evidence

Documents

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

Section 1: Chronology, anonymised pupil list and list of key people – pages 6 to 9

Section 2: Notice of proceedings and response – pages 10 to 18

Section 3: Teaching Regulation Agency witness statements – pages 19 to 35

Section 4: Teaching Regulation Agency documents – pages 36 to 561

Section 5: Teacher documents – pages 563 to 621

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

Witnesses

The TRA called the following witnesses to give evidence at the hearing:

- Witness A, [REDACTED], Ivybridge Community College
- Witness B, [REDACTED], Ivybridge Community College (“Colleague A”)
- Witness C, [REDACTED], Ivybridge Community College

The teacher, Dr Kershaw, gave oral evidence at the hearing.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Dr Kershaw commenced employment at Westcountry Schools Trust (Ivybridge Community College) (“the School”) on 1st September 2011. Dr Kershaw was initially employed as a science teacher at the School, becoming an Academic Performance Leader for Sixth Form in 2019. The title of Academic Performance Leader was interchangeable with the title of Head of Year.

On 29 June 2018, Dr Kershaw attended the year 13 prom at an external venue. It was alleged by other members of staff that at the prom Dr Kershaw had been under the influence of alcohol, engaged in a 'drinking game' with year 13 boys, and had to be monitored by his colleagues given concerns about his behaviour.

It was alleged by Colleague A that during the year 13 prom Dr Kershaw had made an inappropriate comment directed at Colleague A saying "if it wasn't for her wedding ring, I'd fuck her in a heartbeat", or words to that effect. It was also alleged by Colleague A that Dr Kershaw had slid his hand along her body and cupped and/or grabbed Colleague A's left breast.

The panel heard evidence that on 13 July 2018, a disclosure was made by a student to a member of staff following the year 13 prom night. The student disclosed concerns about an overfamiliar relationship between Dr Kershaw and Pupil B. The student disclosed that a gift of jewellery had been given to Pupil B by Dr Kershaw.

Due to the nature of Dr Kershaw's alleged behaviour at the year 13 prom and safeguarding implications regarding the disclosure received by the student in respect of the nature of the relationship between Dr Kershaw and Pupil B, the School undertook two separate and parallel internal investigations.

The School accessed and audited Dr Kershaw's emails.

A formal disciplinary hearing took place on 25 September 2018 in respect of Dr Kershaw's conduct at the year 13 prom and a formal disciplinary hearing took place on 26 September 2018 in respect of Dr Kershaw's behaviour towards Pupil B.

Dr Kershaw continued his employment at the School until 22 September 2020.

Findings of fact

The findings of fact are as follows:

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

1. On or around 29 June 2018, while attending the School Prom you:

a. Were under the influence of alcohol;

Dr Kershaw admitted this allegation. Dr Kershaw stated that *"for most of the evening, I believe my conduct was in the spirit of the prom, with acceptable levels of alcohol intake at an event where most people – both staff and students – were drinking. Towards the end of the evening, between about 10 and 11pm, I allowed myself to be caught in a situation where I was being bought drinks by students at the bar and drinking rapidly with them, and I drank to a level that was inappropriate for a senior member of staff at a school prom."*

Witness B, who also attended the School prom stated that she saw Dr Kershaw *"drinking a lot of alcohol. She stated that Dr Kershaw was "displaying drunken behaviour including slurred speech, he was very giggly and laughing, his lack of control of body, for example, he was stumbling, grabbing onto things to stabilise himself and his pitch of voice was very loud."*

Witness C said that Dr Kershaw *"clearly had been drinking"* and said that she had took him to sit down with teachers and had *"given him water"* during the event.

The panel found allegation 1(a) proved.

b. Engaged in a 'drinking game' with Year 13 boys;

Dr Kershaw admitted this allegation, whilst he was keen to stress that it not prolonged. Dr Kershaw stated *"I recall an incident at the bar where I may have downed a drink amongst some students, which, on reflection, is not the behaviour that might be expected of a senior member of staff. However, I would stop short of considering this single act to amount to participation in a drinking game, for which to most people has far more negative connotations."*

Witness C stated that *"Dr Kershaw was playing a 'down the drinks game' with pupils. From what I understand, if a penny was put into your drink you had to 'down' it. Over the course of the evening at the School Prom, a penny was put into Dr Kershaw's drink and*

this meant it had to be downed. There were two rooms at the School Prom, the dance floor and the bar. This particular incident happened at the bar. From my recollection, I only saw Dr Kershaw down one drink - the pupils were encouraging Dr Kershaw to down the drink. Dr Kershaw was socialising with the pupils all evening, as this is what is to expected at a school prom; however, this does not mean drinking with the pupils.”

When questioned by the presenting officer whether “downing” a drink meant drinking the entire drink in one go, Witness C said “yes”. Witness C stated that she saw Dr Kershaw downing one drink in a pint glass. Witness C explained that the “students were encouraging Dr Kershaw to down the drink”.

The panel found allegation 1b proved.

c. Had to be monitored by one or more colleagues given concerns about your behaviour.

Dr Kershaw admitted this allegation. Dr Kershaw said that he “*was not aware at the time that I was being monitored by any colleagues. I do accept, though, that in the latter part of the evening, I put my colleagues in a difficult situation if they had to look out for me when I should have been overseeing the event, and I am very grateful to them.*”

Witness C stated that “*Mr Kershaw was dancing with pupils throughout the evening and I was keeping an eye on him. [Redacted] I took Mr Kershaw off the dance floor as I felt he was getting too involved in the pupil's celebrations. Once I became aware of the level of which he had been drinking I spoke to him. I took him off the dance floor twice.*”

Witness C explained in her oral evidence that she had been keeping an eye on Dr Kershaw as she knew he had been drinking a number of drinks.

The panel found allegation 1(c) proved.

2. On or around 29 June 2018, while attending the School Prom you:

a. Slid your hand along Colleague A's body;

In response to this allegation, Dr Kershaw said he “*cannot recall this having occurred, and I deny, even in my intoxicated state, that I would deliberately grope anyone.*”

Witness B stated that Dr Kershaw “*stumbled over and as he fell he grabbed me to straighten himself (I assume). It was a very peculiar moment, Mr Kershaw's hand slid up my body...*”

When questioned by the presenting officer about where Dr Kershaw had initially 'grabbed' her, Witness B said that she believed Dr Kershaw's hands were below her hips and his head was at her waist height. Witness B said that as he straightened himself up, his slid his hand up her body. Witness B could not recall if Dr Kershaw used one or two hands. Witness B said that Dr Kershaw's hand stopped at her left breast.

The panel noted that Witness B stated that she was sober at the School prom. The panel found Witness B to be an honest and credible witness when explaining her recollection of the incident. The panel also noted that Dr Kershaw could not recall the incident, given his intoxicated state. The panel considered that by the time of this incident, it was likely, given the circumstances and evidence, that Dr Kershaw had lost control following the consumption of alcohol.

The panel found, allegation 2(a) proved.

b. Cupped and/or grabbed Colleague A's left breast;

Dr Kershaw admitted this allegation but said that he *"cannot recall this having occurred, and I deny, even in my intoxicated state, that I would deliberately grope anyone."*

Witness B stated that during the School prom, Dr Kershaw's hand having slid up her body, *"...his hand stopped at my left breast, he then cupped and groped my left breast. It all happened so quickly."*

In oral evidence, Witness B said that when Dr Kershaw's hand arrived at her breast, he was *"holding"* and *"squeezing"* her breast. When asked by the presenting officer how long his hand was cupping her breast, Witness B said *"A couple of seconds. Three to four seconds. Long enough that I had noticed it and the pupils around me could see it."*

The panel noted that Witness B stated that she was sober at the School prom. The panel found Witness B to be an honest and credible witness when explaining her recollection of the incident. The panel also noted that Dr Kershaw could not recall the incident, given his intoxicated state. The panel considered that by the time of this incident, it was likely, given the circumstances and evidence, that Dr Kershaw had lost control following the consumption of alcohol.

The panel found, on the balance of probabilities, allegation 2(b) proved.

c. Said "if it wasn't for her wedding ring, I'd fuck her in a heartbeat", or words to that effect, in respect of Colleague A.

Dr Kershaw admitted this allegation. Dr Kershaw said *"I cannot remember saying this. If I did say what has been alleged, I believe this was probably my showing off in front of a group and stating that I found [REDACTED] attractive – and perhaps feeling that our friendship put me in a position to say this."*

Witness B stated that during the School prom *"Dr Kershaw said to those standing around him (which included pupils and myself) "if it wasn't for this ring, id fuck her in a heartbeat", right before he groped me."*

Witness B stated that this comment by Dr Kershaw was *"loud enough that the students stood around her all heard it"*. Witness B said that the comment made her feel uncomfortable.

The panel noted that Witness B stated that she was sober at the School prom. The panel found Witness B to be an honest and credible witness when explaining her recollection of the incident. The panel also noted that Dr Kershaw could not recall the incident, given his intoxicated state. The panel considered that by the time of this incident, it was likely, given the circumstances and evidence, that Dr Kershaw had lost control following the consumption of alcohol.

The panel found allegation 2(c) proved.

3. Between 2017 and 2018, you failed to maintain appropriate professional boundaries with Pupil B, in that you:

- a. Exchanged one or more emails with Pupil B which were unprofessional and/or inappropriate, namely;**
 - i. On or around 23 June 2018 at 5.56pm, you emailed Pupil B stating you had to catch up on work which has "been poo", or words to that effect;**

The panel reminded itself when considering the allegations under 3, that Dr Kershaw was Pupil B's [REDACTED] head of year. Pupil B had also said [REDACTED] was familiar with Dr Kershaw but Pupil B did not see anything weird with that. Pupil B also noted that [REDACTED] felt the relationship between Dr Kershaw and [REDACTED] was an appropriate teacher student relationship. The panel saw evidence that Dr Kershaw had tried to help Pupil B with [REDACTED] over the course of Pupil B's time in sixth form.

The panel had sight of the email from Dr Kershaw, which was sent to Pupil B on 23 June 2018 at 5:56pm. Dr Kershaw stated that he *"had to catch up on work this afternoon, which has been poo."*

Dr Kershaw stated *"I can appreciate that the interactions might appear overly familiar, I refute the allegation that I failed to maintain appropriate professional boundaries in these communications with this particular student. Despite some of the e-mails viewed in isolation suggesting that appropriate boundaries were not always maintained, teachers are in the business of helping students to be mentally healthy, achieve academically and thrive after leaving College in wider society."*

The panel noted that it was unprofessional and inappropriate for Dr Kershaw to be discussing the quality of his working day with a pupil. The panel noted the context of the email, and did not consider the informality of the language to be appropriate. The panel considered that this was a failure to maintain the appropriate professional teacher-pupil boundary.

The panel found allegation 3(a)(i) proved.

- ii. On or around 23 June 2018 at 21:21pm, you emailed Pupil B "I love getting a rise!" to which Pupil B responded "Yh me too that's the base of this entire friendship mate", to which you replied with an emoji with tongue out.**

The panel had sight of the email from Dr Kershaw, which was sent to Pupil B on 23 June 2018 at 9:21pm, which said *"I love getting a rise!"*. Pupil B responded on the same day at 9:27pm saying *"Yh me too that's the base of this entire friendship mate."* Dr Kershaw responded to Pupil B at 9:32pm with an emoji with a tongue out.

In response to this allegation, Dr Kershaw said *"This is an instance of Pupil B writing to me (and thus does not reflect any inappropriateness on my part), and simply reflects the over-familiarity [REDACTED] displays with most staff members."*

During her oral evidence, Witness C agreed with the teacher's representative that Pupil B could be *'overfamiliar'* at times.

It was suggested by the presenting officer that Dr Kershaw had teed Pupil B up for a joke and [REDACTED] has risen to that joke by Dr Kershaw saying "I love getting a rise". The panel agreed with the presenting officer's interpretation.

The panel noted that it was unprofessional and inappropriate to be baiting or winding up Pupil B in those terms to try to get a reaction. The panel did not consider it appropriate to be sending an email of this nature at this late hour to a pupil. The panel noted the context of the email, and did not consider the informality of the language and use of emoji to be appropriate. The panel considered that this was a failure to maintain the appropriate professional teacher-pupil boundary.

The panel found allegation 3(a)(ii) proved.

- iii. On or around 23 June 2018 at 5.51pm, you emailed Pupil B "I knew this would happen – leave school and forget about me. *sobs*";**

The panel had sight of the email from Dr Kershaw, which was sent to Pupil B on 23 June 2018 at 5:51pm. Dr Kershaw stated in his response to Pupil B *"I knew this would happen – leave school and forget about me. *sobs*"*

In response to this allegation, Dr Kershaw stated *"these are simply jokes."*

The panel noted that it was unprofessional and inappropriate to be communicating with Pupil B in those terms. The panel noted that by writing this, it was more likely than not, that Dr Kershaw was provoking Pupil B to make a response and continue the narrative which is indicative in the panel's view of a relationship that strayed beyond the professional type. The panel took the view that Dr Kershaw was inviting Pupil B to make a compliment about him in response. The panel noted the context of the email, and did not consider the informality of the language to be appropriate. The panel considered that this was a failure to maintain the appropriate professional teacher-pupil boundary.

The panel found allegation 3(a)(iii) proved.

- iv. On or around 23 June 2018 at 5.10pm you emailed Pupil B "Well my dear, you're obviously hard to get over! Hehe!"**

The panel had sight of the email from Dr Kershaw, which was sent to Pupil B at 5:10pm on 23 June 2018. Dr Kershaw stated in response to Pupil B *"Well my dear, you're obviously hard to get over! Hehe!"*

In response to this allegation, Dr Kershaw said *"these are simply jokes."*

The panel noted that it was unprofessional and inappropriate to be communicating with Pupil B about [REDACTED] relationship [REDACTED] in this way. The panel noted that Dr Kershaw appeared to be softening the blow, when considering the context of the email, but it was not for him to do so or give [REDACTED] advice. The panel considered that this was a failure to maintain the appropriate professional teacher-pupil boundary.

The panel found allegation 3(a)(iv) proved.

- v. You referred to Pupil B as 'hun' in your email of 19 June 2018 at 20.04pm where you said "Tell me something I don't already know, hun!".**

The panel had sight of the email from Dr Kershaw, which was sent to Pupil B at 8:04pm on 19 June 2018. Dr Kershaw stated *“Tell me something I don’t know, hun!”*

In response to this allegation, Dr Kershaw said *“‘Hun’ was a term that was used extensively in the [REDACTED] class that Pupil B was a part of for months up to the final examination period, and I imagine I was using this here as a joke to this popular ‘student speak’ word, completely consistent with interactions with the class in the classroom.”*

In oral evidence, Dr Kershaw said that it was important to look at the context and that for several months, it was a running joke in the class for every sentence to finish with the word ‘hun’.

The panel noted that it was unprofessional and inappropriate to be communicating with Pupil B in this informal manner. The panel noted that the language was not suitable to be used in a classroom environment because the classroom is a formal setting. The use of this language could be interpreted as disrespectful. The panel considered that this language may be offensive to some. The panel noted the context of the email, and did not consider the informality of the language to be appropriate. The panel considered that this was a failure to maintain the appropriate professional teacher-pupil boundary.

The panel found allegation 3(a)(v) proved.

vi. On or around 23 September 2017 at 12.57, you emailed Pupil B “[redacted] told me you tried to see me at lunch. Will make time for you on Monday. Promise. X”.

The panel had sight of the email from Dr Kershaw, which was sent to Pupil B at 12:30am on 23 September 2017. Dr Kershaw said *“[redacted] told me you tried to see me at lunch. Will make time for you on Monday. Promise. X”.*

In response to this allegation, Dr Kershaw said *“Although I can’t specifically recall the situation here, I imagine that Pupil B was trying to see me during the day and that I was unable to see [Pupil B] or had forgotten, and that there was something [Pupil B] felt like [Pupil B] needed to speak to me about. I informed [Pupil B] that I would make time for [Pupil B] on Monday. The ‘X’ was perhaps added as a softener to show compassion for [Pupil B] clearly going through a difficult situation, or it is possible that its addition just represents an accidental typo, as I often sign off personal messages with an ‘X’.”*

Dr Kershaw said that the use of the “X” at the end of this email was an accident. Dr Kershaw said *“I don’t think you will find another one.”* He said that this one email has been picked out of thousands of emails.

The panel noted Dr Kershaw’s position in that he may have made a mistake by including

an “X” at the end of the email, however, if that were the case then it would be a marker of carelessness that the panel would not expect from a regulated professional. The panel’s expectation was that more care should be taken by the teacher when writing to a [REDACTED] pupil. The panel noted that Dr Kershaw’s failure when writing to Pupil B was unprofessional and failed to maintain the appropriate professional teacher-pupil boundary.

The panel found allegation 3(a)(vi) proved.

b. Purchased jewellery for Pupil B.

Dr Kershaw stated *“I do not contest that I bought [Pupil B] a leaving gift. Regarding this as a failure to maintain professional boundaries, I believe the purchase of the gift to perhaps be slightly misguided rather than a failure to maintain professional boundaries, per se.”*

Dr Kershaw said *“I bought a [REDACTED] necklace when it came up on my news feed on Facebook, and I thought that it was very apt. I felt that this was an appropriate gift from a [REDACTED], and would be something to look back at in the future if times were tough to show how far [Pupil B] had come – it is a [REDACTED] and [Pupil B] was a [REDACTED].”*

The panel noted that Witness A had stated in her evidence that the purchasing of jewellery for a pupil was inappropriate because teachers need to ensure not to discriminate. Witness A agreed with the presenting officer that jewellery was a personal gift, compared to a book token.

The panel noted that it was unprofessional and inappropriate to have purchased a gift of jewellery for Pupil B because by Dr Kershaw’s own admission, the gift was personal to Pupil B. The panel noted that Dr Kershaw was treating Pupil B differently to the other pupils. The panel noted that Dr Kershaw could have checked beforehand with another member of staff whether the gift was appropriate in the circumstances, but the panel did not hear any evidence to that effect. The panel noted that whilst Dr Kershaw said that the School’s code of conduct did not need to be reviewed annually, the code of conduct was in place at the time which stated *“Personal gifts from employees to Students are inappropriate and could be misinterpreted and may lead to disciplinary action.”* In light of the above, the panel considered that this was a failure to maintain the appropriate professional teacher-pupil boundary.

The panel found allegation 3(b) proved.

4. Your conduct as set out in allegation 2 and/or 3 was sexually motivated.

Dr Kershaw denied this allegation.

The panel had regard for the legal adviser's advice.

The panel needed to consider whether, even in the absence of any direct evidence, sexual motivation should be inferred from all the circumstances of the case.

The panel noted that in the case of *Basson v GMC (2018)*, it stated "*the state of a person's mind is not something that can be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence*".

It was also stated in this case that a sexual motive means the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

The panel considered the case of *GMC v Haris (2020)*. The panel asked itself whether on the balance of probabilities reasonable persons would think the words and actions found proven could be sexual.

The panel considered the particulars of allegation 2 and 3 separately.

2(a) - In respect of allegation 2(a), the panel noted that Witness B (who is referred to as Colleague A in the allegation) said that as Dr Kershaw had *stumbled over and as he fell he grabbed me to straighten himself (I assume)*".

When questioned by the presenting officer about where Dr Kershaw had initially 'grabbed' her, Witness B said that she believed Dr Kershaw's hands were below her hips and his head was at waist height. Witness B said that as he straightened himself up, his slid his hand up her body.

When Witness B was asked by the teacher's representative whether Dr Kershaw would have hit the floor had she not been there, Witness B said that he would have "*certainly fallen, just somewhere else.*"

Given Witness B's recollection of this incident, the panel did not consider, on the balance of probabilities, that Dr Kershaw's conduct was sexually motivated in respect of allegation 2(a).

2(b) - When considering allegation 2(b), the panel noted that, in oral evidence, Witness B said that when Dr Kershaw's hand arrived at her breast he was "*holding*" and "*squeezing*" her breast. When asked by the presenting officer how long his hand was cupping her breast, Witness B said "*A couple of seconds. Three to four seconds. Long enough that I had noticed it and the pupils around me could see it.*"

When questioned by the presenting officer as to whether Witness B thought Dr Kershaw's conduct by grabbing her breast was an accident or intentional, Witness B said it was a *"difficult question to answer. However the way his hand arrived and squeezed"* suggests that it was *"more intentional"*.

Witness B said that when this happened she wanted to protect herself, her integrity and professionalism. She said that she wanted her husband and wanted to tell her husband.

The panel asked itself whether on the balance of probabilities reasonable persons would think the action of cupping Witness B's breast could be sexual. The panel considered that on the balance of probabilities reasonable persons would think the action of cupping or as described by Witness B, 'squeezing', her breast was sexual. The panel considered that in all the circumstances of the conduct in the case, including the words used by Dr Kershaw in allegation 2(c) shortly before this incident, it was more likely than not that Dr Kershaw's purpose of such action of holding and squeezing the breast of his colleague, by its very nature was sexual.

The panel was mindful of the evidence regarding Dr Kershaw's character, and asked itself whether such evidence had any bearing on Dr Kershaw's credibility or propensity to have carried out the proven conduct in allegation 2(b). The panel noted that none of the individuals who gave character references for Dr Kershaw were present at the time of the incident and also considered that Dr Kershaw was heavily intoxicated at the time. The panel was of the view that had Dr Kershaw not been under the influence of alcohol, this incident would most likely not have happened.

The panel noted that by inference from the surrounding evidence, it was likely, given the circumstances and evidence, that Dr Kershaw had lost control being under the influence of alcohol at the time of this incident.

The panel considered that it was more likely than not that Dr Kershaw's proven conduct in allegation 2(b) was in pursuit of sexual gratification.

Taking all of the above into consideration, the panel found that on the balance of probabilities that Dr Kershaw's conduct was sexually motivated in respect of allegation 2(b).

2(c) - When considering allegation 2(c), the panel noted that Witness B stated that during the School prom *"Dr Kershaw said to those standing around him (which included pupils and myself) "if it wasn't for this ring, id fuck her in a heartbeat"*.

Witness B stated that this comment by Dr Kershaw was *"loud enough that the students stood around her all heard it"*. Witness B said that the comment made her feel uncomfortable.

It was also noted that Witness B had said Dr Kershaw had said “to those standing around him (which included pupils and myself), words to the effect of *“see this girl, she is a 10, if it wasn’t for this ring”*.”

When questioned by the presenting officer as to what a “10” meant, Witness B said *“my understanding is that it is how people rate people’s attractiveness. How attractive they are and how likely you are to want to have an intimate relationship with them.”*

The presenting officer asked Witness B what the reactions on the faces of the pupils were like after Dr Kershaw had made these comments. Witness B said that *“there was a real mix. Confusion, fascination and shock.”* Witness B said that the students had respected their head of year and then they were seeing him change in that way. Witness B also said that there was *“amusement”. A real mixture of emotions.”* Witness B said that the students reactions are what made her *“most uncomfortable. If you are adults in a group, you laugh it off, but children, whether they may or may not be eighteen, I was protective of them, protective of myself and my own professionalism.”*

Witness B said that the *“pupils knew that we were both married. Dr Kershaw was somebody who I liked and I didn’t like being sexualised especially in front of pupils. It goes against everything we try to be as teachers.”*

The panel asked itself whether on the balance of probabilities reasonable persons would think the words found proven in allegation 2(c) could be sexual. The panel considered that on the balance of probabilities reasonable persons would think the words by their very nature were sexual. The panel considered that in all the circumstances of the conduct in the case, it was more likely than not that Dr Kershaw’s purpose of such words, by their very nature were sexual.

The panel noted that by inference from the surrounding evidence, it was likely, given the circumstances, that Dr Kershaw had lost control being under the influence of alcohol at the time of this incident.

The panel was mindful of the evidence regarding Dr Kershaw’s character, and asked itself whether such evidence had any bearing on Dr Kershaw’s credibility or propensity to have carried out the proven conduct in allegation 2(c). The panel noted that none of the individuals who gave character references for Dr Kershaw were present at the time of the incident and also considered that Dr Kershaw was heavily intoxicated at the time. The panel was of the view that had Dr Kershaw not been under the influence of alcohol, this incident would most likely not have happened.

The panel noted that Witness B said that she didn’t like being “sexualised”. The panel took the view that using these words sexually objectified Witness B and that was Dr Kershaw’s intention at the time. The panel believed that by objectifying Witness B in a

sexual manner, this was done in pursuit of sexual gratification because in all of the circumstances noting Dr Kershaw's familiar working relationship with Witness B, there was no other reasonable explanation.

Taking all of the above into consideration, the panel found that on the balance of probabilities that Dr Kershaw's conduct was sexually motivated in respect of allegation 2(c).

3(a)(i) to 3(a)(vi) and 3(b) - The panel considered allegations 3(a)(i) to 3(a)(vi) and 3(b) in respect of whether the proven conduct in these allegations was sexually motivated. The panel had seen no evidence to suggest this from Dr Kershaw's conduct in these allegations.

Witness C had explained in her evidence that Dr Kershaw's office door was usually open when students went to see him. Witness C said that she had no concerns about Dr Kershaw's in person interactions with Pupil B.

The panel did not consider that on the balance of probabilities reasonable persons would consider the emails contained in 3(a)(i) to 3(a)(vi) were sexual. The panel did not consider that in all the circumstances of the conduct in the case, it was more likely than not that Dr Kershaw's purpose of communications were sexual as there was nothing to suggest this from the emails.

The panel also considered this in respect of allegation 3(b) where Dr Kershaw had given Pupil B a gift of jewellery. The panel noted Dr Kershaw's candid response to the presenting officer when he said that the gift was personal, but "*that was the point*" given the reasons outlined in the private session. The panel recognised that Dr Kershaw was not trying to conceal his actions and it was a low value gift.

In the panel's view it was inappropriate and unprofessional for Dr Kershaw to have given Pupil B this gift.

The panel did not consider that the gift of jewellery was given in a sexual manner or in pursuit of sexual gratification.

The panel did not consider, on the balance of probabilities, that Dr Kershaw's conduct was sexually motivated in respect of allegations 3(a)(i) to 3(a)(vi) and 3(b).

Therefore, for the avoidance of doubt, the allegations that the panel found to be sexually motivated were allegations 2(b) and 2(c) for the reasons stated above.

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

Having found a number of 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”.

The panel did not consider that Dr Kershaw’s proven conduct in allegation 2(a) amounted to unacceptable professional conduct or conduct that may bring the profession into disrepute. The reason for this was because the panel accepted Witness B’s evidence that Dr Kershaw had stumbled over and had held onto her to straighten himself and in doing so, had slid his hands on her body. Therefore, the panel did not consider Dr Kershaw’s conduct in this situation to meet the threshold for unacceptable professional conduct or conduct that may bring the profession into disrepute.

The panel was satisfied that the conduct of Dr Kershaw, in relation to the facts found proved (excluding allegation 2(a)), involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Dr Kershaw 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 Dr Kershaw, in relation to the facts found proved (except allegation 2(a)), involved breaches of Keeping Children Safe In Education (“KCSIE”). The panel considered that Dr Kershaw was in breach of the following provision:

- Safeguarding and promoting the welfare of children is everyone’s responsibility. Everyone who comes into contact with children and their families and carers has a

role to play in safeguarding children. In order to fulfil this responsibility effectively, all professionals should make sure their approach is child-centred. This means that they should consider, at all times, what is in the best interests of the child.

The panel was satisfied that the conduct of Dr Kershaw, in relation to the facts found proved (except allegation 2(a)), involved breaches of Working Together to Safeguard Children. The panel considered that Dr Kershaw was in breach of the following provision:

- Everyone who works with children...has a responsibility for keeping them safe.

The panel was satisfied that the conduct of Dr Kershaw fell significantly short of the standard of behaviour expected of a teacher.

The panel also considered whether Dr Kershaw's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice.

The panel found that the offence type 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 considered that Dr Kershaw's drunken behaviour at the School prom which led to the words and actions in proven allegations 2(b) and 2(c), and a finding that his conduct in respect of these allegations was sexually motivated, was serious misconduct falling significantly short of the standard of behaviour expected of a teacher. The panel also noted that the informality and blurring of the teacher-pupil boundary by his conduct in allegations 3(a)(i) to (vi) and 3(b) amounted to serious misconduct falling significantly short of the standard of behaviour expected of a teacher.

The panel noted that the allegations in 1 and 2 took place at the School prom at an external venue however, the panel did not consider that this amounted to conduct which took place outside the education setting given this was a School event.

Accordingly, the panel was satisfied that Dr Kershaw was guilty of unacceptable professional conduct.

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

The panel also considered whether Dr Kershaw's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 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 conduct that may bring the profession into disrepute.

The panel considered that Dr Kershaw's drunken behaviour at the School prom which led to the words and actions in proven allegations 2(b) and 2(c), and a finding that his conduct in respect of these allegations was sexually motivated, was conduct that may bring the profession into disrepute. The panel noted Witness B's evidence regarding the facial expressions on the pupils when Dr Kershaw said the words in allegation 2(c) and the impact that Dr Kershaw's conduct had on the pupils and staff at the School prom. Witness B said that the staff at the School prom were carrying trays of drinks and Dr Kershaw was getting in the way of them doing their job. The panel also noted that the informality and blurring of the teacher-pupil boundary by his conduct in allegations 3(a)(1) to (vi) and 3(b) amounted to conduct that could bring the profession into disrepute.

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. The panel considered that Dr Kershaw's conduct could potentially damage the public's perception of a teacher.

The panel therefore found that Dr Kershaw's actions constituted conduct that may bring the profession into disrepute.

Having found the facts of particulars 1,2, 3 and 4 proved (in respect of allegations 2(b) and 2(c) only), the panel further found that Dr Kershaw's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute in respect of allegation 1, 2(b), 2(c), 3 and 4 (in respect of allegations 2(b) and 2(c) only).

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 is appropriate, the panel had to consider the public interest, the seriousness of the behaviour and any mitigation offered by Dr Kershaw and whether a prohibition order is necessary and proportionate. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely, the safeguarding and wellbeing of pupils, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining the teacher in the profession.

The panel's findings against Dr Kershaw, included that of sexually motivated conduct whilst intoxicated in the presence of sixth form pupils. Therefore, there was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Dr Kershaw 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 Dr Kershaw was outside that which could reasonably be tolerated.

The panel recognised that there was a public interest consideration in retaining the teacher in the profession, since no doubt had been cast upon his abilities as an educator. Dr Kershaw had demonstrated some academic achievement with pupils and had held a senior position as head of year of the sixth form team.

The panel considered that the adverse public interest considerations outweighed the interest in retaining Dr Kershaw in the profession, since his behaviour fundamentally breached the standard of conduct expected of a teacher, especially given the finding of sexually motivated conduct.

The panel considered carefully the seriousness of the behaviour, noting that the Advice states that the expectation of both the public and pupils, is that members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times.

The panel took further account of the Advice, which suggests that a panel will likely consider a teacher's behaviour to be incompatible with being a teacher if there is evidence of one or more of the factors that begin on page 15. In the list of such factors, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature

The sexually motivated conduct found proved in this case indicated that a prohibition order would be appropriate. The panel took into account the public interest, the seriousness of the behaviour and the likely harm to the public interest if Dr Kershaw was

allowed to continue to teach. The panel went on to consider the mitigation offered by the Dr Kershaw.

In the light of the panel's findings there was evidence that Dr Kershaw's actions were deliberate, given that he had chosen to consume an excessive amount of alcohol in the presence of sixth form pupils. The panel had previously noted that had it not been for the consumption of alcohol, it was most likely that the incidents found proved in this case in respect of the School prom would not have occurred.

There was no evidence to suggest that Dr Kershaw was acting under extreme duress.

The panel accepted that the incident was out of character.

The panel had sight of a number of character references within the papers. The panel noted that the character witnesses were not called to give evidence at the hearing on behalf of Dr Kershaw.

A friend of 30 years and former colleague described Dr Kershaw as being "held in exceptionally high regard in his ability to deliver his subject with enthusiasm and knowledge as well as inspire students to really develop a deep passion for science. He was also viewed on a personal level as a caring, generous, humorous and popular person. In other words, a very nice guy who was universally liked by staff, students, parents and other professionals who he encountered."

A second friend described Dr Kershaw as "dutiful, hard-working, kind and dependable. He also has a passion for learning that is almost unequalled in my experience and is a gifted thinker and academic. Rarely have I met someone so dedicated to the acquisition of knowledge and imparting it to others. This has been what has driven Tom as an educator: he is a genuine believer in science and what it can do for his students and the world they live in."

A former colleague said: "I have always found Tom to be honest and with the highest integrity, going above and beyond the requirements of his role as a teacher for the benefits of the students and supporting colleagues within the department.

He had an open door policy which meant that students were always able to have access to his help and guidance whether it was academic or pastoral. My prep room was across the corridor from Tom's laboratory, so I was aware how many visitors he had. He gave up his break time and ran out of hours tutoring/mentoring sessions that were well attended."

The panel considered the comments of the teacher's representative, in that, this former colleague had given a balanced view of Dr Kershaw. He said that the allegations against Dr Kershaw contain some errors of judgement.

The panel also considered the comments of the teacher's representative in respect of the other character references.

The panel noted that some of the individuals that provided character references could attest to Dr Kershaw's abilities as a teacher.

The panel was referred to the lesson observation records of Dr Kershaw and noted that they contained positive feedback such as "*excellent planning*", "*really good positive working relationship with students*" and "*excellent exam practice*".

The panel saw the sexual harassment in the workplace certificate which Dr Kershaw had achieved on 25 May 2023.

The panel considered that Dr Kershaw was remorseful for his conduct and noted he had apologised through his representative to Witness B during the hearing.

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 Dr Kershaw 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 Dr Kershaw. The finding of sexually motivated conduct was the determining factor in forming that opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel was of the view that had it just been considering Dr Kershaw's misconduct in allegation 3 only, it would not have recommended a prohibition order at this stage.

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 cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review

period. The panel did not find that the findings in this case linked to these behaviours. The panel did not consider that this was a case of serious sexual misconduct as it was sexual misconduct at the lower end of the spectrum. The panel also noted that it was a one off incident, not premeditated and it was the panel's view that the proven sexually motivated conduct at the School prom would not have occurred, but for Dr Kershaw's intoxication. However, the panel recognised that being intoxicated was no defence or excuse for his behaviour at the School prom. Dr Kershaw was responsible for organising the event and the panel determined that it was not appropriate for Dr Kershaw to have lost control by drinking excessively at such event in the presence of minors. At the time of the School prom, Dr Kershaw [REDACTED]. Therefore, it was the panel's view that Dr Kershaw should have not placed himself in such a situation by drinking heavily, as by doing so could have had the potential to [REDACTED].

The panel was concerned about the public perception of Dr Kershaw's serious misconduct, especially given the finding of sexually motivated conduct. The panel was of the view that the maintenance of public confidence was of paramount importance and outweighed the interests in retaining Dr Kershaw in the profession.

The panel noted the mitigating circumstances around Dr Kershaw's [REDACTED] at the time of the School prom and his remorse towards Witness B. The panel took the view that the risk of repetition was low, given that it was a one off incident. However, the panel expressed concern around Dr Kershaw's insight into his behaviour.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a review period of 5 years.

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 some of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. In this case, the panel has found some of the allegations not proven (including that the conduct set out in allegation 2(a) and 3 was sexually motivated), and found that some allegations do not amount to unacceptable professional conduct or conduct likely to bring the profession into disrepute, or a relevant conviction. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Dr Tom Kershaw should be the subject of a prohibition order, with a review period of 5 years.

In particular, the panel has found that Dr Kershaw 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 satisfied that the conduct of Dr Kershaw involved breaches of the responsibilities and duties set out in statutory guidance Keeping children safe in education (KCSIE) and involved breaches of Working Together to Safeguard Children.

The panel finds that the conduct of Dr Kershaw fell significantly short of the standards expected of the profession.

The findings of misconduct are serious as they include a finding that the conduct set out in some of the allegations was sexually motivated and that the conduct in some of the allegations involved blurring of the teacher-pupil boundary.

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 or conduct likely to 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 Dr Kershaw, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and safeguard pupils. The panel has observed that its findings on Dr Kershaw

“included that of sexually motivated conduct whilst intoxicated in the presence of sixth form pupils.” 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, “The panel considered that Dr Kershaw was remorseful for his conduct and noted he had apologised through his representative to Witness B during the hearing.” The panel has also commented that “However, the panel expressed concern around Dr Kershaw’s insight into his behaviour.” In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils. I have therefore given this element considerable weight in reaching my decision.

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 was concerned about the public perception of Dr Kershaw’s serious misconduct, especially given the finding of sexually motivated conduct. The panel was of the view that the maintenance of public confidence was of paramount importance and outweighed the interests in retaining Dr Kershaw in the profession.” I am particularly mindful of the panel’s comments that “it was not appropriate for Dr Kershaw to have lost control by drinking excessively at such event in the presence of minors.”

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 and conduct likely to bring the profession into disrepute, 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 Dr Kershaw himself. The panel noted that some of the individuals that provided character references could attest to Dr Kershaw’s abilities as a teacher

A prohibition order would prevent Dr Kershaw from teaching. 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 lack of insight. The panel has said, “The panel noted the mitigating circumstances around Dr Kershaw’s [REDACTED] at the time of the School prom and his remorse towards Witness B. The panel took the view that the risk of repetition was low, given that it was a

one off incident. However, the panel expressed concern around Dr Kershaw's insight into his behaviour."

I have also placed considerable weight on the finding of the panel that "being intoxicated was no defence or excuse for his behaviour at the School prom. Dr Kershaw was responsible for organising the event and the panel determined that it was not appropriate for Dr Kershaw to have lost control by drinking excessively at such event in the presence of minors."

I have given less weight in my consideration of sanction therefore, to the contribution that Dr Kershaw 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 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 5 year review period.

I have considered the panel's comments "that being intoxicated was no defence or excuse for his behaviour at the School prom. Dr Kershaw was responsible for organising the event and the panel determined that it was not appropriate for Dr Kershaw to have lost control by drinking excessively at such event in the presence of minors. The panel has also said that "it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a review period of 5 years."

I have considered whether a 5 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, factors mean that a shorter review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements include the finding of sexually motivated conduct and the lack of full insight.

I consider therefore that a 5 year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Dr Tom Kershaw is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 5 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Dr Kershaw remains prohibited from teaching indefinitely.

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

Dr Tom Kershaw has a right of appeal to the King's Bench Division of the High Court within 28 days from the date he is given notice of this order.

A handwritten signature in black ink, appearing to read 'D Oatley', with a large, sweeping flourish at the end.

Decision maker: David Oatley

Date: 21 July 2023

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