

## THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

**Teacher:** Mr Russell Cross

**Teacher ref no:** 9956948

**Teacher date of birth:** 23 June 1969

**TA Case ref no:** 5115

**Date of Determination:** 29 June 2012

**Former Employer:** Merebrook Infants School

### **A. Introduction**

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 29 June 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Russell Cross.

The Panel members were Mr David Gordon (Lay Panellist – in the Chair), Ms Gill Goodswen (Professional Panellist) and Mr Keith Nancekievill (Professional Panellist).

The Legal Adviser to the Panel was Ms Judith Chrystie of Field Fisher Waterhouse Solicitors LLP.

The Panel convened within a meeting which took place in private. The Panel's decision was announced in public and was recorded.

### **B. Allegations**

The Panel considered the allegation set out in the Notice of Meeting dated 14 May 2012.

Mr Cross is guilty of unacceptable professional conduct in that whilst employed at Merebrook Infant School, Milton Keynes, between December 2007 and May 2008, he:

1. Was involved in sexually explicit act whilst on the school premises in that he:
  - a. Ejaculated in a PE cupboard;
2. Was involved in the above sexually explicit act whilst on the school premises:
  - a. Whilst a colleague (Individual A, Learning Assistant) was present;

- b. Which could have been witnessed by a child;
3. Was involved in other sexually explicit act(s) on the school premises involving a colleague (Individual A, Learning Assistant).

The Teacher signed a Statement of Agreed Facts (pages 11-13 of the Panel Bundle) dated September 2011. The Panel noted that the Statement of Agreed Facts contained an admission that "sexually explicit act(s) took place on school premises involving a teaching assistant, Individual A" (paragraph 2) and that although "there remained a difference in evidence as to the particulars of the allegations outlined above, the fact that the act(s) themselves took place on school premises is accepted". The Panel was concerned that the use of the word "act(s)" was ambiguous and questions whether the admission was in the singular or plural. The Panel noted that subsequent correspondence received from Mr Cross contained an admission to only a single incident.

Mr Cross accepted that the particulars of fact amounted to unacceptable professional conduct.

### **C. Summary of Evidence**

#### Documents

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

- Section 1: Notice of Proceedings (pages 1-9)
- Section 2: Statement of Agreed Facts/Representations (pages 10-15)
- Section 3: Teaching Agency Documents (pages 11-236)
- Section 4: Teacher's Documents (pages 237-325)

In addition, the Panel agreed to accept a further bundle of documents submitted by the Teacher together with an email from the Presenting Officer.

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

The Panel convened in a meeting. As a consequence no witnesses were called to give oral evidence.

### **D. Decision and Reasons**

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

*We confirm that we have read all the documents provided in the bundle in advance of the hearing.*

Russell Cross (dob 23 June 1969) taught Foundation Year students at Merebrook Infant School ('School'). He line managed Individual A, a Learning Assistant.

In early 2008, Individual A made a number of accusations that Mr Cross had behaved in a sexually inappropriate manner towards her during 2007 and 2008 including that he masturbated in a PE cupboard in her presence whilst pupils were present in the class and could have observed the incident. Her accusations became the subject of a criminal investigation during which Mr Cross initially denied any sexual contact between himself and Individual A. Having been told that forensic evidence had found his semen in the PE cupboard, Mr Cross stated that Individual A had performed oral sex on him in the cupboard but that he had not wished to admit this fact because he was married.

Mr Cross denied any other form of sexually explicit act or sexually inappropriate behaviour both in the criminal investigation and in his submissions to the Panel.

Mr Cross was acquitted of the criminal charges following a trial at Huntington Crown Court.

#### Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegation contained in the Notice of Proceedings dated 6 April 2011 against you proven, for these reasons:

**You are guilty of unacceptable professional conduct in that whilst employed at Merebrook Infant School, Milton Keynes, between December 2007 and May 2008 you:**

- 1. were involved in a sexually explicit act whilst on the school premises in that you:**

- a. ejaculated in a PE cupboard**

Mr Cross – once forensic evidence was presented to him at police interview – admitted that he ejaculated in the PE cupboard. He has maintained this admission before the Teaching Agency. Both on Mr Cross's admission and the forensic evidence, the Panel finds this particular proved.

- 2. were involved in the above sexually explicit act whilst on the school premises:**

- a. whilst a colleague (Individual A, Learning Assistant) was present**

Although there is disagreement as to exact nature of the sexually explicit act that took place in Individual A's presence, Mr Cross admits that such an act took place. Whether Mr Cross ejaculated having masturbated (as alleged consistently by Individual A) or as a result of Individual A

performing oral sex on him (as admitted by Mr Cross in a written statement to the police and subsequently), the Panel is satisfied that a sexually explicit act took place, and finds this sub-particular of allegation proved.

**b. which could have been witnessed by a child**

The Panel finds this sub-particular proved. Mr Cross admits that a child could have been on the school premises at the time that sexual act took place.

**c. were involved in other sexually explicit act(s) on the school premises involving a colleague (Individual A, Learning Assistant)**

On Mr Cross's own admissions, he touched Individual A on the bottom. In his police interview (page 201 of the Panel bundle) Mr Cross stated that he "slapped her on the side erm, of her bottom." He says that this incident occurred after Individual A had slapped his bottom but he admits that it was a foolish thing to do.

On the balance of probabilities, the Panel considers that the touching was sexually motivated. Mr Cross made admissions that he made at least one comment with sexual innuendo to Individual A (see page 187 regarding holding on to his balls when carrying a bag of balls from the PE cupboard).

Further, the Panel recognises that Mr Cross was cleared of the charges at the Criminal Court. However, the Panel must consider Mr Cross's behaviour from a regulatory perspective and apply the civil standard of proof. It acknowledges that it is considering hearsay evidence only and it recognises that it must treat such evidence with caution – particularly when it is the only material proving a particular. However, the Panel rejects Mr Cross's version of events that the incident in the PE cupboard was an isolated incident. The Panel does not find Mr Cross's evidence in this regard credible – he has changed his story and lied on numerous occasions, which leads the Panel to question the veracity of his assertion that only one touching incident happened. The Panel also recognises that Mr Cross was Individual A's line manager.

The Panel is conscious that it cannot retry the consent case and that it is not asked to consider – and has not considered – matters of consent. It has limited itself to considering what, on a balance of probabilities, occurred prior to the ejaculation incident and whether there was any other sexually inappropriate touching.

The Panel considers it improbable that the sexual act in the PE cupboard – whatever its nature - was not foreshadowed by some form of sexual interplay or behaviour. The Panel is satisfied that Individual A's account of other touching incidents – such as the tweaking of Individual A's bra, grabbing her out from under a bench by her trousers, rubbing her back and stroking her thigh in the PE lesson, in this context, is credible and the Panel is satisfied that this particular is proved.

### Findings as to Unacceptable Professional Conduct

The Panel judges that the Teacher's conduct amounts to misconduct of a serious nature and falls significantly short of the standards of behaviour expected of a teacher. It considers Mr Cross is guilty of unacceptable professional conduct.

The Panel has found that Mr Cross engaged in a pattern of serious sexual misconduct on school premises. There was a risk that children could have witnessed the incidents and their well-being could have been detrimentally affected as a consequence. It was entirely inappropriate for Mr Cross to have exposed pupils in this way and this was a significant breach of the standards of conduct expected of him as a teacher.

The Panel considers that the unacceptable nature of the conduct is aggravated by the management relationship between the two parties. As both Individual A's line manager and a teacher, Mr Cross would have been expected to have behaved professionally and properly and maintained high standards of conduct. He has failed to do so.

Contrary to Mr Cross's assertion, the Panel has found that there was not an isolated sexual act. However, had the Teacher's conduct been limited to ejaculating in the PE cupboard in the presence of Individual A, which could have been witnessed by a child, the Panel would still have regarded such conduct as unacceptable professional conduct. A sexual act on school premises where a child could have witnessed the incident is simply unacceptable conduct from a teacher. Mr Cross accepts this is so.

The Panel has reviewed the guidance offered in both the Department of Education's Teacher's Standards and the Code of Conduct and Practice for Registered Teachers published by the General Teaching Council for England. It considers that Mr Cross's behaviour breached the Standards and the Code in a number of regards. In relation to the Standards, the Panel considers that Mr Cross's conduct failed to uphold public trust and confidence in the profession and maintain high standards of ethics and moral behaviour by observing professional boundaries and having regard to the need to safeguard pupil's well-being. Further, the Panel judges that Mr Cross has breached Paragraphs 6 and 8 of the Code in terms of failing to exercise leadership and management responsibilities in a respectable, insightful and fair way; to take responsibility for upholding the school's reputation and to build the public's trust and confidence in it; to understand that the need to safeguard children comes first; and to maintain reasonable standards in his own behaviour to uphold public trust and confidence in the profession.

These are serious and concerning matters and amount to unacceptable professional conduct.

### **Panel's Recommendation to the Secretary of State**

The Panel recommends to the Secretary of State that a Prohibition Order is imposed. Such an order is both reasonable and proportionate in relation to the facts found proved and judged to amount to unacceptable professional conduct.

Prohibition is necessary to protect pupils and to maintain public confidence in the profession.

The Committee has carefully reviewed the mitigation provided by Mr Cross. It recognises and has taken into account his previous good history and exemplary record. There is no suggestion that there was any concern about his teaching and the Ofsted report is complimentary about the Foundation Unit which Mr Cross managed.

However, the Panel is concerned that Mr Cross engaged in deliberate actions of an explicitly sexual nature and that these acts took place on school premises. Mr Cross has admitted that there was a risk that pupils could have witnessed at least one act – the incident in which he ejaculated in the PE cupboard.

Mr Cross has shown no insight into the serious nature of his sexual behaviour or how his self-declared “mistake” failed to safeguard pupils. Moreover, he has not recognised the impact of his conduct on the school and the reputation of the profession. The Panel considers that members of the public will be shocked and concerned by Mr Cross’s behaviour - both the conduct he admitted and the conduct it has found proved. There is significant potential for his conduct to have a negative impact on the teaching profession’s reputation and for public confidence in the profession to be significantly damaged. Mr Cross has sought to identify the circumstances that he – and his family – has endured as a consequence of his conduct but beyond these submissions the Panel has seen nothing in the mitigation offered by Mr Cross that such behaviour could not happen again.

Further, the Teacher did not cooperate with the initial investigations in that he denied any inappropriate conduct until the scientific evidence showed that his semen was found in the PE cupboard.

In these circumstances the Panel does not recommend any minimum period for review.

### **Secretary of State’s Decision and Reasons**

I have given considerable care to my consideration of this case. The Panel have been very clear about the facts that they have found and that in particular they have not attempted in any way to retry the allegations that were heard in the court; rather they have considered the incidents in terms of unacceptable professional conduct.

The Panel have in particular focussed on the risk that young children might have witnessed the incident in the cupboard, and that the relationship that Mr Cross had with the teaching assistant was one of line manager.

The incident that the Panel has considered therefore represents a serious case of unacceptable professional conduct. It is also conduct that could bring the profession into disrepute. For these reasons I find that it is both proportionate and in the public interest to impose a Prohibition Order.

I have also given careful consideration to the issue of a review period. The Panel have observed the lack of insight shown by Mr Cross, coupled with the serious nature of the incident as already considered. For these reasons I support the view that there should be no minimum review period.

This means that Mr Russell Cross 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 Russell Cross 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 Russell Cross 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.

**NAME OF DECISION MAKER: Alan Meyrick**

**DATE: 29 June 2012**