



National College for  
Teaching & Leadership

# **Mr Martin Kay: Professional conduct panel outcome**

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

**April 2016**

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

**Teacher:** Mr Martin Kay  
**Teacher ref number:** 9749400  
**Teacher date of birth:** 1 March 1974  
**NCTL case reference:** 12441  
**Date of determination:** 5 April 2016  
**Former employer:** Bolton Music Service, Bolton

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 4 to 5 April 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Martin Kay.

The panel members were Ms Nicolé Jackson (lay panellist – in the chair), Mr Colin Parker (teacher panellist) and Dr Robert Cawley (teacher panellist).

The legal adviser to the panel was Miss Eszter Horvath-Papp of Eversheds LLP.

The presenting officer for the National College was Mr Peter Lownds of 2 Hare Court.

Mr Kay was present and represented by Mr Robert Young of the NASUWT.

The hearing took place in public and was recorded.

## B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 23 October 2015.

It was alleged that Mr Martin Kay was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as deputy headteacher with Bolton Music Service (“BMS”):

1. He crossed professional boundaries in that he inappropriately communicated with Student A, a current and/or former student at BMS in that he:
  - a. sent flirtatious messages;
  - b. encouraged her to send him videos and/or photographs of her naked breasts on one or more occasions;
  - c. sent photographs of his genitalia on one or more occasions;
  - d. sent videos and/or photographs of himself masturbating on one or more occasions.
2. His actions as set out in paragraph 1 above were sexually motivated;
3. On or around 20 January 2014, after he was invited to attend an investigation interview, he telephoned Student A and:
  - a. discussed the deletion of the messages between him and Student A;
  - b. encouraged her to delete the messages;
  - c. said words to the effect, “if it’s not about you, then I have nothing to worry about”.
4. He inappropriately continued to communicate with Student A during the course of the investigation against him, in that he:
  - a. sent her messages of a personal nature;
  - b. referred to matters concerning the investigation.
5. His actions as set out at paragraphs 3 and 4 above were designed to mislead the investigation being conducted on behalf of BMS.

Mr Kay admitted the facts of these allegations and that these amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute.

## **C. Preliminary applications**

The presenting officer applied to amend the allegations, as proposed in the letter dated 18 December 2015, at pages 11a to 11c of the bundle, by adding new particulars 1.b and 1.d. Mr Young had no objections to this application.

The panel considered its power under paragraph 4.56 of the Teacher Misconduct – Disciplinary Procedures for the Teaching Profession (the “disciplinary procedures”), which stated that the panel had the power, in the interests of justice, to 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 considered the interests of justice and whether there was a risk of prejudice being caused to Mr Kay. The panel was mindful that the proposed new particulars did include serious additional allegations; however, Mr Kay had been given notice of these in December 2015, and had had the opportunity to take legal advice and consider the implications on him. The panel was therefore satisfied that allowing the amendments would not cause prejudice to him, and that it would be in the interests of justice to do so.

The panel therefore allowed the application and amended the particulars of allegation 1.

Mr Young then made an application to admit to the bundle a witness statement by Mr Kay. The presenting officer had no objections to the statement being admitted. The panel noted that it had a discretion, under paragraph 4.18 of the disciplinary procedures, to admit any evidence, where it was fair to do so, which may reasonably be considered to be relevant to the case. The panel noted that there was not already a statement by Mr Kay in the bundle, and the panel considered that a statement would be directly relevant and helpful in this case. In the circumstances, the panel was satisfied that it would be fair to admit the statement, and it was therefore added to the bundle as “appendix 1”.

## **D. Summary of evidence**

### **Documents**

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

Section 1: Chronology and anonymised pupil list – pages 2 to 4

Section 2: Notice of Proceedings and Response – pages 6 to 11c

Section 3: NCTL witness statements – pages 13 to 26

Section 4: NCTL documents – pages 28 to 208

Section 5: Teacher documents – pages 210 to 229

In addition, the panel agreed to accept the witness statement from Mr Kay referred to above, which was labelled “appendix 1”, with page numbers 1 to 9.

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

## **Witnesses**

The panel heard oral evidence from Mr Kay.

On behalf of the NCTL, the panel heard evidence from Student A and Witness A, the head of music at Student A’s former sixth form college.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Mr Kay was a teacher at Bolton Music Service (“BMS”) since 1996 and had been deputy head there since 2008. Student A had been a student at BMS since 2002, whilst attending a sixth form college elsewhere between September 2011 and July 2013. She continued to attend BMS for several youth orchestras and ensembles until August 2014, when she was 19 years old. Over the autumn and winter of 2013, Mr Kay and Student A sent each other text and multimedia messages of a personal and sexual nature. An investigation was carried out into Mr Kay’s behaviour, and this was concluded in September 2014.

## **Findings of fact**

Our findings of fact are as follows:

Whilst the panel has noted Mr Kay’s admissions of all the allegations, the panel has nevertheless turned its own independent mind as to whether or not the facts of the allegations have been proven. The panel has found the following particulars of the allegations against Mr Kay proven, for these reasons:

**1. He crossed professional boundaries in that he inappropriately communicated with Student A, a current and/or former student at BMS in that he:**

- a. sent flirtatious messages,**
- b. encouraged her to send him videos and/or photographs of her naked breasts on one or more occasions;**

**c. sent photographs of his genitalia on one or more occasions;**

**d. sent videos and/or photographs of himself masturbating on one or more occasions;**

Mr Kay has admitted these allegations. In addition, the factual circumstances of these allegations were set out in Student A's witness statement (pages 13 to 16).

The panel has noted that the particulars of this allegation refer to "a current and/or former student at BMS". It is common ground that Student A was a former student at BMS, but the panel considered whether she was a current student as at the time of the communications with Mr Kay. The panel has noted Mr Kay's position that she had ceased being a student in July 2013 when she left her sixth form college, whereas Student A's view was that she had remained a student of BMS until August 2014.

Mr Kay gave evidence that, in his view, BMS "students" are individuals who are still in full time education up to the end of sixth form, whereas individuals in higher education or older are classed as adult members of BMS. The panel considers it concerning that Mr Kay was not able to be clear as to the precise status of Student A at BMS, particularly given that he was the deputy headteacher at the time.

In addition, the panel is of the view that Mr Kay's relationship with Student A was in the context of her participation in the various orchestra rehearsals and trips, and according to Student A's evidence, none of these orchestras had any adult members. This indicates to the panel that Student A was attending BMS in her capacity as a continuing student of BMS. The fact that she was also undertaking some voluntary work with BMS does not detract from her status as a student of the service.

In any event, the panel is of the view that Mr Kay, as a senior member of staff at BMS, was in a position of trust and responsibility towards Student A. As part of that role, he provided emotional support to someone with a lack of confidence and other personal difficulties, which allowed the opportunity for the inappropriate relationship to develop. He accepted in his oral evidence that he knew she had low self-esteem, that they were not equals and that he "should have known better" and "should have been beyond reproach". In these circumstances, the panel is of the view that exchanging messages of a sexual nature in this context amounted to inappropriate communications and crossed professional boundaries.

The panel is therefore satisfied that there is sufficient evidence to support Mr Kay's admission and it finds this allegation proven.

## **2. His actions as set out in paragraph 1 above were sexually motivated;**

The panel has considered the issue of sexual motivation on an objective and subjective basis. From an objective point of view, the panel is satisfied that the actions found proven at allegation 1 would be considered to be sexually motivated by reasonable persons.

From a subjective viewpoint, given the nature of some of the activities, the panel concludes that Mr Kay's motivation can only have been sexual.

The panel is therefore satisfied that there is sufficient evidence to support Mr Kay's admission and it finds this allegation proven.

**3. On or around 20 January 2014, after he was invited to attend an investigation interview, he telephoned Student A and:**

- a. discussed the deletion of the messages between him and Student A;**
- b. encouraged her to delete the messages;**
- c. said words to the effect, "if it's not about you, then I have nothing to worry about";**

Mr Kay has admitted this allegation in his oral evidence and set out the circumstances in more detail in his witness statement (appendix 1, page 7). Mr Kay has explained to the panel that he did not specifically tell Student A to delete the messages on that call, but that there was a general understanding between them that all messages would be deleted.

This phone call is also described in Student A's witness statement, where she is clear that Mr Kay did ask her to delete her messages and said that he would do the same (p.16).

The panel is therefore satisfied that there is sufficient evidence to support Mr Kay's admission and it finds this allegation proven.

**4. He inappropriately continued to communicate with Student A during the course of the investigation against him, in that he:**

- a. sent her messages of a personal nature; and**
- b. referred to matters concerning the investigation;**

The initial investigation was undertaken between January and September 2014. There is considerable documentation before the panel evidencing text messages between Mr Kay and Student A during this time (p.54-208). Many of these were of a personal nature, for example where Mr Kay referred to his health issues and the impact of the investigation on him (e.g., p.84, 103 and 192). There were also many references to the ongoing investigation. Although these were often raised by Student A initially, Mr Kay frequently prompted her for further information and asked about what happened in her various meetings with the investigating authority (e.g., p.93, 99-101).



In the panel's view, any communication of this nature was inappropriate given the ongoing investigation against him, and particularly given that he knew that he should not have been contacting Student A during that time (p.83).

The panel is therefore satisfied that there is sufficient evidence to support Mr Kay's admission and it finds this allegation proven.

#### **5. His actions as set out at paragraphs 3 and 4 above were designed to mislead the investigation being conducted on behalf of BMS.**

Mr Kay has admitted this allegation and has acknowledged in his oral evidence that he did not volunteer information to assist the investigation, as he would have preferred that the nature of his multimedia messages with Student A did not come out. He has explained to the panel that he wanted to protect his family and maintain his dignity.

The panel notes that Mr Kay's attempts to obstruct the investigation are also evident from his investigatory interview on 28 July 2014, when he initially denied communicating with Student A via social media and sending her photos or picture messages. It was only when pressed further that he then admitted that he did in fact send her multimedia messages. Even then, he withheld the nature of those messages (p.43-44).

In addition, the panel is of the view that his exchanges with Student A questioning what she had told the investigators, went beyond merely wanting to know what was happening, as for example one exchange resulted in identifying that the dates reported to the investigators matched up (p.99-100).

The panel is therefore satisfied that there is sufficient evidence to support Mr Kay's admission and it finds this allegation proven.

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

Having found all of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The panel again notes Mr Kay's admissions in this regard.

The panel has had regard to the document "Teacher Misconduct: The Prohibition of Teachers", which the panel refers to as "the Advice".

In the panel's view, Mr Kay's conduct within the education setting, i.e. engaging in conduct designed to mislead the disciplinary investigation on behalf of BMS, was misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher. By reference to the Teachers' Standards, the panel considers that Mr Kay was in breach of the following requirements:

- A teacher is expected to demonstrate consistently high standards of personal and professional conduct...
- 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 the teacher's professional position;
  - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

In addition, Mr Kay's conduct outside of the education setting, in engaging with Student A in inappropriate and sexually motivated communications, led to Student A being exposed to or influenced by this behaviour in a harmful way. In the panel's view, Student A's issues with her self-esteem made her vulnerable, whereas Mr Kay was in a position of trust and responsibility. His behaviour had the potential to, and did, have a harmful impact on Student A, as was demonstrated through her emotional oral evidence before the panel.

Accordingly, the panel is satisfied that Mr Kay is guilty of unacceptable professional conduct.

In addition, the panel has gone on to consider whether the proven facts also amount to conduct that may bring the profession into disrepute. The panel has taken into account how 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 has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. This is even more important in Mr Kay's case, given his role as a deputy headteacher.

In the panel's view, the findings of misconduct are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore also finds that Mr Kay's actions constitute conduct that may bring the profession into disrepute.

## Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel considered whether it was an appropriate and proportionate measure, and whether it was in the public interest to do so. The panel was mindful that prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they would be likely to have a punitive effect.

The panel considered the particular public interest considerations set out in the Advice and found all of them to be relevant in this case, namely:

- declaring and upholding proper standards of conduct – in the panel's view this was the key public interest consideration in this matter. Mr Kay engaged in sexually motivated communications with a student and sought to mislead an investigation into his conduct. This was conduct outside that which could reasonably be tolerated and amounted to conduct which could bring the profession into disrepute;
- the maintenance of public confidence in the profession – the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Kay were not treated with the utmost seriousness when regulating the conduct of the profession;
- protection of pupils – the panel's view was that this public interest consideration applied to a lesser extent in this case. Whilst Student A was a student at BMS at the relevant times, she was nevertheless over the age of 18, and there was a lack of clarity at the service as to the precise status of individuals in her circumstances. There was no evidence before the panel that Mr Kay posed an ongoing risk to pupils.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order and carried out a balancing exercise between the public interest considerations both in favour of and against prohibition, and the interests of Mr Kay. The panel took further account of the Advice, which suggested that a prohibition order might be appropriate if certain behaviours of a teacher had been proven. 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;

- abuse of position or trust (particularly involving vulnerable pupils); and
- sexual misconduct, e.g. 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.

Even though there were behaviours that pointed to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. The panel considered the following potential mitigating factors:

- there was no evidence that Mr Kay's actions were not deliberate;
- there was no evidence that Mr Kay was acting under duress, and in fact the panel found the teacher's actions to be calculated and motivated;
- the panel accepts that Mr Kay did have a previously good history. There were several positive references in the bundle regarding Mr Kay's good character and the positive impact he had on pupils (p.212-215);
- Student A was an adult and voluntarily engaged in exchanging the messages of a sexual nature. There was no evidence of an investigation by the police into their interactions;
- Mr Kay indicated that he did not wish to teach again in the future, although the panel could not assume that this would remain his view.

Taking all of these circumstances into account, the panel was of the view that prohibition was both proportionate and appropriate, and the public interest considerations outweighed the interests of Mr Kay. A significant factor in forming that opinion was that Mr Kay's attitude to date seemed to have been to underplay the seriousness of his inappropriate behaviour, and to seek to deny his responsibility as far as possible. He only admitted the allegations on the first day of the hearing, and his admissions, in the panel's view, were given grudgingly. He maintained his view that Student A was not a student, and he showed very limited understanding of, and remorse for, the impact of his behaviour on Student A or the wider profession. The public interest in declaring and upholding proper standards of conduct in these circumstances, strongly outweighed Mr Kay's own interests.

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 to recommend that a review period of the order should be considered. The panel was mindful that the Advice stated that a prohibition order applies for life, but there might be circumstances in any given case that might 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 panel considered whether this was a case where the Advice suggested that no review period should be provided for. The panel noted that the involvement of “serious sexual misconduct” indicated that there be no review period. In the panel’s view, whilst Mr Kay’s conduct amounted to sexual misconduct, this was not at the serious end of the spectrum. As noted earlier, Student A was over the age of 18, the interactions were consensual, and there was no evidence of direct physical interactions of a sexual nature. In this case, the panel did not consider that any of the categories of conduct listed on page 12 of the Advice were relevant.

Nevertheless, the panel was of the view that Mr Kay had failed to demonstrate sufficient insight into and remorse for his actions. Throughout the investigation on behalf of BMS as well as the NCTL proceedings, he appeared to have been choosing his words carefully, and not volunteering relevant information or admitting fault unless it was unavoidable. He said that he and Student A were equally culpable for their messages, and he initially showed limited recognition of the fact that he was a deputy head, in a position of trust and responsibility, whilst she was a young person with vulnerabilities. Therefore his actions were entirely inappropriate, both in terms of the sexual messaging and engaging in conduct which was designed to mislead the investigation. He had already had over 2 years to consider his actions and their impact on Student A as well as the profession. However, his remorse was focused more on the impact on himself and his family.

Therefore, the panel was of the view that Mr Kay would benefit from a significant further period of reflection, to enable him to develop a fuller acceptance of his responsibility in the events which led to his prohibition. He would also need to expand his understanding of the wider scope of safeguarding legislation and policies in respect of students over the age of 18 who are still attending an educational establishment. Should Mr Kay wish to return to teaching in the future, he would need to demonstrate his commitment to the profession, and that he has kept up to date through professional development and training.

In the circumstances, the panel decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period, and that period should be 4 years.

## **Decision and reasons on behalf of the Secretary of State**

I have given very careful consideration to this case and to the recommendations of the panel both in respect of sanction and review.

The panel have found all of the allegations to be proven. The panel has made findings of unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel is satisfied that the conduct of Mr Kay in relation to the facts found proven, involved breaches of the Teachers' Standards. In the panel's view, Mr Kay's conduct within the education setting, i.e. engaging in conduct designed to mislead the disciplinary investigation, was misconduct of a serious nature.

There is a strong public interest consideration in this case, namely: declaring and upholding proper standards of conduct; the maintenance of public confidence in the profession and the protection of pupils.

I have taken into account the need to balance the public interest with the interests of the Mr Kay. I note that the panel found there was no evidence that Mr Kay's actions were not deliberate nor that he was acting under duress. In fact the panel found Mr Kay's actions calculated and motivated.

The panel has decided that the public interest considerations strongly outweigh the interests of Mr Kay. I agree with that view. I note a significant factor in forming that opinion was that Mr Kay's attitude seemed to have been to underplay the seriousness of his inappropriate behaviour, and to seek to deny his responsibility as far as possible. In the panel's view, the allegations were admitted grudgingly. Mr Kay showed a limited understanding of, and remorse for, the impact of his behaviour on the student or wider profession. Taking all of the facts into account, I support the recommendation of the panel that Mr Kay be prohibited. This seems to me to be proportionate and appropriate.

I now turn to the matter of a review period. I noted that the panel was of the view that Mr Kay had failed to demonstrate sufficient insight into and remorse for his actions. The panel considered that Mr Kay initially showed limited recognition of the fact that he was a deputy head, in a position of trust and responsibility, and that his actions were entirely inappropriate, both in terms of the sexual messaging and engaging in conduct which was designed to mislead the investigation.

I note the panel considered Mr Kay's remorse was focused more on the impact on himself and his family, rather than that of the student or the profession.

The panel were of the view that Mr Kay would benefit from a significant further period of reflection, to enable him to develop a fuller acceptance of his responsibility in the events. The panel has decided it would be proportionate for a review period of 4 years.

For the reasons set out above, I agree with the panel's recommendation.

**This means that Mr Martin Kay 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 18 April 2020, 4 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, Mr Kay remains prohibited from teaching indefinitely.

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

Mr Kay 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.

A handwritten signature in black ink, appearing to be 'J. Millions', written on a light-colored background.

**Decision maker: Jayne Millions**

**Date: 7 April 2016**

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