



National College for
Teaching & Leadership

Mr Brendan O'Brien: Professional conduct panel outcome

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

November 2016

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

Teacher: Mr Brendan O'Brien

Teacher ref number: 9742027

Teacher date of birth: 28 November 1969

NCTL case reference: 13202

Date of determination: 18 November 2016

Former employer: Battyeford Primary School, Mirfield

A. Introduction

A professional conduct panel ("the panel") of the National College for Teaching and Leadership ("the National College") convened on 14 November 2016 to the 18 November 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Brendan O'Brien.

The panel members were Mr Ian Carter (teacher panellist – in the chair), Ms Karen McArthur (lay panellist) and Mr Martin Pilkington (lay panellist).

The legal adviser to the panel was Ms Harpreet Marok of Eversheds LLP.

The presenting officer for the National College was Ms Louisa Atkin of Browne Jacobson LLP.

Mr Brendan O'Brien was not present and was not represented.

The meeting took place in private, save for the announcement of the panel's decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegation(s) set out in the Notice of Proceedings dated 6 September 2016.

It was alleged that Mr Brendan O'Brien was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher at Battyeford Primary School:

1. He engaged in inappropriate behaviour;
 - a. in that he displayed favouritism towards one or more male pupils, including by;
 - i. saying things such as "alright mate" to them;
 - ii. putting his arm around them and/or across the front of their chests;
 - b. in that he regularly put his hand on pupils' knees when such contact was not justified in the circumstances;
 - c. in that on one occasion or more he touched Pupil A;
 - i. on or around his penis/groin area over his clothing;
 - ii. by putting his hand into his trousers over the top of his underpants;
 - iii. by putting his hand into his trousers and touching his penis/groin area;
 - d. in relation to Pupil B, including that on one occasion or more he;
 - i. touched and/or stroked his leg;
 - ii. rubbed his penis/groin area over clothing;
 - e. in relation to Pupil C, including that on one occasion or more he;
 - i. touched and/or stroked his leg.
 - f. in relation to Pupil D, including that on one occasion or more he;
 - i. encouraged him to touch his penis/groin area over his clothing;
 - ii. put his hand into his trousers and touched his penis/groin area;
 - g. in that on one occasion or more he touched Pupil E;
 - i. on his upper leg;
 - ii. on his penis/groin area over his clothing;

- h. in relation to Pupil F, including that on one occasion or more he;
 - i. allowed him to sit on his knee;
 - ii. put his arm around his waist close to his groin area;
 - i. in relation to Pupil G, including that on one occasion or more he;
 - i. put his hand on his knee;
 - ii. put his hand on his upper leg close to his groin area;
 - j. in relation to Pupil I, including that on one occasion or more he stroked him on the upper leg;
 - k. in relation to Pupil J, including that on one occasion or more he touched him on the leg;
2. His behaviour towards one or more of the pupils referred to at 1 above was conduct of a sexual nature and/or was sexually motivated.

C. Preliminary applications

Decision on proceeding in absence of teacher

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

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

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

The panel has determined to exercise its discretion under Paragraph 4.29 of the Procedures to proceed with the hearing in the absence of Mr O'Brien.

The panel understands that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that Mr O'Brien may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of R v Jones [2003] 1 AC1. Mr O'Brien was sent the Notice of

Proceedings on 6 September 2016. Mr O'Brien responded to this on 25 September 2016 in which he has clearly indicated that he does not wish to appear at the hearing.

Therefore Mr O'Brien has clearly and unequivocally waived his right to attend. In addition, Mr O'Brien has since been in correspondence with the presenting officer via email and over the phone with regards to the hearing and the hearing bundle. Therefore the panel considered that Mr O'Brien has voluntarily absented himself from the hearing in the knowledge of when and where the hearing is taking place.

The panel has had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There is no indication that an adjournment might result in Mr O'Brien attending the hearing. Mr O'Brien has also indicated that he does not wish to be legally represented at the hearing.

The panel has had regard to the extent of the disadvantage to Mr O'Brien in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of detailed representations made by the teacher and is able to ascertain the lines of defence. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel also notes that there are eight witnesses present at the hearing, who are prepared to give evidence, and that it would be inconvenient for them to return again. Furthermore any delay at this stage might affect the level of engagement of witnesses.

The panel has had regard to the seriousness of this case, and the potential consequences for the teacher and has accepted that fairness to the teacher is of prime importance. However, it considers that in light of Mr O'Brien's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witnesses; that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

Application to admit additional document

The panel considered whether to admit the witness statement of Individual A dated 15 October 2016.

This witness statement had not been submitted in accordance with Paragraph 4.20 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Procedures") which requires each party to submit to the panel and the other party to the proceedings, a copy of the document at least four weeks prior to the hearing. Despite this

the presenting officer had checked with Mr O'Brien and he had no objections to the additional document being added to the bundle.

The panel took the legal adviser's advice on the late admissibility of evidence into consideration and were satisfied that the witness statement could be admitted.

Application to amend allegations

At the hearing on 15 November 2016, the presenting officer made an application for the particulars of allegation 1. e. ii. to be removed from the list of allegations in this hearing, as it had been included in error.

Mr O'Brien did not object to this amendment.

Before the panel considered its decision, the legal adviser declared the following advice:

- The panel had a discretion to amend an allegation or particulars of an allegation at any stage before deciding whether the facts of the case were proved;
- Any amendment should be in the interest of justice (Paragraph 4.56 of the Procedures);
- Article 6 of the European Convention of Human Rights enshrines the right to a fair trial; and
- The panel should take into account the submissions of the presenting officer and the teacher's representative, as well as considering any objections raised, or lack thereof.

The panel were content for the amendment to be made, as they did not consider the proposed amendment changed the nature of the allegations nor would they cause unfairness or prejudice to Mr O'Brien. Furthermore, the panel did not consider that the amendment would change the factual basis upon which the allegation is founded.

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 13

Section 3: NCTL witness statements – pages 15 to 39

Section 4: NCTL documents – pages 41 to 446

Section 5: Teacher documents – pages 448 to 504

In addition, the panel agreed to accept the following:

- Witness Statement of Individual A dated 15 October 2016 (pages 39A – 39B)
- Plan drawn by Pupil D (page 153A)
- Plan drawn by Witness C (page 153B)

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

Witnesses

The panel heard oral evidence from:

Witness A, West Yorkshire Police;

Witness B, Teacher at Battysford Primary School;

Witness C, Business Manager at Battysford Primary School;

Witness D, Educational Teaching Assistant at Battysford Primary School;

Pupil D;

Parent B;

Parent C;

Parent D.

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.

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

Mr O'Brien commenced employment at Battysford Primary School during 2010.

Pupil A entered Mr O'Brien's class in 2011 and it was during this academic year that allegations of touching occurred.

In September 2012, Pupil A began secondary school and Pupils B, C and D entered Mr O'Brien's class. There are further allegations of touching that occurred during this academic year.

In May 2013, Witness B reports concerns to the headteacher regarding Mr O'Brien touching Pupil G.

Pupil E entered Mr O'Brien's class in September 2013 and it was during this academic year that allegations of touching occurred.

In December 2013, Witness C observed Pupil F sitting on Mr O'Brien's knee.

In January 2014, Pupil E informed his parents and the headteacher that Mr O'Brien touched him, leading to a visit from the police and social services. It was during late January – February 2014 that Pupils A, B, C and D informed their parents that Mr O'Brien had touched them.

An investigation conducted by the Local Authority followed in September 2014 in relation to the headteacher's handling of safeguarding concerns.

A trial proceeded at Leeds Crown Court during January 2015 in relation to the allegations of sexual touching. Mr O'Brien was acquitted of all criminal charges.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegation(s) against you proven, for these reasons:

1. You engaged in inappropriate behaviour;

b. in that you regularly put your hand on pupils' knees when such contact was not justified in the circumstances;

This allegation is wholly denied by Mr O'Brien.

The panel noted Mr O'Brien's own admission in his response to allegation 1. b. where he states, "I have always stated that I was a tactile teacher and freely admit that I would put my hand on the knee of pupils in a variety of contexts".

The statutory safeguarding guidance makes it clear that there should only be physical contact with pupils in ways appropriate to their professional role. Taking into consideration the evidence, Mr O'Brien's behaviour in regularly putting his hand on pupils' knees was not in accordance with the guidance and best practice. The panel considered that Mr O'Brien's interpretation of the guidance relating to physical contact was wrong and that as an experienced senior teacher he should have been aware of this.

Having considered all of the evidence and, in particular, Mr O'Brien's own clear admission, the panel decided that Mr O'Brien did regularly put his hand on pupils' knees when such contact was not justified. The panel considered such contact to be

inappropriate given the teacher / pupil relationship and therefore it finds the allegation proven.

d. in relation to Pupil B, including that on one occasion or more you;

i. touched and/or stroked his leg;

This allegation is wholly denied by Mr O'Brien.

The panel noted Mr O'Brien's own admission in response to allegation 1. b. where he states, "I have always stated that I was a tactile teacher and freely admit that I would put my hand on the knee of pupils in a variety of contexts".

In the transcript of Pupil B's evidence given at Court in 2015, Pupil B answers, "yeah" to the question, "When the police came to speak to you ... did you tell them that Mr O'Brien had touched your leg?" Additionally, in the video interview given to the police in 2014, Pupil B confirmed by demonstrating that he had been touched on the leg by Mr O'Brien.

Looking to the stem of allegation 1. d. i. the panel considered that in touching Pupil B's leg Mr O'Brien had engaged in inappropriate behaviour. The panel believed that this demonstrated poor judgment on Mr O'Brien's part. The statutory safeguarding guidance makes it clear that there should only be physical contact with pupils in ways appropriate to their professional role. Mr O'Brien's tactile teaching style is not in accordance with the statutory safeguarding guidance. Therefore, the panel is satisfied that this allegation is proven on the balance of probabilities.

e. in relation to Pupil C, including that on one occasion or more you;

i. touched and/or stroked his leg.

This allegation is wholly denied by Mr O'Brien.

The panel noted Mr O'Brien's own admission in response to allegation 1. b. where he states, "I have always stated that I was a tactile teacher and freely admit that I would put my hand on the knee of pupils in a variety of contexts".

In the video interview given to the police in 2014, Pupil C stated that Mr O'Brien had stroked his legs 4 or 5 times and demonstrated this.

Looking to the stem of allegation 1. e. i. the panel considered that in touching Pupil C's leg Mr O'Brien had engaged in inappropriate behaviour. The panel believed that this demonstrated poor judgment on Mr O'Brien's part. The statutory safeguarding guidance makes it clear that there should only be physical contact with pupils in ways appropriate to their professional role. Mr O'Brien's tactile teaching style is not in accordance with the statutory safeguarding guidance. Therefore, the panel is satisfied that this allegation is proven on the balance of probabilities.

i. in relation to Pupil G, including that on one occasion or more you;

ii. put your hand on his upper leg close to his groin area;

This allegation is wholly denied by Mr O'Brien.

Witness B gave evidence to the panel in relation to this. The panel found her to be both a consistent, compelling and credible witness. Her shock and distress at what she had witnessed was evident even now. Following the incident that she had witnessed on the afternoon of Friday 10 May 2013 involving Mr O'Brien and Pupil G, she made notes while it was fresh in her mind. She spoke to a friend, who was an experienced teacher in another part of the country, over the weekend. She then told the headteacher the following Monday. Witness B liked Mr O'Brien and got on well with him professionally. The panel tested the evidence of Witness B and she was very clear and detailed in her recollection of the incident and demonstrated to the panel what she had seen and where Mr O'Brien's hand was on Pupil G. Her evidence was that Mr O'Brien was crouched down beside Pupil G with his left hand on Pupil G's upper thigh close to his groin area.

On the balance of probabilities, the panel considered Witness B's oral evidence to carry more weight than Mr O'Brien's denial and therefore found this allegation to be proven.

2. Your behaviour towards one or more of the pupils referred to at 1 above was conduct of a sexual nature and/or was sexually motivated.

This allegation is wholly denied by Mr O'Brien.

The panel considered the two stage test for sexual motivation. In relation to allegations 1.b., 1. d i. and 1. e. i. the panel was not satisfied that Mr O'Brien's actions could be viewed by a reasonable person as being sexually motivated.

Following detailed discussion regarding the test to be applied for a finding of sexual motivation and upon in-depth consideration of the evidence, the panel decided that Mr O'Brien's actions in relation to allegation 1. i. ii. were sexually motivated. In reaching this decision, the panel noted that the reasonable person would view touching a pupil on his upper leg close to his groin area could be sexually motivated, given the proximity of the touching to the groin area. As the first limb of the test was satisfied, the panel therefore went on to consider the second limb of the test, namely whether, in all the circumstances of the case, it was more likely than not that Mr O'Brien's purpose was sexual. Witness B demonstrated very clearly that Mr O'Brien touched Pupil G close to the groin area and she witnessed this for approximately 10 seconds. The panel finds that these actions were not accidental or justified in the context of a pupil / teacher relationship. Additionally, the position of Mr O'Brien's hand and the duration of contact makes Mr O'Brien's actions more likely than not to have been sexually motivated.

The panel concluded that Mr O'Brien's behaviour towards one or more of the pupils referred to at allegation 1 above was conduct of a sexual nature and/or was sexually motivated and therefore the panel found this allegation proven.

The panel has found the following particulars of the allegation(s) against you not proven, for these reasons:

1. You engaged in inappropriate behaviour;

a. in that you displayed favouritism towards one or more male pupils, including by;

i. saying things such as "alright mate" to them;

This allegation is wholly denied by Mr O'Brien.

Mr O'Brien admits to saying friendly things to all children, although he does not recall specifically saying "alright mate" to them. The panel heard evidence from Witness D that she had witnessed Mr O'Brien saying things such as "alright mate" to unidentified male pupils.

The panel noted that there was insufficient evidence to be certain on the balance of probabilities, that this behaviour displayed favouritism towards one or more male pupils.

ii. putting your arm around them and/or across the front of their chests;

The panel heard evidence from Witness D as to how Mr O'Brien did put his arm around and across the front of pupils' chests. Witness D clearly demonstrated to the panel how she had witnessed Mr O'Brien do this and the panel accepted her evidence, finding her to be a credible witness.

In addition to Witness D's evidence, Mr O'Brien in his statement given to the police admitted that he would put his arms on the pupils and "played their mate." Furthermore in his response to the allegation Mr O'Brien admitted to putting his arm around the shoulder of children, albeit as a gesture of comfort. The panel considered that from the evidence it was clear that Mr O'Brien was a tactile teacher, despite his safeguarding training which makes it clear that there should only be physical contact with pupils in ways appropriate to their professional role. Given that Mr O'Brien was a senior teacher, the panel considered that he should have been aware of this.

Looking at the stem of allegation 1. a. the panel considered all of the evidence and on the balance of probabilities it believed that although these events were more likely than not to have occurred, there was not sufficient evidence of favouritism and therefore the panel does not find the allegation proven.

- c. in that on one occasion or more you touched Pupil A;**
 - i. on or around his penis/groin area over his clothing;**
 - ii. by putting your hand into his trousers over the top of his underpants;**
 - iii. by putting your hand into his trousers and touching his penis/groin area;**

This allegation is wholly denied by Mr O'Brien.

In considering this allegation the panel noted that there were deficiencies in the case presented by the NCTL. Pupil A was interviewed by the police in 2014. It is the panel's view that many issues that should have been explored at this early stage were not pursued. No further statement by Pupil A was put before the panel to aid its deliberations. The panel was not able to test Pupil A's evidence as he did not attend this hearing as a witness.

In addition, there is no other evidence to corroborate Pupil A's evidence and Pupil A did not report the incidents at the time they allegedly happened. The fact that Pupil A returned to the School to see Mr O'Brien, although reluctantly, leaves doubt in the panel's mind.

The panel found Pupil A to present as a credible witness, however the numerous deficiencies referred to above outweigh the strength and quality of his evidence.

Therefore considering all of the evidence before it and looking to the stem of allegation 1. c. whether Mr O'Brien had engaged in inappropriate behaviour with regards to Pupil A, the panel was not satisfied on the balance of probabilities that this allegation had been proven.

- d. in relation to Pupil B, including that on one occasion or more you;**
 - ii. rubbed his penis/groin area over clothing;**

This allegation is wholly denied by Mr O'Brien.

In the video recording of Pupil B's police interview given in 2014, the panel noted that the position demonstrated by the police officer questioning Pupil B was not actually the penis/groin area. Therefore the panel considered that there was insufficient evidence to find this allegation proven on the balance of probabilities.

- f. in relation to Pupil D, including that on one occasion or more you;**
 - i. encouraged him to touch your penis/groin area over your clothing;**

ii. put your hand into his trousers and touched his penis/groin area;

This allegation is wholly denied by Mr O'Brien.

The panel noted that Pupil D was the only pupil to allege that Mr O'Brien encouraged him to touch Mr O'Brien's penis/groin area. The panel also noted the transcript of the judge's summing up in the criminal trial in 2015, and in particular the summing up of the evidence in relation to Pupil D.

The panel took into account Pupil D's oral evidence at this hearing. The panel did not find that there was sufficient evidence on the balance of probabilities that allegation 1. f. i. and ii. had been proven. In reaching its decision the panel assessed the evidence from Pupil D as to the frequency, duration and location of the alleged incidents.

Therefore, looking to the stem of allegation 1. f. the panel found this allegation was not proven.

g. in that on one occasion or more you touched Pupil E;

i. on his upper leg;

ii. on his penis/groin area over his clothing;

This allegation is wholly denied by Mr O'Brien.

The panel considered that Pupil E may have had a motivation for making the allegation, given that he was in trouble with Mr O'Brien and his mother was going to be told about this.

The panel noted from the video recording of Pupil E's police interview given in 2014 that there was no direct allegation by Pupil E to the effect of allegation 1. g. i. and therefore it could not find the facts of this allegation proven on the balance of probabilities.

The panel noted that there were many inconsistencies in Pupil E's video evidence and for this reason the panel on the balance of probabilities did not accept his version of events.

Looking therefore to the stem of allegation 1. g. the panel did not find this proven.

h. in relation to Pupil F, including that on one occasion or more you;

i. allowed him to sit on your knee;

This allegation is wholly denied by Mr O'Brien.

Despite Mr O'Brien's denial, he does actually admit that Pupil F sat on his knee probably between 5 and 10 times, albeit that this would be at Pupil F's own insistence rather than Mr O'Brien inviting Pupil F to do so.

The panel heard oral evidence from Witness D who worked with Pupil F as an educational teaching assistant. She witnessed Mr O'Brien with Pupil F sitting on his knee and they were both holding up a book and reading it together. Witness D did not think there was anything untoward about this at the time.

The panel considered all of the evidence before it and on the balance of probabilities it believed that these events were more likely than not to have occurred. However, the panel did not consider this behaviour to be inappropriate behaviour due to the special needs of Pupil F, a pupil with autism. Therefore, this allegation is not proven.

ii. put your arm around his waist close to his groin area;

The panel heard oral evidence from Witness C, who had witnessed Mr O'Brien with his arm around Pupil F. However, in her evidence, Witness C stated that she was unable to see exactly where Mr O'Brien's hand was on Pupil F as she could only see down to his forearm.

Having considered all of the evidence, the panel concluded that on the balance of probabilities this allegation was not proven.

i. in relation to Pupil G, including that on one occasion or more you;

i. put your hand on his knee;

This allegation is wholly denied by Mr O'Brien.

The panel noted that there was no evidence presented that proved the facts of this allegation. The panel also noted that Witness B's evidence in relation to what she witnessed with Pupil G, did not include Mr O'Brien putting his hand on Pupil G's knee. The panel therefore found this allegation was not proven.

j. in relation to Pupil I, including that on one occasion or more you stroked him on the upper leg;

This allegation is wholly denied by Mr O'Brien.

The panel noted that the only evidence in relation to this allegation comes second hand from Witness A's interview with Pupil I in 2014. When asked in oral evidence, Witness A could not be certain that Pupil I had used the word 'stroked' although she said she would usually use the word used by the witness. In addition to this there was no separate statement from Pupil I and Pupil I did not give oral evidence to the panel. Therefore the panel has not been able to test this evidence.

Having considered all of the evidence before it, the panel is not satisfied that this allegation has been proven on the balance of probabilities.

k. in relation to Pupil J, including that on one occasion or more you touched him on the leg;

This allegation is wholly denied by Mr O'Brien.

As with allegation 1. j. the panel noted that the only evidence in relation to this allegation comes second hand from Witness A's interview with Pupil J in 2014. When asked in oral evidence, Witness A could not be certain that Pupil J had used the word 'touched' although she said she would usually use the word used by the witness. In addition to this there was no separate statement from Pupil J and Pupil J did not give oral evidence to the panel. Therefore the panel has not been able to test this evidence.

Having considered all of the evidence before it, the panel is not satisfied that this allegation has been proven on the balance of probabilities.

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

Having found allegations 1. b., 1. d. i., 1. e. i., 1. i. ii. and 2 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.

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

The panel is satisfied that the conduct of Mr O'Brien in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr O'Brien 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, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Mr O'Brien fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr O'Brien's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that the offence of sexual activity is relevant.

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

Accordingly, the panel is satisfied that Mr O'Brien is guilty of unacceptable professional conduct.

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.

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 finds that Mr O'Brien'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/or conduct that may bring the profession into disrepute, it is 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 has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

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

In light of the panel's findings against Mr O'Brien, there is a strong public interest consideration in respect of the protection of pupils given the findings of inappropriate behaviour with regards to touching pupils.

The panel considered that Mr O'Brien had not shown insight into his actions, as having admitted that he had touched pupils and had a tactile teaching style, he did not recognise that this behaviour was at odds with the statutory safeguarding guidance. Mr O'Brien should have shown a greater appreciation of the appropriate boundaries that regulate the teacher/pupil relationship.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr O'Brien was not treated with the utmost seriousness when regulating the profession. In particular, the panel noted that the underlying facts giving rise to the allegations proven were not isolated incidents. The allegations involved a number of pupils.

In view of the above, the panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr O'Brien was outside that which could reasonably be tolerated.

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 taking into account the effect that this would have on Mr O'Brien.

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr O'Brien. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- 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 would point 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. In particular:

- The panel considered whether Mr O'Brien's actions were deliberate. The panel were not convinced by Mr O'Brien's response to the allegations that he had provided any explanation that his actions were anything other than deliberate, particularly given his free admission that he would touch pupil's knees.
- There was no evidence to suggest that Mr O'Brien was acting under duress.
- The panel noted that, in his role as a teacher, Mr O'Brien had not been subject to any formal disciplinary proceedings, prior to the events underlying these allegations. The panel has no character evidence on Mr O'Brien, however there is nothing to suggest Mr O'Brien was anything other than an effective teacher.

In light of the above, the panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr O'Brien. Mr O'Brien's abuse of his position of trust and the serious impact of his conduct on the welfare of the pupils and the impact on the reputation of the teaching profession was a significant factor in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

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

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include serious sexual misconduct, e.g. where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons.

The panel has found that Mr O'Brien has made physical contact with pupils and it has found one particular instance of this to have been sexually motivated.

Mr O'Brien has denied all of the allegations raised against him, and the panel note that he has not demonstrated any insight into his inappropriate conduct or the impact on the pupils. Mr O'Brien also has not expressed any remorse for the resultant consequences of his actions.

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

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation made by the panel in respect of both sanction and review period. The panel has found a number of the allegations proven. Where the allegations have not been found proven, I have put these from my mind.

Mr O'Brien is guilty of unprofessional conduct and conduct which may bring the profession into disrepute. The panel considers that Mr O'Brien 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, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that Mr O'Brien fell significantly short of the standards expected of the profession.

The panel has gone on to take into account the Advice published by the Secretary of State. That Advice suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- 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.

I note that the panel considered that Mr O'Brien had not shown insight into his actions, as having admitted that he had touched pupils and had a tactile teaching style, he did not recognise that this behaviour was at odds with the statutory safeguarding guidance.

There is a strong public interest consideration in respect of the protection of pupils given the findings of inappropriate behaviour with regards to touching pupils.

I have taken into account the guidance published by the Secretary of State. I have also taken into account the need to be proportionate and to balance the interests of the teacher with the interests of the public.

I have taken into account the mitigating factors considered by the panel. I note that the panel found there was no evidence that Mr O'Brien's behaviour or actions were not deliberate or that he was acting under duress.

The panel is of the view that prohibition is both proportionate and appropriate, and that the public interest considerations outweigh the interests of Mr O'Brien. I note Mr O'Brien's abuse of his position of trust and the serious impact of his conduct on the welfare of the pupils, and the impact on the reputation of the teaching profession was a significant factor in forming that opinion.

I support the recommendation made by the panel. This was a serious case and it is appropriate, proportionate and in the public interest that Mr O'Brien be prohibited from teaching.

I now turn to the matter of a review period. I have taken into account the Advice which indicates that there are behaviours that, if proven, would militate against a review period being allowed. These behaviours include serious sexual misconduct.

I note the panel found that Mr O'Brien has not demonstrated any insight into his inappropriate conduct or the impact on the pupils. Neither has he expressed any remorse for the resultant consequences of his actions. For the reasons stated above, I support the recommendation that there be no review period.

This means that Mr Brendan O'Brien 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 O'Brien 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 O'Brien 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', with a small dot at the end.

Decision maker: Jayne Millions

Date: 25 November 2016

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