



Teaching
Regulation
Agency

Mr Mark Kerrigan: Professional conduct panel outcome

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

April 2022

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

Teacher: Mr Mark Kerrigan
TRA reference: 19262
Date of determination: 22 April 2022
Former employer: St James' Senior Girls School, London

Introduction

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 20 to 22 April 2022 by way of a virtual hearing, to consider the case of Mr Mark Kerrigan.

The panel members were Mrs Melissa West (teacher panellist – in the chair), Mr Maurice McBride (lay panellist) and Mrs Shabana Robertson (lay panellist).

The legal adviser to the panel was Ms Josie Beal of Birketts LLP solicitors.

The presenting officer for the TRA was Mr Michael Bellis of Capsticks LLP solicitors.

Mr Kerrigan was present and was represented by Mr Mark Rose of NASUWT.

The hearing took place by way of a virtual hearing in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 24 January 2022.

It was alleged that Mr Kerrigan was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that, while working as a teacher at St James Senior Girls' School:

1. Between or around October 2018 and November 2019, he sent personal communications to Pupil 1 on one or more occasions using his:
 - a. personal email account; and/or
 - b. school email account.
2. On or around 10 September 2019, he travelled alone in a vehicle with Pupil 1.
3. On or around 9 December 2019, he informed Pupil 1 that he had received a complaint.
4. On or around 16 December 2019, when asked by Staff Member A about emails sent to Pupil 1 on 10 October 2019,
 - a. he stated that this was the only time he had sent emails to Pupil 1 using his personal email account or words to that effect;
 - b. he did not disclose that he had sent more than one email to Pupil 1 from his personal email account;
 - c. he did not disclose that he had sent personal communication to Pupil 1 on other occasions.
5. His conduct at 4 above was dishonest in that:
 - a. he knew that he had sent emails to Pupil 1 from his personal email account on more than one occasion;
 - b. he sought to conceal the emails to Pupil 1 sent from his personal and/or school email account from the School.
6. Between or around September and December 2019:
 - a. when Pupil 2 was distressed:
 - i. touched Pupil 2's bare leg;

- b. when Pupil 3 was distressed:
 - i. held Pupil 3's hand;
 - ii. touched Pupil 2's arm and/or hand.

7. Between or around September 2019 and January 2020 he:

- a. on one or more occasions, hugged Pupil 4;
- b. on one or more occasions, when Pupil 4 was distressed, touched and/or squeezed Pupil 4's thigh;
- c. stated to Pupil 4:
 - i. a former pupil had stayed with his family in their house after leaving the school;
 - ii. whether she would be 'like one of those girls who'd like to come over when you're an adult', or words to that effect.

In his response to the notice of referral Mr Kerrigan indicated that he admitted to allegations 1, 2, 3, 6(b)(i) and 6(b)(ii). He denied the remaining allegations and he denied unacceptable professional conduct and conduct that may bring the profession into disrepute.

In his response to the notice of proceedings, Mr Kerrigan denied the allegations.

At the outset of the hearing, Mr Kerrigan's representative confirmed that Mr Kerrigan's position was as set out in his response to the notice of referral. However, during the course of the hearing Mr Kerrigan denied allegation 6(b)(ii).

Preliminary applications

Procedures

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

Application regarding hearsay evidence

The panel considered a preliminary application from the presenting officer to admit the hearsay evidence in the bundle.

The panel noted that there was a large amount of hearsay evidence in the bundle, primarily relating to witness evidence given by six pupils, none of whom gave witness evidence at the professional conduct panel hearing. The teacher's representative did not object to the hearsay evidence being included in the bundle, but asked the panel to consider the weight that ought to be placed on it. The panel was informed that the bundle had been agreed between the parties.

The panel was advised that hearsay evidence is admissible in civil proceedings. The panel was also aware that, in accordance with paragraph 4.18 of the Procedures, the panel may admit evidence which may reasonably be considered to be relevant to the case where it is fair to do so.

The panel considered that the hearsay evidence in the bundle was relevant to the case. The panel therefore decided to admit this evidence. However, the panel recognised this evidence as hearsay and, in the course of its deliberations, considered the weight that should be placed on this evidence.

Discontinuance application

Following the conclusion of the TRA's case on the first day of the hearing, Mr Kerrigan's representative made an application that the case be dismissed by the panel and provided written submissions to this effect.

In his written submissions, Mr Kerrigan's representative submitted that the TRA had failed to evidence the allegations in a meaningful way and had relied on hearsay evidence and subjective opinion. He highlighted that the pupils referred to in this matter had not provided witness evidence directly to the TRA or attended the hearing as witnesses. Mr Kerrigan's representative referred to witness evidence given by the TRA's witnesses that appeared to be supportive of Mr Kerrigan and asserted that the TRA had failed to provide or seek corroborative evidence or testimony.

The presenting officer provided detailed oral submissions within which he confirmed that the TRA opposed the application. The presenting officer submitted that there was no requirement for the TRA to provide corroborative evidence. He reminded the panel that the hearing bundle containing hearsay evidence had been agreed by Mr Kerrigan and that, notwithstanding this, the presenting officer made an application for the hearsay evidence to be admitted at the start of the hearing. This application was accepted by the panel and it was not opposed by Mr Kerrigan.

The presenting officer took the panel through the allegations and then addressed the matter of unacceptable professional conduct and conduct that may bring the profession into disrepute, and explained why the TRA considered that there was a case to answer.

The panel was reminded that, at the outset of the hearing, Mr Kerrigan's representative had confirmed that, as set out in the response to the notice of referral, Mr Kerrigan admitted to allegations 1, 2, 3, 5a and 6b. The panel was also reminded of relevant witness and documentary evidence.

The panel received legal advice and was referred to paragraph 4.54 of the Procedures which confirms that the panel may discontinue the proceedings, at any stage, where it considers it fair and appropriate. The panel was also referred to the test in *R v Galbraith [1981] 1WLR 1039*.

The panel gave detailed consideration to the application, whilst being careful to avoid making any determination in respect of the facts of the allegations or whether the facts of the allegations might amount to unacceptable professional conduct or conduct that might bring the profession into disrepute. The panel was mindful that it had not heard evidence from Mr Kerrigan, and Mr Kerrigan had not provided a formal witness statement to the panel. The panel was also mindful of the admissions that Mr Kerrigan had made in respect of this matter, but of course understood that it was for the panel to determine the facts of this matter if it were to continue.

The panel concluded that there was a case to answer. The panel was of the view that there was evidence before it on matters which are in the province of the panel. The panel further considered that, whilst it had not made any decisions in respect of the allegations, on one possible view of the facts, there was evidence on which the panel could properly come to the conclusion that the allegations are well founded, not least due to Mr Kerrigan's admissions. The panel therefore concluded that it would not be fair or appropriate to discontinue the proceedings. Accordingly, the panel directed that the proceedings should continue.

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 5 to 7
- Section 2: Notice of proceedings and response – pages 8 to 32
- Section 3: Teaching Regulation Agency witness statements – pages 33 to 43

- Section 4: Teaching Regulation Agency documents – pages 44 to 431
- Section 5: Teacher documents – pages 432 to 451

The panel also considered the written submissions provided by Mr Kerrigan's representative relating to his application for discontinuance, as referred to above.

Witnesses

The panel heard oral evidence from the following witnesses called by the TRA:

- Individual A [REDACTED]
- Staff Member A [REDACTED]

The panel also heard oral evidence from Mr Kerrigan.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Kerrigan was employed by St James Senior Girls' School ('the School') from 1 September 2016 as Head of ICT.

It was alleged that, between October 2018 and November 2019, Mr Kerrigan sent personal communications to Pupil 1 using his personal email account and school email account. It was also alleged that on 10 September 2019 Mr Kerrigan travelled alone in a vehicle with Pupil 1.

Pupil 1 reported concerns about Mr Kerrigan on 6 December 2019 and, allegedly, on 9 December 2019 Mr Kerrigan informed Pupil 1 that he had received a complaint.

On 16 December 2019, a conversation took place between Mr Kerrigan and Staff Member A during which it was alleged that Mr Kerrigan told Staff Member A that he only sent emails from his personal email account to Pupil 1 on 10 October 2019. It was also alleged that Mr Kerrigan had failed to disclose that he had sent personal communications to Pupil 1 on other occasions.

Following Pupil 1's complaint it was also alleged that between September and December 2019, Mr Kerrigan: (a) touched Pupil 2's bare leg, (b) held Pupil 3's hand and (c) touched Pupil 2's arm and/or hand. It was further alleged that, between September 2019 and January 2020, Mr Kerrigan: (a) hugged Pupil 4, (b) touched and/or squeezed Pupil 4's thigh, (c) told Pupil 4 that a former pupil had stayed at his house and (d) asked Pupil 4

whether Pupil 4 would like to be one of those girls who'd like to come over when Pupil 4 was an adult (or words to that effect).

Mr Kerrigan was dismissed from the School on 31 January 2020. A referral was made to the TRA on 7 February 2020.

Findings of fact

The findings of fact are as follows:

- 1. Between or around October 2018 and November 2019, you sent personal communications to Pupil 1 on one or more occasions using your:**
 - a. personal email account; and/or**
 - b. school email account.**

The panel noted that Mr Kerrigan admitted allegation 1(a) and allegation 1(b).

The panel was provided with copies of emails exchanged between Mr Kerrigan and Pupil 1. The email correspondence in the bundle was comprised of 80 pages and contained around 224 emails from Mr Kerrigan to Pupil 1.

The emails from Mr Kerrigan were primarily from his school email account, but there were 3 separate emails and/or email threads sent from his personal email account to Pupil 1. All emails were sent to Pupil 1's school email account and the pupil used this account to respond to all of the emails.

The panel considered the written representations and oral evidence of Mr Kerrigan.
[REDACTED]

Mr Kerrigan submitted that Pupil 1 initiated the contact asking for support. Mr Kerrigan accepted that he did not report all of the emails exchanged with Pupil 1 or add them to the School's safeguarding system, [REDACTED]. Mr Kerrigan also accepted that some of the email communication was personal in nature. However, he said that Pupil 1's email style was conversational and akin to sending text messages, and he therefore adapted his communication style accordingly.

The panel considered the witness statement and oral evidence of Individual A. The panel was impressed by Individual A's witness evidence and found Individual A to be a credible witness. The panel was of the view that Individual A's evidence was clear, fair and detailed.

On 6 December 2019, Individual A received an email from Pupil 1. Pupil 1 asked to speak with Individual A and referred to: *"finding some things that a particular teacher is doing involving me and others very uncomfortable and would really appreciate some*

intervention". Individual A met with Pupil 1 who referred to email correspondence with Mr Kerrigan and other matters that were making Pupil 1 feel uncomfortable. Pupil 1 also referred to incidents involving other pupils.

Individual A carried out an investigation into these concerns, which involved speaking with pupils, their parents, and Mr Kerrigan. Individual A obtained emails between Mr Kerrigan and Pupil 1, including emails sent from Mr Kerrigan's personal email address. Mr Kerrigan and Pupil 1 were asked to provide copies of the emails, but they did not do so. The School's IT team obtained the emails by accessing Pupil 1's school email account.

Individual A confirmed that Mr Kerrigan had reported some of his email communications with Pupil 1 on the School's safeguarding system, [REDACTED]. However, Individual A said that Mr Kerrigan had not disclosed all of his email communications with Pupil 1. Individual A explained that she had not seen the majority of the emails contained in the bundle and she was surprised by their content. Individual A considered that a significant number of the emails were personal and inappropriate.

Individual A submitted that she did not believe Mr Kerrigan had intentionally sent emails to Pupil 1 from his personal email account. She suspected that Mr Kerrigan had accidentally sent the emails from his personal account as a result of the settings on his mobile phone, and not because of a conscious decision he had made. Mr Kerrigan also stated that he had accidentally sent emails from his personal email account.

On examination of the evidence before it, it was apparent to the panel that Mr Kerrigan had engaged in extensive email correspondence with Pupil 1 from his school email account and, on 3 separate occasions, from his personal email account.

The panel was of the view that the email communications were personal in nature; Mr Kerrigan had referred to his personal life, sent Pupil 1 a picture of his new puppy and a "new driver" meme and used language which was overly friendly and unprofessional. The panel took into account Mr Kerrigan's comments about Pupil 1's email style, however it was of the view that the volume, nature and timing of the emails (some of which were sent late at night) were wholly inappropriate.

The panel found allegations 1(a) and 1(b) proven.

2. On or around 10 September 2019, you travelled alone in a vehicle with Pupil 1.

Mr Kerrigan admitted allegation 2.

Mr Kerrigan submitted that, on 10 September 2019, he was supervising a rugby session and was responsible for bringing the kit. Pupil 1 had recently passed their driving test and had driven to the session. Mr Kerrigan submitted that, after the rugby session, Pupil 1 offered him a lift and was insistent that he accept it. Mr Kerrigan indicated that he had

initially declined but, because Pupil 1 was insistent, he agreed in the end because he did not want to upset or offend Pupil 1.

Mr Kerrigan said that there was another pupil in the vehicle when he accepted the lift. However, Pupil 1 dropped off the other pupil first. Mr Kerrigan said that he was not aware this would be the case when he accepted the lift, but remained in the car after the other pupil had left. Mr Kerrigan admitted that, with hindsight, he should not have accepted the offer of a lift from Pupil 1 but was clear that he did not have any ulterior motive.

On examination of the evidence before it, the panel was satisfied that Mr Kerrigan did travel alone in a vehicle with Pupil 1.

The panel found allegation 2 proven.

3. On or around 9 December 2019, you informed Pupil 1 that you had received a complaint.

Mr Kerrigan admitted allegation 3.

Mr Kerrigan submitted that, on 9 December 2019, he was aware that a complaint had been made about him, but he was not aware of the content of the complaint or the identity of the person who had made the complaint.

Mr Kerrigan told the panel that he was sitting in the ICT Department and was visibly upset. Pupil 1 approached him and asked him if he was okay. Mr Kerrigan accepted that he told Pupil 1 that a complaint had been made about him. Mr Kerrigan denied that, at this stage, he knew that Pupil 1 had made the complaint or that he was aware of the content of the complaint.

The panel concluded that, by his own admission, Mr Kerrigan told Pupil 1 that he had received a complaint, or words to this effect.

The panel found allegation 3 proven.

4. On or around 16 December 2019, when asked by Staff Member A about emails sent to Pupil 1 on 10 October 2019,

- a. you stated that this was the only time you had sent emails to Pupil 1 using your personal email account or words to that effect;**
- b. you did not disclose that you had sent more than one email to Pupil 1 from your personal email account;**
- c. you did not disclose that you had sent personal communication to Pupil 1 on other occasions.**

Mr Kerrigan denied allegation 4 in its entirety.

The panel considered the witness statement and oral evidence of Staff Member A.

Staff Member A had a telephone call with Mr Kerrigan on 16 December 2019. Staff Member A told the panel that, upon receipt of Mr Kerrigan's call, Staff Member A immediately began making a handwritten note of the call, which was then typed up.

The panel was provided with Staff Member A's typed note of the telephone call. The notes stated: "*MK went on to say that it was [sic] using the personal email for that message was just an error, and that it was the only time he sent an email from his personal address. He maintained that everything else was through his school email account.*"

At this point, Staff Member A understood that Mr Kerrigan had only sent two emails to Pupil 1 about his puppy, and asked Mr Kerrigan to provide the School with a copy of those two emails. Mr Kerrigan stated that he would provide the emails if the School provided him with a copy of his contract of employment. However, ultimately, Mr Kerrigan did not provide copies of the emails.

Staff Member A therefore asked the IT Network Manager to access Pupil 1's school email account. The IT Network Manager informed Staff Member A that there were a large number of emails between Mr Kerrigan and Pupil 1 and recommended that Staff Member A should view them. Staff Member A looked through more than 100 emails sent between Pupil 1 and Mr Kerrigan. Staff Member A found further email threads and discussions between Mr Kerrigan and Pupil 1, including additional emails from Mr Kerrigan's personal email account which he had not disclosed.

Mr Kerrigan told the panel that Staff Member A's account of the conversation was not what he actually said. Mr Kerrigan stated that he told Staff Member A that he had been communicating with Pupil 1 by email and that some of the emails were on the School's safeguarding system, [REDACTED] and the others were on the School's email server.

Mr Kerrigan also said that he thought he had referred to an email thread as being one email, which might have caused confusion.

The panel found Staff Member A to be a credible witness on the basis that her evidence appeared to have been consistent throughout this matter. In contrast, the panel found Mr Kerrigan's evidence to be inconsistent in respect of the emails he exchanged with Pupil 1.

In respect of allegation 4(a), the panel preferred Staff Member A's evidence. In light of Staff Member A's evidence and her typed record of her telephone call with Mr Kerrigan, the panel concluded that it was more likely than not that Mr Kerrigan had told Staff

Member A that the emails concerning his puppy were the only time he had used his personal email address.

In respect of allegation 4(b), the panel was not persuaded by Mr Kerrigan's explanation that he was referring to an email thread as being one email. The panel was provided with copies of the emails sent from Mr Kerrigan's personal email account and noted that the emails and/or email threads were sent on 3 separate occasions on 27 April 2019, 20 July 2019 and 10 October 2019. The panel was not convinced that Mr Kerrigan believed that those emails all formed part of one thread, particularly given that he was Head of ICT at the School and would be familiar with what constituted an email thread. The panel therefore concluded that Mr Kerrigan did not disclose that he had sent more than one email to Pupil 1 from his personal email account.

In respect of allegation 4(c), it was apparent from the evidence before the panel that Mr Kerrigan did not disclose that he had sent personal communications to Pupil 1 on other occasions. Mr Kerrigan told the panel that the information was available on the School server, however the panel was of the view that Mr Kerrigan could have been more helpful in bringing it to the School's attention and, furthermore, the existence of the emails on the School server did not amount to a disclosure by Mr Kerrigan.

The panel found allegations 4(a), 4(b) and 4(c) proven.

5. Your conduct at 4 above was dishonest in that:

- a. you knew that you had sent emails to Pupil 1 from your personal email account on more than one occasion;**
- b. you sought to conceal the emails to Pupil 1 sent from your personal and/or school email account from the School.**

Mr Kerrigan denied allegation 5 in its entirety and denied that he had been dishonest.

As referred to above, when Mr Kerrigan did not provide the School with copies of the emails, Staff Member A obtained access to Pupil 1's school email account and saw the extent of the email communication between Mr Kerrigan and Pupil 1. This included additional emails sent from Mr Kerrigan's personal email account. Staff Member A therefore concluded that Mr Kerrigan had lied to her during the call she had with him on 16 December 2019, when he told her that the two emails concerning his puppy were the only emails sent from his personal email account.

Mr Kerrigan accepted that he did send emails to Pupil 1 from his personal account on more than one occasion, however he said that he did not realise this at the time as the emails had been sent from his personal account in error.

Mr Kerrigan denied seeking to conceal the emails he had sent Pupil 1 and explained that every email he had sent to Pupil 1 was to her school email address and all communications were therefore saved to the School server.

During the course of the hearing, questions were put to Mr Kerrigan about when he became aware that he had sent emails from his personal email address. Mr Kerrigan stated that Pupil 1 asked him why he was using a different email address and that he realised his mistake at that point. He said that he then transferred the emails sent from his personal account on to the School server so that copies were saved to the server. Mr Kerrigan confirmed that he had done this before he spoke to Staff Member A on 16 December 2019.

The panel therefore concluded that Mr Kerrigan was aware that he had sent more than one email from his personal email account to Pupil 1. Accordingly, the panel found allegation 5(a) proven.

In respect of allegation 5(b) the panel did not consider that there was any evidence that Mr Kerrigan had sought to conceal the emails he sent to Pupil 1. The emails provided to the panel were all sent to Pupil 1's school email account and therefore would have been saved to the school server. Whilst, in the panel's view, Mr Kerrigan should have been more forthcoming about his communications with Pupil 1, the panel did not believe that he had sought to conceal his communications. The panel found allegation 5(b) not proven.

6. Between or around September and December 2019:

a. when Pupil 2 was distressed:

i. touched Pupil 2's bare leg;

b. when Pupil 3 was distressed:

i. held Pupil 3's hand;

ii. touched Pupil 2's arm and/or hand.

Mr Kerrigan denied allegation 6(a)(i) but admitted allegation 6(b)(i). Mr Kerrigan initially indicated that he admitted allegation 6(b)(ii) but during the hearing it became apparent that he now denied allegation 6(b)(ii).

In respect of allegation 6(a)(i) the evidence presented to the panel was confusing and appeared to conflate the two separate incidents referred to in allegations 6(a) and 6(b).

The panel was provided with written accounts taken by Individual A of conversations with Pupil 2 and Pupil 6 which both stated that Mr Kerrigan had touched Pupil 2's bare leg whilst Pupil 2 was distressed. Mr Kerrigan denied this and denied that he had ever had to

comfort Pupil 2. The panel was also provided with a copy of the minutes of the School's disciplinary hearing with Mr Kerrigan. In those minutes Mr Kerrigan did refer to touching Pupil 2's leg when he was [REDACTED] when Pupil 3 was distressed. The panel did not consider that it had been presented with sufficiently clear evidence in respect of this allegation and, accordingly, the panel did not find allegation 6(a)(i) proven.

In respect of allegation 6(b)(i), Mr Kerrigan admitted to holding Pupil 3's hand. Mr Kerrigan stated that Pupil 3 was [REDACTED]. This was consistent with the account given by Pupil 3 to Individual A. Mr Kerrigan stated that he reported this incident to Pupil 3's parents who were supportive of his actions. The panel therefore found allegation 6(b)(i) proven.

In respect of allegation 6(b)(ii), Mr Kerrigan denied this allegation but said it was possible he might have touched Pupil 2 inadvertently. The panel was provided with written accounts taken by Individual A of conversations with Pupil 2 and Pupil 3. Both pupils stated that as part of Mr Kerrigan's [REDACTED], he asked what Pupil 3 could feel and Pupil 3 said she could feel Pupil 2. Mr Kerrigan asked what Pupil 2 felt like and said words to the effect of "I bet she feels squishy" and touched her hand and/or arm.

The panel noted that this was broadly consistent with what Mr Kerrigan said during the School's disciplinary hearing, when he referred to touching Pupil 2's leg when he was [REDACTED]. Mr Kerrigan said "*I touched her leg and said it was squishy to try and make it humorous*". Whilst the panel considered that these minutes appeared to confuse the two incidents, the panel noted that Mr Kerrigan had used the same language as Pupil 2 and Pupil 3. The panel therefore concluded that it was more likely than not that Mr Kerrigan had touched Pupil 2's arm or hand and used this language then, particularly as he had initially admitted to this allegation. The panel found allegation 6(b)(ii) proven.

7. Between or around September 2019 and January 2020 you:

- a. on one or more occasions, hugged Pupil 4;**
- b. on one or more occasions, when Pupil 4 was distressed, touched and/or squeezed Pupil 4's thigh;**
- c. stated to Pupil 4:**
 - i. a former pupil had stayed with your family in your house after leaving the school;**
 - ii. whether she would be 'like one of those girls who'd like to come over when you're an adult', or words to that effect.**

Mr Kerrigan denied allegation 7 in its entirety. He said that he recalled having a conversation with Pupil 1 about foreign exchange students staying at his home and Pupil

1 staying in touch with the School after she left, but that the conversation was not as described in the allegation and it was not with Pupil 4.

The panel was provided with a written account taken by the headteacher of a conversation with Pupil 4. The account indicated that Pupil 4 had said that Mr Kerrigan hugged them, squeezed their thigh and used the wording set out in allegation 7(c).

The panel was mindful that it had not heard evidence from Pupil 4 and it had not been provided with any additional evidence in respect of these allegations. The panel did not consider that it had sufficient evidence before it to conclude, on the balance of probabilities, that these events took place.

The panel found allegations 7(a), 7(b), 7(c)(i) and 7c(ii) not proven.

In conclusion, the panel found allegations 1(a), 1(b), 2, 3, 4(a), 4(b), 4(c), 5(a), 6(b)(i) and 6(b)(ii) proven.

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 was satisfied that the conduct of Mr Kerrigan, in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Mr Kerrigan 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
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Mr Kerrigan in respect of allegations 1(a), 1(b), 2, 3, 4(a), 4(b), 4(c) and 5(a) amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

In respect of allegation 6(b), the panel accepted that Mr Kerrigan was undertaking a [REDACTED] and this is why he held Pupil 3's hands and touched Pupil 2's hand or arm. Whilst the panel considered Mr Kerrigan's actions in respect of touching Pupil 2 in particular were misguided, it did not consider that it could be said that his conduct had fallen significantly short of the standards expected of the profession.

The panel also considered whether Mr Kerrigan's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice. The panel did not consider that any of the offences were relevant. Whilst the panel found that Mr Kerrigan's behaviour in respect of allegation 4 was dishonest, it did not consider that Mr Kerrigan's actions amounted to serious dishonesty. His actions were at the less serious end of the spectrum.

Accordingly, the panel was satisfied that Mr Kerrigan was guilty of unacceptable professional conduct in respect of allegations 1(a), 1(b), 2, 3, 4(a), 4(b), 4(c) and 5(a) only.

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

The panel's view was that the findings of misconduct are serious. The panel considered that the conduct displayed in allegations 1(a), 1(b), 2, 3, 4(a), 4(b), 4(c) and 5(a) would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

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

The panel found that Mr Kerrigan's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute in respect of allegations 1(a), 1(b), 2, 3, 4(a), 4(b), 4(c) and 5(a) 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 should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so.

The panel were aware that 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 and the protection of other members of the public; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In light of the panel's findings against Mr Kerrigan, which involved sending personal communications to Pupil 1, travelling alone in a vehicle with Pupil 1 and dishonesty, there was a strong public interest consideration in respect of the protection of pupils.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Kerrigan was not treated with the utmost seriousness when regulating the conduct of the profession.

The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Kerrigan was outside that which could reasonably be tolerated.

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Kerrigan.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Kerrigan. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or safeguarding and well-being of pupils, and particularly where there is a continuing risk;

- dishonesty;

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

There was no evidence that Mr Kerrigan's actions were not deliberate.

There was no evidence to suggest that Mr Kerrigan was acting under extreme duress, and, in fact, the panel found Mr Kerrigan's actions to be calculated and motivated.

The panel noted a number of character references submitted on behalf of Mr Kerrigan which attested to Mr Kerrigan's previous history as a teacher. In particular, the panel noted the following:

- Individual B [REDACTED]
 - *"Mr Kerrigan taught [redacted] computer studies and was an exceptional and outstanding teacher in that he helped her realise her true potential and excel at the subject."*
 - *"Each interaction he had with them was genuine, caring, respectful and as a matter of fact life changing."*
 - *"He is one of the most committed, dedicated and outstanding teachers I have ever met and having three children I have met quite a few. His caring and compassion are just exceptional qualities."*
- Individual C [REDACTED]
 - *"I strongly believe Mr. Kerrigan to be an honest and trustworthy teacher; he demonstrated strong moral principles and consistently showed high standards of professional conduct."*
 - *"I firmly believe that Mr. Kerrigan has continued to maintain high standards of ethics and behaviour as our relationship has continued outside of the school environment. Throughout our interactions, Mr. Kerrigan has upheld boundaries appropriate to a teachers' professional position. To this day, I still believe him to be an honest and trustworthy teacher whom the profession is incredibly lucky to have."*
- Individual D [REDACTED]
 - *"I always found Mr. Kerrigan to be nothing short of professional. As a parent of a child that went to [REDACTED], my perception of him was encouraging, supportive, kind and helpful. Nothing was ever too much trouble."*

- *“During these encounters, it was clear that Mr. Kerrigan wanted the best for the pupils within his care. He was an incredibly informative teacher that never failed to maintain strong professional relationships with both the parents and the children.”*
- Individual E [REDACTED]
 - *“My wife and I are immensely grateful to Mr. Kerrigan for the care, support and encouragement he gave to our daughter throughout this period. He was unfailingly considerate and attentive towards her at a most difficult period of her life and we are sure that his patience and consideration helped her gain enormously in confidence and self-esteem.”*
 - *“I cannot emphasise too strongly how reassuring it was to know that someone was there to look after her, to know that he was acting in her best interests, and to know that he was always available should we wish to speak with about her welfare. His conduct was always highly professional and courteous.”*
- Individual F [REDACTED]
 - *“I remember Mark Kerrigan with great fondness, on account of his great capacity for empathy and thoughtfulness. I consider him one of the kindest people I have worked with. He was someone who always noticed people, students and staff alike, and would always go out of his way to cheer someone up, or offer a kind word when they were having a bad day.”*
 - *Above all I remember Mark as someone totally passionate about and invested in teaching – invested in the students, invested in his colleagues, invested in the school. He was someone who would often volunteer when an extra pair of hands was needed at school events or trips, and if a student in his form was struggling or going through a difficult time he took it very hard and would be concerned to help.”*
 - *“In summary I remember Mark as a kind, empathetic, dedicated, enthusiastic, honest, conscientious, generous colleague, who loved his profession and cared deeply for the students.”*

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 considered that Mr Kerrigan’s conduct, though serious, was not at the most serious end of the spectrum. The panel accepted that, whilst Mr Kerrigan’s actions were misguided and, at times, inappropriate, he had good intentions and he was seeking to protect Pupil 1 in particular. There was no evidence before the panel that there was an ulterior motive or any malicious intent on Mr Kerrigan’s part. There was no evidence before the panel that Mr Kerrigan’s actions had caused harm to the pupils involved.

The panel was aware that Mr Kerrigan had 10 years of teaching experience and had a previously good record. The panel noted the number of character references provided from former pupils and parents, and their content. Furthermore, the panel believed that Mr Kerrigan had demonstrated a level of insight by accepting that he had overstepped boundaries and apologising for his actions.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, the recommendation of no prohibition order would be both a proportionate and an appropriate response. Given that the nature and severity of the behaviour were at the less serious end of the possible spectrum and, having considered the mitigating factors that were present, the panel determined that a recommendation for a prohibition order would not be appropriate in this case. The panel considered that the publication of the adverse findings it had made was sufficient to send an appropriate message to the teacher as to the standards of behaviour that are not acceptable, and the publication would meet the public interest requirement of declaring proper standards of the profession.

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 sanction.

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 both unacceptable professional conduct and conduct that may bring the profession into disrepute in respect of allegations 1(a), 1(b), 2, 3, 4(a), 4(b), 4(c) and 5(a) only. In this case, the panel has found some of the allegations not proven, and found that some allegations do not amount to unacceptable professional conduct or conduct likely to bring the profession into disrepute. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Mark Kerrigan should not be the subject of a prohibition order. The panel has recommended that the findings of unacceptable professional conduct and conduct likely to bring the profession into disrepute, should be published and that such an action is proportionate and in the public interest.

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

The panel finds that the conduct of Mr Kerrigan fell significantly short of the standards expected of the profession.

The findings of misconduct involved sending personal communications to a Pupil, travelling alone in a vehicle with a Pupil and dishonesty.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Kerrigan, 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 pupils. The panel has observed, "In light of the panel's findings against Mr Kerrigan, which involved sending personal communications to Pupil 1, travelling alone in a vehicle with Pupil 1 and dishonesty, there was a strong public interest consideration in respect of the protection of 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 believed that Mr Kerrigan had demonstrated a level of insight by accepting that he had overstepped boundaries and apologising for his actions."

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found

against Mr Kerrigan was not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the finding of dishonesty in this case and the impact that such a finding has on the reputation of the profession.

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order as a failure to uphold those high standards. In weighing these considerations, I have had to consider the matter from the point of view of an “ordinary intelligent and well-informed citizen.”

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Kerrigan himself and “The panel was aware that Mr Kerrigan had 10 years of teaching experience and had a previously good record. The panel noted the number of character references provided from former pupils and parents, and their content.” A prohibition order would prevent Mr Kerrigan 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 “Mr Kerrigan’s conduct, though serious, was not at the most serious end of the spectrum. The panel accepted that, whilst Mr Kerrigan’s actions were misguided and, at times, inappropriate, he had good intentions and he was seeking to protect Pupil 1 in particular. There was no evidence before the panel that there was an ulterior motive or any malicious intent on Mr Kerrigan’s part. There was no evidence before the panel that Mr Kerrigan’s actions had caused harm to the pupils involved.”

I have also placed considerable weight on the consideration by the panel, that the nature and severity of the behaviour was found at the less serious end of the possible spectrum, there was no evidence of malicious intent, Mr Kerrigan has demonstrated insight for overstepping boundaries and the evidence of his contribution to the profession was good.

For these reasons, I have concluded that a prohibition order is not proportionate or in the public interest. I consider that the publication of the findings made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession.

A handwritten signature in black ink, appearing to read 'J. A. Buxton', written in a cursive style.

Decision maker: Sarah Buxcey

Date: 27 April 2022

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