



Teaching  
Regulation  
Agency

# **Miss Emma Kelly: Professional conduct panel outcome**

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

**November 2022**

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

<b>Teacher:</b>	Miss Emma Kelly
<b>Teacher ref number:</b>	1588337
<b>Teacher date of birth:</b>	26 September 1993
<b>TRA reference:</b>	18162
<b>Date of determination:</b>	30 November 2022
<b>Former employer:</b>	Colburn Community Primary School, North Yorkshire

### **Introduction**

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 21 November 2022 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Miss Emma Kelly, a joint hearing together with Individual D.

The panel members were Mr John Martin (teacher panellist – in the chair), Mr Gamel Byles (teacher panellist) and Mrs Shabana Robertson (lay panellist).

The legal adviser to the panel was Miss Sarah Price of Blake Morgan solicitors.

The presenting officer for the TRA was Ms Lucy Coulson of No5 Chambers, instructed by Browne Jacobson solicitors.

Miss Kelly was present and was represented by Mr Simon Harding of The 36 Group Chambers.

The hearing took place in public and was recorded.

## Allegations

The panel considered the allegations set out in the Notice of Hearing dated 22 September 2022.

It was alleged that Miss Kelly was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as a teacher during the academic year 2017/18:

1. In respect of the Key Stage 2 assessment, she caused and/or permitted and/or failed to prevent maladministration including by;

a. In relation to writing tests;

i. passing off guided work as independent pupil work;

ii. excessively scaffolding pupil work;

b. indicating to pupils during tests that the answer they had provided were right and/or that they should review answers which were incorrect;

c. providing unauthorised/prohibited equipment to pupils during tests;

2. Her conduct as may be found proven at Allegation 1 above lacked integrity and/or dishonesty in that she was seeking to unfairly improve assessment outcomes for one or more pupils.

Following an application to amend the allegations (see below), the panel decided to amend the allegation as follows:

It was alleged that Miss Kelly was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as a teacher during the academic year 2017/18:

1. In respect of the Key Stage 2 assessment, she caused and/or permitted and/or failed to prevent maladministration including by;

a. In relation to writing assessments;

i. passing off guided work as independent pupil work;

ii. excessively scaffolding pupil work;

2. Her conduct as may be found proven at Allegation 1 above lacked integrity and/or dishonesty in that she was seeking to unfairly improve assessment outcomes for one or more pupils.

The allegations were not admitted.

## **Preliminary applications**

### **Application to amend/discontinue allegations**

Ms Coulson, on behalf of the TRA, made an application to amend the allegation. Specifically, to amend "tests" to "assessments" as that more accurately reflected the evidence. Ms Coulson also applied to remove allegation 1c, namely:

*1c. providing unauthorised/prohibited equipment to pupils during tests*

Ms Coulson submitted that there was insufficient evidence and that this particular of the allegation should be removed. The application was not opposed by Mr Harding, on behalf of the teachers.

The panel heard and accepted legal advice. The panel has a discretion under paragraph 4.56 of the disciplinary procedures to amend an allegation or a particular of the allegation at any time before making findings of fact, if it is fair and in the interests of justice. The panel found that it was fair and in the interests of justice to discontinue allegation 1c.

A further application was made by Ms Coulson to discontinue allegation 1b, namely:

*1b. indicating to pupils during tests that the answer they had provided were right and/or that they should review answers which were incorrect*

Ms Coulson submitted that she had been made aware on the first day of the hearing that the TRA had discontinued allegation 1b in late 2019 and that particular 1b should not have formed part of the allegation which this panel is required to determine. The application was not opposed by Mr Harding, on behalf of the teachers. The panel heard and accepted legal advice. The panel was very disappointed that this allegation had been included in the Notice of Proceedings and found that it was fair and in the interests of justice to discontinue allegation 1b.

### **Application for special measures**

Ms Coulson made an application for special measures in relation to each of the TRA's four witnesses. Dealing with each witness in turn:

#### Witness A

Ms Coulson submitted that Witness A should be treated as a vulnerable witness, as she has complained that she would feel intimidated by Individual D and Miss Kelly if she was to attend the hearing in person and gave evidence in the same room as them. It was submitted that Witness A should be allowed to give evidence by way of video link.

Mr Harding submitted that there was an objection to Witness A being treated as a vulnerable witness, as there is no evidence of intimidation. However, in the interests of proceeding swiftly, there was no objection to her giving evidence remotely by video link.

#### Witness B

Ms Coulson submitted that Witness B is one of the [REDACTED] at the School, and due to circumstances at the School, if she were to attend the hearing in person, there would only be [REDACTED] at the School during that time. It was submitted that Witness B should be allowed to give evidence by way of video link.

Mr Harding confirmed there was no objection to Witness B giving evidence by video link.

#### Witness C

Ms Coulson submitted that Witness C should be treated as a vulnerable witness as she has complained that she would feel intimidated by Individual D. It was also submitted that she is one of the [REDACTED] at the School, and due to circumstances at the School, if she were to attend the hearing in person, there would only be [REDACTED] at the School during that time. It was submitted that Witness C should be allowed to give evidence by way of video link.

Mr Harding submitted that there was an objection to Witness C being treated as a vulnerable witness, as there is no evidence of intimidation. However, in the interests of proceeding swiftly, there was no objection to her giving evidence remotely by video link.

#### Pupil H

Ms Coulson submitted that Pupil H is a child (under 16) and should be considered as a child witness. It was submitted that the following special measures should be put in place for Pupil H: to give evidence remotely by video link; to have a witness supporter (her mother); not to have sight of Individual D and Miss Kelly when giving evidence; and for any questions from Individual D and Miss Kelly to be asked via their representative.

Mr Harding did not oppose the application in respect of Pupil H. It was confirmed that Mr Harding would ask any questions of Pupil H, on behalf of Individual D and Miss Kelly.

In considering the application, the panel heard and accepted the legal advice. The panel was mindful that the Rules define a vulnerable witness as people whose quality of evidence is likely to be adversely affected at a hearing. The panel noted that 4.71 includes any witness who complains of intimidation.

The panel considered the application in stages: whether the complaint of intimidation was genuine, whether witnesses were vulnerable and if so, whether they should give evidence at all. If the panel considered the witnesses should be permitted to give evidence, it would go on to consider whether special measures were necessary.

In determining whether the complaint of intimidation was genuine, the panel had regard to the guidance in R (Levett) v Health Care Professions Council [2013] EWHC 3330 (Admin). The panel recognised that it did not need to, and should not, make a factual finding as to whether the teachers had been involved in any deliberate act of intimidation, but the panel should be satisfied that there were some background circumstances that could give rise to those feelings. The panel recognised that it needed to determine whether each witness was in genuine fear of intimidation at a hearing and not simply whether they had been the subject of alleged intimidation in the past.

Having carefully considered the submissions put forward by both Ms Coulson and Mr Harding, the panel made the following decision:

#### Witness A

The panel was not provided with evidence that Witness A was a vulnerable witness. However, in the circumstances, it accepted that Witness B should be able to give evidence remotely by way of video link.

#### Witness B

In the circumstances, the panel accepted that Witness B should be able to give evidence remotely by way of video link.

#### Witness C

The panel was not provided with evidence that Witness C was a vulnerable witness. However, in the circumstances, it accepted that Witness C should be able to give evidence remotely by way of video link.

#### Pupil H

The panel accepted that Pupil H should be treated as a child witness and that the proposed special measures should be imposed, namely: Pupil H be allowed to give evidence remotely by video link; to have a witness supporter (her mother); not to have sight of Individual D and Miss Kelly when giving evidence; and for any questions from Individual D and Miss Kelly to be asked via their representative.

#### **Application to admit hearsay evidence**

Ms Coulson made an application for the evidence of Pupil E to be admitted as hearsay evidence. Ms Coulson submitted that it would be fair to admit the evidence of Pupil E.

Mr Harding, on behalf of the teachers confirmed that the inclusion of Pupil E's statement as hearsay evidence was opposed, but there was no objection to the pupil's jotters being included. Mr Harding submitted that Pupil E's evidence was prejudicial rather than

probative. He also submitted that there had been no good reason for Pupil E's non-attendance.

The panel had regard to Rule 4.28 which provides: "*The panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.*" The panel focussed on the question of fairness, as it was clear that Pupil E's evidence was relevant. In considering fairness, the panel considered the principles set down in the relevant case law. The panel carefully considered whether the statement of Pupil E could be admitted as hearsay evidence, but found that the seriousness of the allegations and the potential consequences to the teachers outweighed the balance meaning that it would be unfair to admit the statement. The panel was particularly mindful that the teachers would not have the opportunity to test Pupil E's evidence, as she not attending the hearing. The application to admit Pupil E's evidence as hearsay was refused.

### **Application for additional documents**

At the outset of the hearing, the panel heard an application made by Mr Harding to admit a late bundle of evidence, submitted on behalf of Individual D and Miss Kelly. Whilst Ms Coulson, on behalf of the TRA, did not oppose to the bundle, she did raise a concern regarding the relevance of text messages included within the bundle.

Ms Coulson also made an application, on behalf of the TRA, to admit the signed witness statement of Witness A. This application was not opposed by the teachers.

The panel heard and accepted legal advice. The panel determined that a number of documents within the late evidence bundle submitted by the teachers were clearly relevant (for example, the teachers' witness statements) and that other documents may be relevant to the issues it had to determine. As a whole, the panel found that it was in the interests of a fair hearing for the bundle to be admitted.

The panel considered that the signed statement of Witness A was relevant and in the interests of a fair hearing to be admitted. The panel accepted both applications to admit the documents.

During the course of the proceedings, further applications were made to submit additional documents.

Mr Harding made an application on behalf of the teachers to admit Individual D's annotations on the evidence reference table that Ms Coulson had prepared. This application was not opposed. The panel heard and accepted the legal advice. The panel found that the document was relevant and it was in the interests of a fair hearing to be added. The application as allowed.

A further application was then made by Mr Harding to admit a diagram of the class room layout, which had been drawn by Miss Kelly. The application was not opposed by Ms



Coulson. The panel heard and accepted the legal advice. The panel found that the document was relevant and it was in the interests of a fair hearing to be added. The application as allowed.

A further application was made by Ms Coulson for the National Curriculum word list for Year 5 and Year 6, and the novel, 'Holes', by Louis Sachar, to be admitted. This was not opposed by the teachers. The panel heard and accepted the legal advice. The panel found that the document was relevant and it was in the interests of a fair hearing to be added. The application was allowed.

## 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 14 to 17

Section 2: Notice of proceedings and response – pages 19 to 33

Section 3: Teaching Regulation Agency witness statements – pages 34 to 142

Section 4: Teaching Regulation Agency documents – pages 144 to 2350

Section 5: Individual D's response to the NOP – pages 2351 to 2353

Section 6: Miss Kelly's response to the NOP – page 2354 to 2356

In addition, the panel agreed to accept the following:

- Additional evidence bundle (submitted by the teachers), pages 1 to 82
- Signed statement of Witness A (labelled pages 40a to 40f of the main bundle)
- Individual D's annotations on the evidence reference table (1 page standalone document)
- Pupil Seating plan for class 7, prepared by Miss Kelly (1 page standalone document)
- National Curriculum word list for Year 5 and Year 6 (1 page standalone document)
- The novel, 'Holes', by Louis Sachar

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing and the additional documents that the panel decided to admit.

## Witnesses

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

- Witness A, [REDACTED] (by video link);
- Witness B, [REDACTED] (by video link);
- Witness C, [REDACTED] (by video link);
- Pupil H, a former pupil of the School (by video link).

The panel also heard oral evidence from:

- Individual D;
- Miss Emma Kelly.

## Decision and reasons

The panel carefully considered this case and reached decisions in relation to each teacher.

These allegations arise out of events that took place at Colburn Community Primary School (the School).

Miss Kelly commenced her new qualified teacher (NQT) year at the School in September 2016 and initially taught the Year 4 class. In September 2017, Miss Kelly began teaching Year 6.

Individual D had been employed at the School from 1 September 2010 as the [REDACTED].

On 18 May 2018, the School was informed that it had been selected for external moderation of the Key Stage 2 English writing.

On 15 June 2018, during a Governor Cross Curricular visit Witness A, ([REDACTED]) identified concerns regarding the pupils' English books from the Year 6 class. An investigation was subsequently carried out by two local authority officers on behalf of the Standards and Testing Agency (STA).

On 16 July 2018, the STA informed the School that the integrity of the writing assessment judgments were not secure. It decided to annul the outcomes for the Key Stage 2 English writing for all pupils within the cohort.

On 26 October 2018, following the consideration of further evidence the STA advised that certain pupils would not receive any results for the Key Stage 2 tests and would not receive an overall standard for English grammar, punctuation and spelling, English reading or mathematics.

Miss Kelly and Individual D both resigned from the School on 31 December 2018.

The panel accepted the legal advice provided.

## **Findings of fact**

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

**It was alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as a teacher during the academic year 2017/18:**

**1. In respect of the Key Stage 2 assessment, you caused and/or permitted and/or failed to prevent maladministration including by;**

**a. In relation to writing assessments;**

**i. passing off guided work as independent pupil work;**

**ii. excessively scaffolding pupil work;**

The panel was provided with an extensive bundle, which included evidence relating to a number of pupils. At the start of these proceedings, the presenting officer provided the panel with a reference table, highlighting the evidence that the TRA relied on in support of the allegation. The panel carefully considered each example in the table and noted that there were examples of work being excessively scaffolding for several pupils. However, the panel found that there was insufficient evidence in many of those examples to show that the work had then been assessed as independent work.

The panel identified one date on which Miss Kelly passed off guided work as independent. This work was then put forward to be considered as independent writing for the purposes of teacher assessment.

### 21 May 2018

The panel was referred to documentation that related to the work begun on 21 May 2018 of eight different pupils. This included copies of the TAFs, the English workbooks and/or jotters, the National Curriculum word list for Year 5 and Year 6, the novel on which the assignment was based, Individual D's record of intervention and the investigation notes

conducted by [REDACTED]. The panel carefully considered what evidence it had in relation to each of these pupils.

Miss Kelly told the panel that the pupils had been reading a novel called "Holes", written by Louis Sachar. The pupils' task was to select a character and then write a letter home to the character's mother. Miss Kelly explained that the pupils had discussions between themselves when completing this work. She stated that the work could still be assessed as independent, and that was in line with the assessment guidance.

The panel was provided with an email dated 23 May 2018 sent from Individual D to Miss Kelly. The email contained a paragraph related to the pupils' task discussing the counsellors at Camp Green Lake. The panel was also provided with a copy of a letter that Stanley, the main character in the novel, had written to his "mum". This included the paragraph that had featured in the email dated 23 May 2018. Miss Kelly confirmed in her oral evidence that she had put the letter together as a way of celebrating the work that the pupils had done.

The panel found that there were significant and striking similarities between each of the pupils' work and with the letter produced by Miss Kelly. This included the order and topic of the paragraphs, the structure of the paragraphs, the phrasing, punctuation and vocabulary.

An example relating to paragraphing is each pupils' letter had five paragraphs in the same order all relating to the same topics. This mirrors the letter prepared by Miss Kelly.

Two examples relating to phrasing are first: Pupil C's first paragraph started *"I'm writing to you to confess: Camp Green Lake is dreadful."* Pupil F's first paragraph starts *"I am writing to tell you the truth about Camp Green Lake: it hasn't got a sky-blue, clear lake."* In the letter prepared by Miss Kelly, the first paragraph started *"I am writing to tell you the truth: Camp Green Lake is horrific."* Second example: Pupil C begins her second paragraph with *"Firstly, all of my mischievous camp mates are all dangerous criminals."* Pupil F's second paragraph starts *"Firstly, I need to tell you about the other boys at camp (dangerous criminals)..."*. The letter prepared by Miss Kelly's second paragraph begins *"Firstly, I need to tell you about my campmates - all dangerous criminals – that I..."*.

An example relating to punctuation is Pupil K wrote *"I can't keep my secret from you anymore: I need your help!"*. Pupil Q wrote *"I can't keep this from you anymore: I need your help!"*. In the letter prepared by Miss Kelly, it stated *"I have now reached the point where I can't keep this from you any longer: I need your help!"*.

The panel was also struck by the similarity in the use of parenthesis. For example, Pupil O stated *"... (I took the blame for something they did)."* Pupil K stated *"... (I took the blame for something they did)".* Pupil I said *"...(I took the blame for someone's mistake)".* In the letter prepared by Miss Kelly it included *("I took the blame for something they did)".*

An example relating to vocabulary is Pupil S wrote *"I do fear in the harsh environment I will die. I have: no water, no food or no equipment to protect myself. I'm desperate for help and I need support immediately. All of my muscles are throbbing and my stomach aches so I don't want to think about it. What can you recommend?"*

Pupil R wrote *"...had the same idea as me - to fear that in this harsh environment, I might die from dehydration. equipment, no food or water – nothing. My stomach and muscles hurt, the temperature frequently rising each day. What do you recommend?"*

In the letter prepared by Miss Kelly it stated *"Having weighed up my options, I felt the only course of actions was to try and escape; I fear, in the harsh environment, I may die of dehydration. I have nothing with me: no equipment – nothing. I am desperate, and conscious that I need support immediately. Every muscle aches and my stomach is empty. What do you recommend?"*

The panel noted that there were also similarities between the words in the final paragraph of that letter and the list of Year 5 and Year 6 word list from the National Curriculum. For example, "environment", "dehydration", "equipment", "desperate", "conscious", "immediately", "muscle" and "stomach".

The class room had six tables on which pupils were working. Two of the above examples were from table one, three from table two, one from table three and one from table six.

On balance, the panel found that the pupils were provided with support from Miss Kelly, which amounted to excessive scaffolding. The panel also found that the work was then passed off as independent for the purposes of assessment.

In light of the above, the panel found that Miss Kelly had caused maladministration in that she excessively scaffolded pupil's work and then passed off such guided work as independent for the purpose of assessment. Allegation 1 is found proved.

## **2. Your conduct as may be found proven at Allegation 1 above lacked integrity and/or dishonesty in that you were seeking to unfairly improve assessment outcomes for one or more pupils.**

Having found allegation 1 proved, the panel went on to consider if that proven conduct lacked integrity and/or was dishonest.

In considering the issue of dishonesty, the panel first sought to ascertain Miss Kelly's state of knowledge or belief as to the facts. Miss Kelly had told the panel that the '2018 teacher assessment guidance: key stage 2' document enabled teachers to use their professional judgment when assessing pupil's work. In particular, she stated that there was flexibility that allowed a teacher discretion to identify elements of a pupil's work that met the "I can" statements.

The panel did not find that this view was genuinely held by Miss Kelly. The panel noted that Miss Kelly had attended training in relation to the guidance and would have been familiar with it. The panel were of the view that Miss Kelly had knowingly not followed the STA guidance. Particularly, the guidance states "*writing is not independent if it has been*

- *Modelled or heavily scaffolded*
- *Copied or paraphrased*

Furthermore, although it was stated that Miss Kelly had no motive to act as alleged, the panel disagreed. In particular, the panel considered that Miss Kelly could have personally gained from her conduct, as improved assessment outcomes had the potential for financial gain, enhanced reputation and career progression. The panel found that it was possible this played a part in the deliberate failure to adhere to the guidance.

The panel then went on to consider whether Miss Kelly's conduct was dishonest by applying the objective standard of ordinary decent people. In doing so, the panel was mindful that there is no requirement that Miss Kelly must appreciate that what she has done by those standards is dishonest.

The panel found that ordinary decent people would consider Miss Kelly's actions dishonest because there is an expectation that teachers do not tamper with pupil's assessment outcomes and that such interference would amount to dishonesty. The panel did acknowledge that Miss Kelly was of previous good character. However, the panel found that Miss Kelly had knowingly caused the maladministration of writing assessments to unfairly improve the assessment outcomes for several pupils. The panel found this was dishonest.

The panel went on to consider if Miss Kelly's actions amounted to a lack of integrity. The panel accepted that in these circumstances, having found that she did behave dishonestly, it is hard to conceive that this does not amount to a lack of integrity. The panel was mindful that Miss Kelly held a trusted role as a teacher. The panel found that Miss Kelly's actions fell below the ethical standards of the teaching profession, and amounted to a lack of integrity.

In light of the above, allegation 2 is found proved.

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

Having found allegations 1 and 2 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 Miss Kelly, in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Miss Kelly 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Miss Kelly amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Miss Kelly's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice.

The panel found that the offence of serious dishonesty was relevant.

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

As to conduct that may bring the profession into disrepute, 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 findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on the individual’s status as a teacher, potentially damaging the public perception.

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

## **Panel’s recommendation to the Secretary of State**

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

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be 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 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 maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and striking the right balance between the rights of the teacher and the public interest.

The panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Miss Kelly were 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 Miss Kelly 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 Miss Kelly.

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 Miss Kelly. 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;
- abuse of position or trust (particularly involving pupils);
- violation of the rights of pupils;
- dishonesty or a lack of integrity;
- deliberate action in serious contravention of requirements for the conduct of an examination or assessment leading to an externally awarded qualification or



national assessment (or deliberate collusion in or deliberate concealment of such action) particularly where the action had, or realistically had the potential to have, a significant impact on the outcome of the examination assessment.

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 Miss Kelly's actions were not deliberate. There was no evidence to suggest that Miss Kelly was acting under duress.

Miss Kelly did have a previous good history. The panel was not provided with any character references or references from colleagues that could attest to Miss Kelly's abilities as a teacher. However, the panel did identify that in Witness C's oral evidence, she said that Miss Kelly was "*keen*" in her newly qualified teacher role. This was confirmed by Witness B who stated in her oral evidence that Miss Kelly had a "*successful year*" as a newly qualified teacher. The panel did consider that Miss Kelly was passionate about teaching and cared about the pupils.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Miss Kelly of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Miss Kelly. In considering the list of factors above, the panel were of the view that Miss Kelly's dishonesty was a significant factor in forming that opinion. The panel considered the fact that the proven conduct had violated the rights of a number of pupils was also a compelling factor. For example, a pupil stated in the investigation interview, "*When I would do work by myself with my own ideas Miss Kelly would sometimes tell me to stop and look at the example of the board and use that.*" and "*I got annoyed when Miss Kelly told me to stop what I was doing and use the board as I had my own ideas.*"

Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend a review period of the order. The panel was mindful that the Advice states

that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. The panel found that none of these behaviours applied in this case. However, the behaviour did include serious dishonesty, which indicated that a longer period before a review is considered appropriate. The panel found that Miss Kelly was responsible for dishonesty by causing the maladministration of writing assessments for Key Stage 2 pupils.

It was submitted on behalf of Miss Kelly that she did not accept the panel's findings. The panel was not provided with evidence of insight or remorse. Therefore, the panel was not reassured that the conduct found proven would not be repeated.

The panel decided that the findings indicated a situation in which a longer review period would be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a review period, after 4 years.

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

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

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found all of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel has made a recommendation to the Secretary of State that Miss Emma Kelly should be the subject of a prohibition order, with a review period of four years.

In particular, the panel has found that Miss Kelly 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach;

- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel finds that the conduct of Miss Kelly fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include findings of maladministration 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 Miss Kelly, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children/safeguard pupils. The panel has observed, "The panel considered the fact that the proven conduct had violated the rights of a number 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, "It was submitted on behalf of Miss Kelly that she did not accept the panel's findings. The panel was not provided with evidence of insight or remorse. Therefore, the panel was not reassured that the conduct found proven would not be repeated." In my judgement, the lack of insight means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils'. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "The panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Miss Kelly were not treated with the utmost seriousness when regulating the conduct of the profession." The panel also observed, "Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Miss Kelly of prohibition." 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 Miss Kelly herself. A prohibition order would prevent Miss Kelly from teaching and clearly deprive the public of her contribution to the profession for the period that it is in force.

I have given less weight in my consideration of sanction therefore, to the contribution that Miss Kelly has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession. For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended a four year review period.

I have considered the panel’s comments, “The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. The panel found that none of these behaviours applied in this case. However, the behaviour did include serious dishonesty, which indicated that a longer period before a review is considered appropriate. The panel found that Miss Kelly was responsible for dishonesty by causing the maladministration of writing assessments for Key Stage 2 pupils.”

I have considered whether another review period duration, including not allowing a review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, factors mean that allowing a four year review period is sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the dishonesty found and the lack of either insight or remorse.

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

**This means that Miss Emma Kelly is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or**

**children's home in England.** She may apply for the prohibition order to be set aside, but not until 13 December 2026, four years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Miss Kelly remains prohibited from teaching indefinitely.

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

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

A handwritten signature in black ink, appearing to read "John Knowles". The signature is written in a cursive style with a large initial 'J'.

**Decision maker: John Knowles**

**Date: 8 December 2022**

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