



Teaching
Regulation
Agency

Mr Matthew Kelly: Professional conduct panel outcome

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

November 2023

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

Teacher:	Mr Matthew Kelly
Teacher ref number:	1176540
Teacher date of birth:	24 October 1975
TRA reference:	19139
Date of determination:	29 November 2023
Former employer:	Beckfoot School, Bingley

Introduction

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 27 to 29 November 2023 by way of a virtual hearing, to consider the case of Mr Matthew Kelly.

The panel members were Mr Richard Young (lay panellist – in the chair), Ms Penny Griffith (lay panellist) and Ms Victoria Jackson (teacher panellist).

The legal adviser to the panel was Ms Abigail Reynolds of Birketts LLP solicitors.

The presenting officer for the TRA was Ms Fallon Alexis of QEB Hollis Whiteman, instructed by Kingsley Napley LLP solicitors.

Mr Matthew Kelly was not present and was not represented.

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 14 September 2023 (as amended by an application from the presenting officer which is set out below). The amended allegations are as follows:

It was alleged that Mr Kelly was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst a teacher at Beckfoot School, Bingley:

1. Between September 2019 and 25 January 2020, he engaged in 560 email exchanges with Pupil A of a personal nature including:
 - a. 139 exchanges at the weekends or during holidays;
 - b. 170 exchanges which took place after 9pm at night;
 - c. An email sent on 16 January 2020 at 20:21 headed "Seems I can't even turn the radio on, without being reminded of you..." containing a screen shot of your iPod/digital radio which says, "Now on Heart 80s: Chicago with 'Hard Habit to Break'"; and
 - d. An email sent on 17 January 2020 at 19:46 in which he shared a definition of Pupil A's name which stated "You would want to keep [REDACTED] safe and always make [REDACTED] smile just to see that smile that will make your whole day. You would love [REDACTED] more than anything in the universe and want to spend forever with her."
2. On the night of 24/25 January 2020, he sent inappropriate emails to Pupil A for a period of three hours unrelated to school matters.
3. On one or more occasions between September 2019 and January 2020, he held inappropriate conversations with Pupil A including:
 - a. Discussing his personal life;
 - b. Discussing the consumption of alcohol; and
 - c. Discussing issues that he was having in relation to his marital relationship.
4. You failed to follow previous instructions, by not informing the school's Designated Safeguarding Lead regarding interactions with Pupil A.
5. On an unknown date in January 2020, he permitted Pupil A to retrieve a [REDACTED] item from his desk which [REDACTED] had previously given to him on an unknown date between November and December 2019.

6. On 30 September 2019, he sent a photograph of a lottery ticket and told Pupil A that he would share the winnings with her, or words to that effect.
7. On 6 February 2020, he carried out one or more Google searches in relation to Pupil A's Instagram and/or Facebook accounts which he knew or ought to have known was not appropriate.
8. Between 30 November 2017 and 17 March 2020, he downloaded one or more Category 6 images of children which were found on one of his devices when they were forensically examined by West Yorkshire Police on 23 July 2021.
9. His conduct, as set out in allegation 8 was sexually motivated.
10. His conduct, as set out in allegations 1, 2, 3, 5, 6 and 7 demonstrates elements of building an inappropriate relationship with Pupil A.

Mr Kelly admitted allegations 1(a), 1(b), 1(c), 1(d), 2 and 3(a) in a statement of agreed facts signed by him on 30 July 2021. In respect of allegations 1(a), 1(b), 1(c), 1(d), 2 and 3(a), Mr Kelly also admitted that his conduct amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute. Mr Kelly made no admission in respect of allegations 3(b), 3(c), 4, 5, 6, 7, 8, 9 and 10.

Preliminary applications

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 '2020 Procedures'). The panel understands that the earlier provisions contained within Teacher misconduct: Disciplinary procedures for the teaching profession April 2018 (the '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 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 2018 Procedures in this case.

Application to proceed in the absence of the teacher

Mr Kelly was not present at the hearing nor was he represented. The presenting officer made an application to proceed in the absence of Mr Kelly.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of *R v Jones [2003] 1 AC 1* (as considered and applied in subsequent cases, particularly *GMC v Adeogba*).

The panel was satisfied that the Notice of Proceedings had been sent to Mr Kelly in accordance with the 2018 Procedures.

The panel concluded that Mr Kelly's absence was voluntary and that he was aware that the matter would proceed in his absence.

The panel noted that Mr Kelly had not sought an adjournment to the hearing and the panel did not consider that an adjournment would procure his attendance at a hearing. There was no medical evidence before the panel that Mr Kelly was unfit to attend the hearing. The panel considered that it was in the public interest for the hearing to take place. It also considered the effect on the witnesses of any delay.

Having decided that it was appropriate to proceed, the panel agreed to seek to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mr Kelly was neither present nor represented.

Application to amend allegations

On day 2 of the hearing, the presenting officer made an application to amend the allegations as follows:

- To amend allegation 5 from *'On or around 17 December 2019, you permitted Pupil A to retrieve a [REDACTED] from your desk which you had previously removed from [REDACTED] on or around 27 November 2019'* to *'On an unknown date in January 2020, you permitted Pupil A to retrieve a [REDACTED] from your desk which [REDACTED] had previously given to you on an unknown date between November and December 2019'*;
- To amend allegation 8 from *'Between 30 November 2017 and 29 February 2020, you downloaded 12 Category 6 images of children which were found on Exhibit VP4 when it was forensically examined by West Yorkshire Police on 23 July 2021'* to *'Between 30 November 2017 and 17 March 2020, you downloaded one or more Category 6 images of children which were found on one of your devices when they were forensically examined by West Yorkshire Police on 23 July 2021'*
- To withdraw allegations 9 and 10; and
- To amend allegation 11 (which would become allegation 9) from *'Your conduct, as set out in allegation 8 and/or 9 and/or 10 was sexually motivated'* to *'Your conduct as set out in allegation 8 was sexually motivated'*.

The panel noted that teacher had not been informed of the proposed changes to the allegations.

The panel was advised that it had the power to amend allegations in accordance with paragraph 4.56 of the 2018 Procedures.

The panel considered that the proposed amendments would not change the nature and scope of the allegations and that the proposed amendments to allegations 5, 8 and 11 (now allegation 9) did not amount to a material change to the allegations. The panel considered that there was no doubt as to the TRA's case and that the teacher knew the case he had to answer. Further, the panel did not consider that the case would have been presented differently had the amendments been made at an earlier stage. The panel considered therefore that there would be no unfairness or prejudice to Mr Kelly in granting the presenting officer's application.

The legal adviser drew the panel's attention to the case of *Dr Bashir Ahmedsowida v General Medical Council [2021] EWHC 3466 (Admin), 2021 WL 06064095* which held that the lateness of amendments did not necessarily mean they were unjust, as acknowledged in the previous case of *Professional Standards Authority v Health and Care Professions Council and Doree [2017] EWCA Civ 319 at [56]*.

Accordingly, the panel granted the application and considered the amended allegations, which are set out above.

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 4 to 6
- Section 2: Notice of proceedings and response – pages 7 to 20
- Section 3: TRA witness statements – pages 21 to 33
- Section 4: TRA documents – pages 34 to 216
- Section 5: Teacher documents – pages 217 to 226

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

Witnesses

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

- Witness A, [REDACTED]

- Witness B, [REDACTED]
- Witness C, [REDACTED]

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 Kelly commenced employment as a teacher at Beckfoot School ('the School') in September 2013. He was later promoted to Assistant Faculty Lead.

Between September 2019 and January 2020, Mr Kelly exchanged emails with Pupil A.

On 27 January 2020, concerns were raised by two sixth form students in relation to Mr Kelly exchanging emails with Pupil A late on a Friday evening. Witness C was appointed to undertake an investigation.

On 7 February 2020, an investigatory interview was undertaken with Mr Kelly.

On 14 February 2020, the School made a referral to the TRA in respect of Mr Kelly.

On 29 February 2020, Mr Kelly resigned and ceased employment at the School.

On 17 March 2020, Mr Kelly was interviewed by the police.

On 19 August 2021, the TRA received information from West Yorkshire Police in respect of Mr Kelly relating to images found on Mr Kelly's devices and search terms used. The police advised that there were no illegal images found and therefore no criminal charges were being pursued.

Findings of fact

The findings of fact are as follows:

It was alleged that Mr Kelly was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst a teacher at Beckfoot School, Bingley:

- 1. Between September 2019 and 25 January 2020, he engaged in 560 email exchanges with Pupil A of a personal nature including:**
 - a. 139 exchanges at the weekends or during holidays;**
 - b. 170 exchanges which took place after 9pm at night;**

- c. An email sent on 16 January 2020 at 20:21 headed "Seems I can't even turn the radio on, without being reminded of you..." containing a screen shot of your iPod/ digital radio which says, "Now on Heart 80s: Chicago with 'Hard Habit to Break"; and
- d. An email sent on 17 January 2020 at 19:46 in which he shared a definition of Pupil A's name which stated "You would want to keep [REDACTED] safe and always make [REDACTED] smile just to see that smile that will make your whole day. You would love her more than anything in the universe and want to spend forever with [REDACTED] ."

2. On the night of 24/25 January 2020, he sent inappropriate emails to Pupil A for a period of three hours unrelated to school matters.

The panel considered the witness statement and oral evidence of Witness C, who was appointed by the School to investigate Mr Kelly's conduct in respect of Pupil A.

Witness C stated that, as part of the investigation, she was furnished with an excel document setting out all emails exchanged between Mr Kelly and Pupil A which allowed her to filter the evidence and group emails together to work out a timeline of the exchanges between Mr Kelly and Pupil A. She confirmed the email addresses were that of Mr Kelly and Pupil A.

Witness C confirmed that there were 560 emails exchanged between Mr Kelly and Pupil A between September 2019 and January 2020. She concluded that 139 of these email exchanges took place at a weekend or during holiday periods and 170 emails took place after 9pm.

The excel spreadsheet referred to by Witness C noted that, of the approximately 560 emails, only 22 of the emails were purely academic in nature, with the remaining emails categorised as either entirely personal or of both an academic and personal nature.

Witness C referred to an email dated 16 January 2020, a copy of which was contained in the bundle of documents before the panel, which stated, "*seems I can't even turn the radio on, without being reminded of you...*" with a screenshot attached to the email stating "*Now on Heart 80s; Chicago with Hard Habit to Break*". Witness C submitted that the email did not fall within the remit of academic discussion.

Witness C further referred to an email Mr Kelly sent to Pupil A dated 17 January 2020, a copy of which included in the bundle of documents before the panel. Witness C confirmed she received and reviewed this email, and that the email contained a picture with a definition of Pupil A's name attached stating "*you would want to keep [REDACTED] safe and always make [REDACTED] smile just to see that smile that will make your whole day. You would love [REDACTED] more than anything in the universe and want to spend forever with her.*"

Witness C further submitted that she had reviewed email correspondence between Mr Kelly and Pupil A between 24 and 25 January 2020. It was Ms Dowson's evidence that the exchange took place from the evening of 24 January 2020 into the early hours of 25 January 2020 for a period of around three hours.

The panel was furnished with a copy of this exchange and noted that the exchange started with a "wink" emoji from Mr Kelly, and that, throughout the exchange, Mr Kelly discussed the number of 'pints' he had consumed, indicating that this was "*just a bit more than 5*". The panel concluded that Mr Kelly was under the influence of alcohol during these exchanges. had reviewed email correspondence between Mr Kelly and Pupil A between 24 and 25 January 2020. It was Witness C's evidence that the exchange took place from the evening of 24 January 2020 into the early hours of 25 January 2020 for a period of around three hours.

The panel noted that, in the statement of agreed facts dated 30 July 2021, Mr Kelly admitted allegations 1(a), 1(b), 1(c), 1(d) and 2.

The panel also noted Mr Kelly's written representations in which he explained that he was asked to support Pupil A after attending a meeting where he was enlightened as to Pupil A's [REDACTED] and personal circumstances. Mr Kelly submitted that he was nervous to take on the role and was described as looking like a "*rabbit caught in the headlights*".

Mr Kelly submitted that no real further guidance was given to him other than to check in on Pupil A regularly and to try and [REDACTED]. Mr Kelly explained that the emails he sent to Pupil A were to show [REDACTED] was not alone and that the School did care, as well as to "*distract*" [REDACTED]. He stated that the songs were in relation to him not wanting [REDACTED] to [REDACTED].

Mr Kelly submitted that he would often have chats with Pupil A, and that there were times he tried to either [REDACTED] or offering [REDACTED] advice as he saw fit. It was Mr Kelly's submission that many of these discussions, which took place in person, "*shed light*" on the email exchanges.

Mr Kelly submitted that he often left school on a Friday concerned about Pupil A's welfare. He submitted that, on one occasion, he saw some of Pupil A's friends, and this led to the "*drunken*" email thread. It was Mr Kelly's position that he then realised things had progressed too far and he subsequently apologised to Pupil A when he saw [REDACTED] on the following Monday, explaining that it would not happen again.

However, whilst the panel acknowledged that there may be circumstances in which out of hours contact with a pupil may be required, it did not consider that any of the exchanges referred to within the allegations constituted a situation in which contact was required. The panel considered that the nature, content and timing of the exchanges went beyond

appropriate contact between a pupil and a teacher. The panel was further satisfied that the majority of the emails exchanged were of a personal nature.

The panel therefore found allegations 1(a) 1(b), 1(c) and 1(d) and 2 proven.

3. On one or more occasions between September 2019 and January 2020, he held inappropriate conversations with Pupil A including:

a. Discussing his personal life;

b. Discussing the consumption of alcohol; and

c. Discussing issues that he was having in relation to his marital relationship.

The panel noted that, in the statement of agreed facts dated 30 July 2021, Mr Kelly admitted allegation 3(a).

In respect of the allegation 3(a) and 3(c), Mr Kelly explained in his written submissions that he discussed his personal circumstances as [REDACTED]. He stated that in hindsight it was inappropriate but that he was explaining to Pupil A how [REDACTED] should not keep looking to excuse those actions of others which are inappropriate, and to take the necessary guidance given by [REDACTED] support network. In this regard, the panel considered that the disclosure of personal information and marital difficulties in these circumstances was inappropriate and blurred the boundaries of the professional relationship between Mr Kelly and Pupil A.

In respect of allegation 3(b), Mr Kelly submitted that Pupil A was aware that he had [REDACTED]. He said [REDACTED] was also aware that he occasionally went out for a drink, as some of [REDACTED] fellow students were 18 and went to local establishments. Mr Kelly stated that it was difficult to ignore discussions around alcohol, and that, on one occasion, a discussion surrounding alcohol formed part of a tutor time PSHCE (preparing for university) presentation, during which Mr Kelly mentioned eating a kebab to avoid hangovers to the whole class. In this regard, the panel noted that the discussions relating to alcohol and kebabs with Pupil A had been by way of out of hours email exchanges, which was inappropriate given Mr Kelly's role as Pupil A's teacher.

The panel found allegation 3 proven.

4. You failed to follow previous instructions, by not informing the school's Designated Safeguarding Lead regarding interactions with Pupil A.

In respect of allegation 4, Mr Kelly submitted that, whilst he was supporting Pupil A, a meeting was held without him or Pupil A present. Mr Kelly submitted that they both approached Individual A, [REDACTED] for Pupil A and reported concerns about the school's support. Mr Kelly reported other occasions where he went to see Ms Marklew

but was told on one occasion “*I haven’t got time for [REDACTED] [Pupil A] today*”. Mr Kelly submitted that he never felt during his time supporting Pupil A that he was provided with any level of support or guidance from the sixth form team at the School.

The panel noted the witness statement and oral evidence of Witness A, the School’s Designated Safeguarding Lead at the material time, who explained that there were two risk assessments linked to this matter. He stated the first was a risk assessment the School put in place due to [REDACTED]. Mr Kelly was referenced in this risk assessment as an academic support to Pupil A.

Secondly, Witness A stated there was a risk assessment in respect of Mr Kelly, who had raised concerns that he was struggling with supporting Pupil A due to [REDACTED].

Witness A submitted that Mr Kelly was asked whether he felt comfortable in continuing to support Pupil A, to which he agreed he would continue. Witness A stated that he had a further conversation with Mr Kelly where he checked in on him regarding his welfare. He stated that during this conversation on 11 December 2019, he asked Mr Kelly whether his support of Pupil A was purely academic, to which he responded it was.

Witness A stated that he felt it was clear from the email correspondence reviewed by the School that Mr Kelly was worried about Pupil A’s [REDACTED]. He explained that he would expect that if a member of staff was having a conversation [REDACTED], that they would bring it to his attention. Witness A stated that Mr Kelly should have logged on the [REDACTED] and flagged to a member of the safeguarding team if he had concerns about Pupil A.

Witness A stated that, twice a year, he gives a presentation about safeguarding at the School and that during these presentations he informed all teachers to bring any concerns or worries relating to a student to his attention. He confirmed that Mr Kelly did not inform him of any of the interactions he had with Pupil A which were subsequently uncovered by the investigation. The panel was satisfied that this amounted to a breach of a previous instruction to report safeguarding concerns.

In his evidence, Witness A stated that one of the issues with the greatest concern was that Pupil A gave Mr Kelly a [REDACTED], which Mr Kelly kept in his drawer and Pupil A then subsequently retrieved. Witness A submitted that this incident is an example of something that Mr Kelly should have immediately alerted a member of the safeguarding team about, rather than keeping the [REDACTED] and allowing Pupil A to retrieve it at a later date.

Witness A submitted that in his opinion, Mr Kelly was doing his best to look after Pupil A, but it was not carried out in the way teachers are trained to do.

Whilst the panel accepted that there was limited evidence as to the guidance given to Mr Kelly in respect of Pupil A, the panel considered that Mr Kelly received regular

safeguarding training and was expressly instructed during this training that all teachers must bring any concerns or worries relating to a student to the attention of Witness A. The panel further considered that if Mr Kelly was sufficiently concerned about Pupil A's [REDACTED] so as to require extensive out of hours contact, Mr Kelly should have reported these concerns, yet he failed to do so on each and every occasion.

The panel found allegation 4 proven.

5. On or around 17 December 2019, he permitted Pupil A to retrieve a [REDACTED] from his desk which he had previously removed from [REDACTED] on or around 27 November 2019.

The panel considered the written statement and oral evidence of Witness B, who confirmed that Pupil A disclosed to him that [REDACTED] came into School with a [REDACTED] and that, sometime between the end of November 2019 and Christmas, [REDACTED] gave it to Mr Kelly.

He stated that Pupil A disclosed [REDACTED] was concerned about [REDACTED]. He stated that Pupil A informed him that [REDACTED] gave Mr Kelly [REDACTED], and he put it in a drawer, as [REDACTED] told him [REDACTED]. Witness B recalled [REDACTED].

Witness B explained that Pupil A further disclosed that one day after the Christmas holidays, [REDACTED] went to see Mr Kelly and described [REDACTED] as being [REDACTED] and asked Mr Kelly for the [REDACTED] back. Witness B stated Pupil A reported to him that Mr Kelly told [REDACTED]. Pupil A further disclosed that Mr Kelly informed [REDACTED] that he could not give the [REDACTED] back to her, but he was going to use the printer, so told [REDACTED] that "*she knew where it was if [REDACTED] wanted to take it*". Pupil A went to the drawer and took the [REDACTED] when Mr Kelly went to use the printer.

Mr Kelly explained in his written statement that Pupil A [REDACTED]. He stated that he asked [REDACTED]. Mr Kelly submitted that he was surprised at this but as he was not issued any guidance on dealing with such matters, he assumed those who had knew what they were talking about.

Mr Kelly stated that he was curious as to how [REDACTED] obtained it, but Pupil A said that as [REDACTED] was a [REDACTED].

Mr Kelly stated that at the end of a particular school day as he was packing up to leave, Pupil A hurriedly came to him and said [REDACTED] had been thinking about giving up the [REDACTED] based on their conversations. He explained that he asked Pupil A if [REDACTED] was ready to do so and placed the [REDACTED] in the top drawer and left to pick [REDACTED] from school.

Mr Kelly stated that in the weeks following Pupil A was showing signs of regretting [REDACTED] decision and so he was encouraging her, and for a period of time [REDACTED] managed without the [REDACTED].

Mr Kelly explained that one morning he was at the printer, and Pupil A asked for the [REDACTED] back, to which he informed [REDACTED] he could not give it back and explained [REDACTED]. Knowing that Pupil A had access to other things in the School and that [REDACTED] had been instructed [REDACTED], Mr Kelly stated that he asked Pupil A what actions [REDACTED] would take, to which [REDACTED] told him [REDACTED] would [REDACTED]. Mr Kelly stated that he urged [REDACTED] to reconsider but said his room was open and it was [REDACTED] decision to make, he continued his printing and did not see [REDACTED].

Having considered the evidence and Mr Kelly's own representations, the panel found allegation 5 proven.

6. On 30 September 2019, he sent a photograph of a lottery ticket and told Pupil A that he would share the winnings with her, or words to that effect.

In her evidence, Witness C confirmed that she had received and reviewed an email exchange in which Mr Kelly attached a photograph of what appeared to be a lottery ticket, and which took place on 30 September 2019. A copy of the email exchange and attached photograph was exhibited to the statement of Witness C.

The panel reviewed the email exchange and that the email stated "OK. *If this wins, we're sharing it!*".

The panel accepted Witness C's evidence that a photograph of the lottery ticket was attached to the email dated 30 September 2019 as sent by Mr Kelly and therefore found allegation 6 proven.

7. On 6 February 2020, he carried out one or more Google searches in relation to Pupil A's Instagram and/or Facebook accounts which he knew or ought to have known was not appropriate.

The panel considered the forensic report prepared by West Yorkshire Police dated 23 July 2021 which identified that, on 6 February 2020, there were over 30 Google searches in respect of Pupil A between approximately 1.36pm and 3.44pm, including searches of the phrases '[Pupil A] face' and '[Pupil A] Instagram'. The panel was satisfied that the search of '[Pupil A] face' related to a search for Pupil A's Facebook account, and that the search of '[Pupil A] Instagram' indicated a search for Pupil A's Instagram account.

The panel noted that this took place after the School's investigation into Mr Kelly's correspondence with Pupil A had commenced and at a time that there was no requirement for Mr Kelly to be in contact with Pupil A. The panel was concerned at the

number of searches undertaken and the fact that the searches were undertaken after the School's investigation had commenced. The panel considered that Mr Kelly would have known, or ought to have known, that such searches were not appropriate. Indeed, in the panel's view the searches were inappropriate.

The panel therefore found allegation 7 proven.

8. Between 30 November 2017 and 17 March 2020, he downloaded one or more Category 6 images of children which were found on one of his devices when they were forensically examined by West Yorkshire Police on 23 July 2021.

The panel considered the forensic report prepared by West Yorkshire Police, which stated that a number of Category 6 images had been identified following a review of hard drives from devices belonging to Mr Kelly. The report defined these images as images which, whilst not illegal, could indicate an interest in the sexual abuse of children, or be borderline on a decision regarding subjects being of legal age. It was later confirmed by Individual B in an email dated 29 October 2021 that three of the images were of [REDACTED] and a further three images were of females performing sex acts where the females appeared to be of pre-teen age or did not appear to have hit pubescent stage.

On examination of the evidence, and in particular noting that during a police interview Mr Kelly had confirmed that no other person had access to the examined devices, the panel was satisfied, on the balance of probabilities, that the images had been downloaded by Mr Kelly.

The panel noted the stem of the allegations stated that the conduct took place while Mr Kelly was employed as a teacher at the School, meaning on or before Mr Kelly's resignation on 29 February 2020. The conduct was alleged to have taken place between 30 November 2017 and 17 March 2020. Given that the period between 29 February 2020 and 17 March 2020 was a very limited period within an extensive timeframe, the panel considered that, on the balance of probabilities, it was more likely than not that these images were downloaded during the period before 29 February 2020 in which Mr Kelly was employed by the School.

The panel found allegation 8 proven.

9. His conduct, as set out in allegation 8 was sexually motivated.

The panel's attention was drawn to section 78 of the Sexual Offences Act 2003 and to the cases of *Sait v The General Medical Council [2018]*, *Basson v General Medical Council [2018]* and *The General Medical Council v Haris [2020] EWHC 2518*.

The panel considered whether the conduct was sexually motivated. It noted guidance from *Basson* that: "A sexual motive means that the conduct was done either in pursuit of

sexual gratification or in pursuit of a sexual relationship". It also noted *Haris*, in which the High Court indicated that the criteria in *Basson* sets the bar too high. Foster J stated:

"in the present case it is in my judgement clear beyond argument that the intimate touching of Patients A and B was sexual and that answering a question as to the motivation of the toucher, the only available answer, is yes, the motivation must have been sexual [...]"

"Of course, there are significant differences in the context and the analogy is not exact, but it does seem to me that pleading 'sexual motivation' is unhelpful. Similarly to look for 'sexual gratification' may be misleading or overcomplicating. It is irrelevant to the actions which the GMC would wish to proscribe whether or not the perpetrator was sexually 'gratified' at all – whether before, after or during the act in question. Gratification, as with 'pursuit of a relationship' are, pace the analysis of Mostyn J in Basson, not helpful in my judgement in promoting the public interests at stake here. These criteria set the bar too high and I respectfully disagree that they represent the law".

"Had the touching been pleaded as being 'sexual' and had the Tribunal asked themselves whether in all the circumstances, which includes the absence of accident [...] absence of consent [...] and any other clinical or other proper justification [...] then it seems to me impossible they would have reached any conclusion other than that the touching was sexual".

In light of the decision in *Haris*, the panel considered that the act of downloading images which depicted females performing sex acts was by its nature sexual and had clear sexual connotations. The panel considered that the act of downloading these images was, on the balance of probabilities, in pursuit of sexual gratification. The panel was of the view that there was no other innocent reason for Mr Kelly's conduct and it therefore concluded that his conduct as described at allegation 8, with the exception [REDACTED], was sexually motivated.

The panel found allegation 9 proven.

10. His conduct, as set out in allegations 1, 2, 3, 5, 6 and 7 demonstrates elements of building an inappropriate relationship with Pupil A.

The panel considered the pattern of behaviour demonstrated by allegations 1, 2, 3, 5, 6 and 7, and, in particular, the volume, content and timing of Mr Kelly's communications with Pupil A.

The panel noted that, in the relatively short period of time between September 2019 and 25 January 2020, there were 139 exchanges at the weekends or during holidays and 170 exchanges which took place after 9pm at night.

The panel also noted the content of the exchanges, including those set out in the allegations. The panel considered that a significant number of the emails were personal in nature.

The panel considered that a qualified teacher should have understood that the volume, content and timing of the communications, including both emails and conversations which took place 'face to face', was inappropriate, particularly given that Pupil A was a [REDACTED] pupil. The panel noted Mr Kelly's own submission that, whilst his intentions were to provide advice, support and guidance to an individual in need, upon reflection, Pupil A had potentially become over-reliant on him for support and that he had, albeit inadvertently, potentially isolated Pupil A from others.

The panel also accepted Witness A's evidence, that the School had adequate safeguarding measures in place, including annual safeguarding training and the use of [REDACTED]. The panel noted Witness A's evidence that he had 'checked in' with Mr Kelly on at least two occasions to ensure that he was able to continue to support Pupil A and to confirm that the support was to be purely professional.

In his evidence, Witness A explained that following the investigation into Mr Kelly's conduct, he considered that some of the correspondence between Mr Kelly and Pupil A did not need to be reported, but there were some emails that Mr Kelly should have informed him of. Witness A stated that as an example, the email dated 30 September 2019 where Mr Kelly discussed with Pupil A the purchase of a lottery ticket and sharing the money if it wins, was in his opinion professionally inappropriate.

Mr Kelly submitted that he was ignored in decisions made regarding any action plan from the School, that there was a lack of guidance given to him and that Pupil A felt the School did not give [REDACTED] adequate support. Mr Kelly submitted that he felt isolated in supporting Pupil A, and that for a sustained period of time he was the only individual who was listening to [REDACTED] and supporting her. Mr Kelly further felt that if he did not do everything in his power to support her, [REDACTED].

The panel considered that Mr Kelly would have been aware of when and how to raise safeguarding concerns and that Mr Kelly should have been aware that failing to report his concerns, instead of dealing with them by way of personal communications, was inappropriate in all of the circumstances. The panel further considered that Mr Kelly had sufficient opportunity to disclose the nature of his communications with Pupil A but failed to do so. The panel did not accept that Mr Kelly was isolated in his support of Pupil A.

Overall, the panel concluded that the contact Mr Kelly had engage in demonstrated elements of building an inappropriate relationship with Pupil A. Notwithstanding that Mr Kelly was tasked with providing some support to Pupil A, the panel was not remotely satisfied that the volume, timing and content of the communication with Pupil A amounted to appropriate academic or pastoral support.

The panel found allegation 10 proven.

The panel found allegations 1 to 10 proven.

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

Having found 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 Kelly, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr 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, 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 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 Kelly amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr 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 any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child was relevant given that the images recovered as set out at allegation 8 were described as showing pre-teen or pre-pubescent females performing sexual acts. The Advice indicates that where behaviours associated with such an offence exist, a panel is more likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel noted that allegations 7 and 8 took place outside the education setting. Mr Kelly's conduct in searching for Pupil A on Instagram and/or Facebook and downloading

one or more Category 6 images was relevant to his profession as a teacher. This conduct may have led to pupils being exposed to harm.

The panel further noted that in a statement of agreed facts dated 30 July 2021, Mr Kelly admitted that, in respect of allegations 1(a), 1(b), 1 (c), 1(d), 2 and 3(a), he was guilty of unacceptable professional conduct.

Accordingly, the panel was satisfied that Mr Kelly was guilty of unacceptable professional conduct.

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 further noted that in a statement of agreed facts dated 30 July 2021, Mr Kelly admitted that, in respect of allegations 1(a), 1(b), 1(c), 1(d), 2 and 3(a), he was guilty of conduct that may bring the profession into disrepute.

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

Having found the facts of allegations 1(a), 1(b), 1(c), 1(d), 2, 3(a), 3(b), 3(c), 4, 5, 6, 7, 8, 9, and 10 proved, the panel further found that Mr Kelly's conduct amounted to both unacceptable professional conduct and 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.

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 the light of the panel's findings against Mr Kelly, which involved engaging in email exchanges and inappropriate conversations with Pupil A, carrying out searches in relation to Pupil A's Instagram and/or Facebook accounts and downloading one or more Category 6 images, there was a strong public interest consideration in the safeguarding and wellbeing of pupils and the protection of other members of the public.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Kelly 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 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 Mr Kelly. The panel was mindful of the need to strike the right balance between the rights of the teacher and the public interest.

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 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving pupils);

- sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one-off incidents;
- failure to act on evidence that indicated a child's welfare may have been at risk e.g., failed to notify the designated safeguarding lead and/or make a referral to children's social care, the police or other relevant agencies when abuse, neglect and/or harmful cultural practices were identified;
- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE).

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.

The panel noted Mr Kelly's written submissions, where he expressed his deepest regret as to the position he put himself, and others around him, in. He stated that he would like to apologise to the School and the staff as he had no intention of bringing harm to anyone, and in fact, wanted quite the contrary.

Mr Kelly further submitted that he felt isolated in supporting Pupil A, and that for a sustained period of time he was the only individual who was listening to [REDACTED] and supporting her. However, the panel noted that, on one or more occasions, Mr Kelly's wellbeing in respect of this role was discussed with him, and that a risk assessment was in place in respect of the role. Mr Kelly stated that whilst he acknowledges he went beyond the realms of teaching to support Pupil A, his actions and emails were all intended for the sole purpose of support and guidance which he had been asked by others to do. He stated that he wanted to get [REDACTED].

Mr Kelly explained that he wished he had never been asked to mentor a student with [REDACTED], and that if he were to wind back the clock, he would have refused as he was not equipped to deal with it. He stated that he would never allow himself to be in the same position again and he has learnt an extremely harsh lesson but hopes that it can be seen his intentions were to provide support and guidance for the better of an individual in need.

Mr Kelly submitted that he had placed many years into becoming a "decent" teacher and he had recently become assistant faculty leader. He stated that he would be devastated if

he would be unable to teach again and felt that he had a positive impact on many students. Mr Kelly further submitted that his conduct would not be repeated.

Considering the evidence and notwithstanding Mr Kelly's submissions, the panel considered that there was no evidence that Mr Kelly's actions were not deliberate.

The panel further considered that, notwithstanding Mr Kelly's submission that limited guidance was given to him and that he was nervous to take on the role, there was no evidence to suggest that Mr Kelly was acting under extreme duress.

Although Mr Kelly appeared to have had an otherwise good record, there was no evidence that Mr Kelly has demonstrated exceptionally high standards in both personal and professional conduct and has contributed significantly to the education sector.

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 Mr 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 Mr Kelly. The inappropriate nature of the communications with Pupil A who was [REDACTED] pupil, the failure to follow appropriate instructions in respect of safeguarding and the downloading of one or more images which whilst not illegal, could indicate an interest in the sexual abuse of children, or be borderline on a decision regarding subjects of being of legal age, were significant factors in forming that opinion. 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. One of these behaviours includes any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child. The panel found that Mr Kelly was responsible for downloading one or more Category 6 images,

three of which were of females performing sex acts where the females appeared to be of pre-teen age or did not appear to have reached pubescent stage.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. The panel found none of these behaviours to be relevant.

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

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation 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 Mr Matthew Kelly should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr 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, 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 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 Kelly fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding of sexually motivated conduct in the downloading of images depicting females performing sex acts where the females appeared to be of pre-teen age or did not appear to have hit pubescent stage. The panel also found that Mr Kelly had engaged in contact with a pupil which demonstrated elements of building an inappropriate relationship.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In assessing 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 also 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 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 and safeguard pupils. The panel has observed, "Mr Kelly's conduct in searching for Pupil A on Instagram and/or Facebook and downloading one or more Category 6 images was relevant to his profession as a teacher. This conduct may have led to pupils being exposed to harm." 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 it set out as follows, "The panel noted Mr Kelly's written submissions, where he expressed his deepest regret as to the position he put himself, and others around him, in. He stated that he would like to apologise to the School and the staff as he had no intention of bringing harm to anyone, and in fact, wanted quite the contrary."

The panel went on to record that, "Mr Kelly explained that he wished he had never been asked to mentor a student with [REDACTED], and that if he were to wind back the clock, he would have refused as he was not equipped to deal with it. He stated that he would never allow himself to be in the same position again and he has learnt an extremely harsh lesson but hopes that it can be seen his intentions were to provide support and guidance for the better of an individual in need."

Furthermore, the panel noted that, "Mr Kelly submitted that he had placed many years into becoming a "*decent*" teacher and he had recently become assistant faculty leader. He stated that he would be devastated if he would be unable to teach again and felt that he had a positive impact on many students. Mr Kelly further submitted that his conduct would not be repeated."

In my judgement, while Mr Kelly has clearly demonstrated some remorse for some elements of his behaviour, there is no clear evidence that he has attained insight into his actions and particularly the impact that it has had on others. In my assessment, this lack of evidence of full remorse and 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 findings of misconduct are such a 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." I am particularly mindful of the finding that Mr Kelly's behaviour in downloading Category 6 images depicting females performing sex acts where the females appeared to be of pre-teen age or did not appear to have hit pubescent stage was sexually motivated and the potential negative impact that such a finding could have on the standing of the teaching 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 and conduct that may bring the profession into disrepute, 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 Kelly himself. The panel commented that "Although Mr Kelly appeared to have had an otherwise good record, there was no evidence that Mr Kelly has demonstrated exceptionally high standards in both personal and professional conduct and has contributed significantly to the education sector."

A prohibition order would prevent Mr Kelly 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 seriousness of the panel's findings, which included sexually motivated behaviour in downloading Category 6 images featuring females who appeared to be of pre-teen age or did not appear to have reached pubescent stage. I have also taken into account the absence of evidence that Mr Kelly has attained full remorse for, or insight into the impact of, his behaviour.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr 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 full 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 that no provision should be made for a review period.

In doing so, the panel has made reference to the Advice which indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. One of these behaviours includes any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child. The panel found that Mr Kelly was responsible for downloading one or more Category 6 images, three of which were of females performing sex acts where the females appeared to be of pre-teen age or did not appear to have reached pubescent stage.

I have considered whether 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 review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the seriousness of the panel's findings and a lack of evidence that Mr Kelly has attained full insight into the impact of his behaviour and the risk of repetition that this gives rise to.

I consider therefore that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mr Matthew Kelly is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Kelly shall not be entitled to apply for restoration of his eligibility to teach.

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

Mr 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 'M. Cavey', enclosed within a thin black rectangular border.

Decision maker: Marc Cavey

Date: 4 December 2023

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