



Teaching
Regulation
Agency

Mr Andrew Batterham: Professional conduct panel outcome

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

February 2023

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

Teacher:	Mr Andrew Batterham
Teacher ref number:	8661183
Teacher date of birth:	30 May 1965
TRA reference:	19322
Date of determination:	23 February 2023
Former employer:	The Leys School, Cambridge

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 20 to 23 of February 2023, to consider the case of Mr Batterham.

The panel members were Mr Clive Ruddle (lay panellist – in the chair), Ms Jo Palmer-Tweed (teacher panellist) and Mrs Michelle Chappell (teacher panellist).

The legal adviser to the panel was Mr Ben Schofield of Blake Morgan LLP.

The presenting officer for the TRA was Mr Andrew Cullen of Browne Jacobson LLP.

Mr Batterham was not present and was not represented.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 13 October 2022.

It was alleged that Mr Batterham was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that in that whilst employed as a Teacher at the Leys School:

1. He failed to maintain appropriate professional boundaries and/or developed an inappropriate relationship with;

a. Pupil A between 2000 and 2005, including by;

i. sending Pupil A text messages, including messages that were sexual in nature;

ii. meeting Pupil A alone in his car on one or more occasions;

iii. meeting Pupil A in a pub and/or nightclub and/or permitting Pupil A to drink alcohol on those occasions;

iv. going out for dinner with Pupil A and/or purchasing food and/or drink for Pupil A on this occasion;

v. kissing Pupil A on one or more occasions including at the school and/or a nightclub and/or in his car and/or at his home;

vi. whilst at a nightclub, asking Pupil A to place [REDACTED] hand down his trousers and/or permitting Pupil A to touch his penis;

vii. inviting Pupil A around to his property on one or more occasions and/or drinking alcohol with Pupil A whilst [REDACTED] was at his property on those occasions;

viii. engaging in sexual activity with Pupil A at his property on one or more occasions.

b. Pupil B between 2000 and 2005, including by;

i. sending Pupil B text messages, including text messages where he commented upon [REDACTED];

ii. meeting Pupil B alone in his car on one or more occasions;

iii. kissing Pupil B on one or more occasions;

- iv. asking Pupil B to have sexual intercourse with him;
- v. engaging in sexual activity with Pupil B.

2. His conduct at allegation 1a and/or 1 b was of a sexual nature and/or was sexually Motivated.

Mr Batterham did not provide a formal response to the Notice. In the absence of any clear admission or denial of the allegations by Mr Batterham, the TRA was put to their burden of proof, as in any other disputed case.

Preliminary applications

Application to admit further documents

The presenting officer made an application to admit further email correspondence between the TRA and Mr Batterham as part of his application to proceed in Mr Batterham's absence. The panel was satisfied that the emails would be directly relevant to the application and there would be no unfairness to Mr Batterham in admitting them, as they were documents that were previously sent to him, or created by him. The panel therefore admitted any further correspondence between Mr Batterham and the TRA into the bundle under their powers at paragraph 4.18 of the 2018 Disciplinary Procedures.

Application to proceed in the absence of Mr Batterham

The panel considered an application from the presenting officer to proceed in the absence of Mr Batterham.

The panel accepted the legal adviser's 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* [2016] EWCA Civ 162).

Firstly, the panel considered if the Notice of Proceedings ("the Notice") had been sent in accordance with Regulation 19 of The Teachers' Disciplinary (England) Regulations 2012 and Paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Procedures").

Regulation 19 read in full as follows:

Service of notices and orders

19.—(1) Anything required to be served on a teacher for the purposes of these Regulations may be—

(a) delivered to the teacher personally;

(b) sent to or left at the teacher's last known address; or

(c) where the teacher requests in writing that documents be served by such a method, sent by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication.

The Notice is an important procedural document which sets out the hearing date, venue, allegations and TRA witnesses, amongst other details. Owing to its importance, the panel was satisfied that it was a notice to which regulation 19 applies.

There was no suggestion that personal service was effected under regulation 19(1)(a).

There was a question as to whether service has been effected under regulation 19(1)(b) or 19(1)(c) owing to the postal and email correspondence between the TRA and Mr Batterham.

Service by post

There have been two potential address where service by post have been considered by the panel. Those addresses are:

[REDACTED].

On 19 October 2022, the Notice was initially sent by email only. (The panel will deal with email service in the below section.) A copy of the Notice was also included in the draft bundle sent by recorded post to the [REDACTED] address (and by email) on 19 December 2022. There had been no direct response from Mr Batterham to confirm he had received these items of correspondence.

The referral to the TRA from The Leys School is dated 17 May 2020 and provided the [REDACTED] address as Mr Batterham's address. As the 2018 Procedures would therefore apply, the 19 December 2022 copy of the Notice would give the required eight week notice period under Paragraph 4.11. As a starting point, this could amount to good service to the last known address under regulation 19(1)(b).

The current solicitors for the TRA took over conduct of this case from another firm. In the documentation provided to them from the former solicitors it included the TRA's 'case to answer' decision document, which gave Mr Batterham's address as the [REDACTED] address. It also included an undated word document which was titled 'new address' and gave the [REDACTED] address.

On 17 February 2021, the current solicitors wrote to Mr Batterham at the [REDACTED] address to advise that they had taken conduct of the case. On 19 February 2021, Mr Batterham sent an email to the TRA's solicitors to the email address that was included in the letter. In that email, it included the words "[t]hank you for letter".

The presenting officer was not able to confirm in light of the above information, why the draft bundle sent on 19 December 2022 was therefore sent to the [REDACTED] address and essentially conceded that the [REDACTED] address could not be said to be his last known address. No other notice has been sent by post to the [REDACTED] address.

Accordingly, the panel was not satisfied that service had been effected under regulation 19(1)(b).

Service by email

Copies of the Notice were also sent to Batterham by email on 19 October 2022 and 19 December 2022. Whilst there had been some correspondence before the panel from Mr Batterham to the TRA, it was very limited in its nature. There was an email dated 19 November 2020 which stated:

"I have nothing to add other than to say that this whole process has been unreasonably stressful and protracted.

I just want to move on now."

There were two further emails on 19 February 2021 and 15 April 2021 from Mr Batterham. There were no further emails before the panel. There was no express written request from Mr Batterham to be served the Notice by email in those emails. Nor were the panel satisfied that it could be inferred from the limited content of those emails that there was a reasonable inference that Mr Batterham had requested service by email. Indeed, the last email received from Mr Batterham on 15 April 2021 (and sometime before the service of the Notice) reads:

"Please would you let me know how things are likely to proceed from here?"

Accordingly, the panel was not satisfied that service had been effected under regulation 19(1)(c).

Decision

The panel was mindful that it is in the public interest for hearings to proceed as expeditiously as possible and that there were a number of witnesses who had attended to give evidence. Also, as there had been a recent attempt by Mr Batterham to call the TRA's solicitors, the panel considered that it would be in the interests of justice to adjourn for the remainder of the day to allow the TRA to make further attempts with Mr Batterham to confirm if he had received the hearing papers and if he intended to further engage in these proceedings.

The following day on 21 February, the presenting officer submitted further email correspondence between Mr Batterham and the TRA from the previous afternoon.

The TRA sent an email to Mr Batterham asking if he had received the papers and stating that the panel would adjourn the proceedings if they were not satisfied that he had received them. Mr Batterham replied with a one word email stating: "Received." In response to that email the TRA further emailed to say that they would interpret that response as being confirmation that he received the papers by post in December 2022 and invited him to correct that interpretation if it was wrong. Mr Batterham further responded with "Thank you."

Now having those additional responses, the panel was satisfied that the Notice served had been effected under regulation 19 and went on to consider whether or not it should proceed in Mr Batterham's absence.

The panel decided that the hearing should continue in the absence of Mr Batterham for the following reasons:

- Mr Batterham had not sought an adjournment at any point.
- Whilst Mr Batterham had indicated in his 17 April 2021 email that [REDACTED].
- The panel was satisfied that Mr Batterham's absence was voluntary and he had waived his right to attend.
- Given Mr Batterham's limited engagement, there was no indication that he might attend at a future date, such that no purpose would be served by an adjournment.
- There is a public interest in hearings taking place within a reasonable time.
- There is a burden on all professionals who are subject to a regulatory regime to fully engage with their regulator.
- There are witnesses present to give evidence to the panel who would be significantly inconvenienced were the hearing to be adjourned.

Having decided that it is appropriate to proceed, the panel would strive to ensure that the proceedings are as fair as possible in the circumstances, bearing in mind that Mr Batterham is neither present nor represented.

Privacy application

The presenting officer made an application for some parts of Pupil A and B's evidence to heard in private. The application was for evidence touching [REDACTED] to be heard in private. The presenting officer submitted that these parts of the evidence should be considered as part of their 'private lives' and that there were no compelling public interest reasons for that evidence to be heard in public.

The panel noted the starting point of these proceedings is that they should be held in public and the important public interest reasons in doing so. The panel considered that evidence involving Pupil A and B's [REDACTED] could legitimately be considered as being part their private life. The panel further considered that there were no contrary public interest reasons for hearing this part of the evidence in private.

The panel was satisfied that this application was confined solely to the evidence touching on those elements of their private lives, which was a small and discrete element of the evidence and that by holding those parts of the evidence in private went no further than is necessary to protect that element of their private life.

The panel considered that even though those parts of the evidence would be held in private, the public would otherwise still be able to understand the nature and evidence before the panel regarding the allegations and that the general principle of open justice could still be preserved.

Accordingly, the panel granted the application.

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 6 to 7

Section 2: Notice of proceedings and response – pages 8 to 20

Section 3: Teaching Regulation Agency witness statements – pages 21 to 66

Section 4: Teaching Regulation Agency documents – pages 67 to 222

Section 5: Teacher documents – pages 223 to 224

In addition, the panel agreed to accept the following:

Bundle of additional correspondence between Mr Batterham and the TRA – pages 225 to 241

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:

- Pupil A (former pupil at The Leys School)
- Pupil B (former pupil at The Leys School)
- Witness A ([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.

The Leys School (the "School") is a co-educational independent secondary school which receives both day and boarding pupils. Mr Batterham was employed by the school from 1994 and was a teacher in English and Games from 1997.

In 2017, Pupil A made a disclosure [REDACTED] that [REDACTED] had been engaged in a sexual relationship with Mr Batterham during [REDACTED] time at the School, which was in-between 2000 and 2005. Following that disclosure, Pupil A was advised to speak to the police and a subsequent criminal investigation was undertaken. In January 2019, Pupil A attended the police station to give a interview. The investigation resulted in the police taking no further action. Following advice from the Local Authority Designated Officer, the School also undertook its own internal investigation. During this investigation, Mr Batterham came to an agreement with the School to resign, which took place on 27 March 2020, and the School made a referral to the TRA.

Findings of fact

The findings of fact are as follows:

The panel has heard from the three witnesses identified above. Mr Batterham has not provided any evidence to this panel. The panel noted there were other possible sources in the evidence, to attempt to understand Mr Batterham's position in relation to these allegations.

On the 18 December 2019, Mr Batterham was interviewed as part of the School's investigation. The notes of that interview state that Mr Batterham said he was outraged at the allegations in regard to Pupil A and B. He denied all of the conduct which has been alleged in these proceedings (save for a brief reference to his accepting that there was one occasion where he had taken Pupil A home in his car). He described the allegations as vile and pernicious. It appears that Mr Batterham provided a simple denial to those allegations. He did however, make reference to it being impossible for someone else to get into his car, as it was usually parked right against a hedge and would be close to the staff room. This being the case others would have seen what was happening or if there were any passengers in his car.

Mr Batterham gave a 'no comment' interview to the police in their investigation and therefore that interview did not assist the panel in further understanding Mr Batterham's position.

In summary the three witnesses had all provided statements to the TRA prior to the hearing, in which they also gave live evidence. In each instance, their accounts followed a cohesive internal logic and it was consistent with the surrounding evidence. In the absence of any contradictory evidence from Mr Batterham (save for the reference to the car parking situation, which the panel explored with Pupil A and B, in Mr Batterham's absence) their evidence was not contradicted. The panel could not identify any features of their evidence which suggested it was unreliable or not credible.

The panel also considered an application by the TRA to draw an adverse inference, following Mr Batterham's failure to give evidence at the hearing. The TRA submitted the test from the leading authority of *R (Kuzmin) v GMC* [2019] EWHC 2129 (Admin) had been satisfied. The panel followed the advice from the independent legal adviser in determining this aspect and considered the four limbs set out in the case:

- 1) The panel were satisfied, as a matter of law, there was a prima facie case to answer in this case. The evidence, if found proven would plainly amount to a serious case of sexual misconduct with pupils.
- 2) The panel's attention was drawn to the Notice (sent on 19 October 2022 and re-sent on 19 December 2022) and a further email dated 23 February 2023, which purported to put Mr Batterham on notice and warned him about a potential adverse inference being drawn. The panel was satisfied that the content of these notices and warnings were sufficient to be considered as adequate under this limb of the test. The panel was further satisfied that adequate opportunity had been provided to Mr Batterham to provide evidence if he wished to and that no procedural unfairness would arise to him if the panel did not pause the proceedings to provide a further opportunity.
- 3) The panel had no reason before it to suggest any reasonable explanation as to why Mr Batterham could not provide evidence to the panel, save for a brief mention of [REDACTED] in his November 2020 email. In the absence of any up-to-date information [REDACTED], the panel were not satisfied this would amount to a reasonable explanation.
- 4) The panel were not able to identify any other factors which might suggest that it would be unfair to draw an adverse inference in light of Mr Batterham's failure to give evidence in this case.

Accordingly, the panel found this to be a case where an adverse inference could be drawn in light of Mr Batterham's failure to give evidence.

The panel considered all the evidence and applied the burden and standard of proof following the advice of the legal adviser. In regard to allegation 1, the panel was satisfied that it is more likely than not that all of the factual elements of this allegation took place and therefore find allegation 1 proved in full. The panel made this finding without having to consider what weight should be applied to any adverse inference against Mr Batterham's failure to give evidence.

The panel took into account all of evidence before it. However, in its reasons, it will not make reference to every piece of evidence it has considered.

1. You failed to maintain appropriate professional boundaries and/or developed an inappropriate relationship with;

a. Pupil A between 2000 and 2005, including by;

i. sending Pupil A text messages, including messages that were sexual in nature;

Pupil A attended the School from Year 9 in [REDACTED] and left at the end of Year 13 in [REDACTED]. In Years 9-11, Pupil A was a [REDACTED] at the School and in Years 12 and 13, [REDACTED].

Pupil A's initial contact with Mr Batterham was in Years 10 and 11. Pupil A was a member of [REDACTED] and Mr Batterham was a coach in that team. Mr Batterham also ran a regular acoustic music session, known as 'Unplugged' where pupils got together to play cover songs. This happened around once every term. [REDACTED].

In Year 10, when Pupil A would see Mr Batterham around the School, they would occasionally make arrangements to meet at a wooden bench near one of the boarding houses on the School grounds. This happened around four or five times. On those occasions, they would talk about classes, hockey and what was going on in Pupil A's personal life. Pupil A described Mr Batterham as being curious as to any boyfriend [REDACTED] might have had at the time.

When Pupil A was in Year 11, there was an occasion when Mr Batterham commented that [REDACTED] looked mature for her age. On a subsequent occasion, Mr Batterham asked Pupil A for her mobile number which [REDACTED] gave to him.

Pupil A explained that they would send each other text messages on most days during the school day and sometimes after school, but not at the weekends. Pupil A described the content of those early messages as 'without much substance' and around topics such as how [REDACTED] day was, hockey and music.

Pupil A described the text messages as becoming more 'flirty' during her time in the sixth form. The messaging went on to include discussions about [REDACTED] appearance

and their sexual activity with each other. Pupil A stated that the messages made [REDACTED] feel both special and uncomfortable at the same time.

ii. meeting Pupil A alone in his car on one or more occasions;

Arrangements were made in text messages for Pupil A and Mr Batterham to meet and spend time together in his car, which was parked opposite the staff room. This would happen around once a week around 6pm when most people had gone home. Pupil A described these occasions as lasting around 30 to 45 minutes and they would spend the time talking. Pupil A would get into the car and sit in the front passenger seat. [REDACTED] described it as a double parking space and [REDACTED] would be able to get into the car, regardless of how it was parked in the space.

Pupil B gave a similar description to Pupil A, as to where Mr Batterham's car was parked on the School's grounds in her evidence when [REDACTED] was explaining the times [REDACTED] visited Mr Batterham in his car.

The notes of the interview describe Mr Batterham's account of the parking situation as follows:

"[Mr Batterham] pointed out that he parked his car in the same place every day so that it was known as 'his space' and this was very adjacent to the school building so that [Mr Batterham] would be easily seen if he met regularly with a student in his car. [Mr Batterham] further commented that the way in which his car was parked precluded the possibility of opening the door on the passenger side because it was parked tight up against the hedge."

The panel was satisfied that it was more likely than not, that both pupils were able to access Mr Batterham's car whilst it was parked on the School's grounds.

iii. meeting Pupil A in a pub and/or nightclub and/or permitting Pupil A to drink alcohol on those occasions;

Pupil A described going to a party for Pupil V in Year 12. Pupil A told Pupil V about the messages and time [REDACTED] had been spending with Mr Batterham. Pupil V mentioned the age difference to Pupil A, but [REDACTED] explained that it was not 'weird and that it was a real relationship'. Pupil A had previously arranged to leave the party and meet Mr Batterham at a pub that evening and he came and picked [REDACTED] up from the party. Whilst in the pub [REDACTED] consumed alcohol that was bought for her by Mr Batterham. Pupil V's sister and [REDACTED] boyfriend (Witness A) went to the pub and told Mr Batterham that he should not be out drinking with students as [REDACTED] was underage. Pupil A described the situation as being awkward after that, so [REDACTED] returned back to the party.

Pupil A also gave evidence as to a further occasion when [REDACTED] was with Mr Batterham in a night club and consumed alcohol with him (mentioned further in allegation 1(a)(vi)).

[REDACTED].

Witness A gave evidence that in around 2003, Pupil V's parents had gone away and [REDACTED], who were in their mid-twenties at the time, were looking after Pupil V. Witness A knew that Pupil A was a good friend of Pupil V.

Pupil V had a birthday party at her home address and [REDACTED] noticed that Pupil A was not at the party. At some point during the party, [REDACTED] established that Pupil A might be in the pub in the village, so left the party and went to the pub. He saw Pupil A at the pub and asked what was going on. A male spoke to him and said that he was Pupil A's teacher and there wasn't any problem.

[REDACTED] left the pub and told [REDACTED] about Pupil A being in the pub. [REDACTED] then returned to the pub and he told the teacher that Pupil A should not be there as [REDACTED] was underage and he was her teacher. Following this Pupil A went back to the party.

iv. going out for dinner with Pupil A and/or purchasing food and/or drink for Pupil A on this occasion;

Pupil A described an occasion when [REDACTED] went out for dinner with Mr Batterham at a restaurant when [REDACTED] was in Year 13 and that Mr Batterham paid for [REDACTED] food and a glass of wine. [REDACTED] explained that a male teacher at the School came into the restaurant and that Mr Batterham was worried that they might have been seen together.

v. kissing Pupil A on one or more occasions including at the school and/or a nightclub and/or in your car and/or at your home;

Once after an Unplugged rehearsal, Pupil A had arranged to meet with Mr Batterham at the drama studio. It was around 18:30, after everyone had left, and Pupil A and Mr Batterham engaged in long passionate mouth to mouth kissing. It was the first time they had kissed. Pupil A described the situation as awkward and uncomfortable.

Pupil A described an occasion when [REDACTED] was 16 and in Year 12 when [REDACTED] invited Mr Batterham to come over to [REDACTED] house as [REDACTED] family were out. [REDACTED] said that they had some tea and toast and when he left they kissed with tongues.

Further evidence of kissing is identified in reference to evidence of Pupil A at allegation 1(a)(vi).

vi. whilst at a nightclub, asking Pupil A to place [REDACTED] hand down your trousers and/or permitting Pupil A to touch your penis;

Pupil A described an occasion when the hockey team had gone out drinking after a match. There were a number of teachers also present on that occasion. Mr Batterham brought Pupil A around three to four vodka and cokes. During the night Mr Batterham and Pupil A were talking and flirting. Pupil A stated that they kissed out of sight of the other members of the team and that Mr Batterham dared her to put [REDACTED] hand down his trousers. Pupil A explained [REDACTED] fumbled with his penis and testicles on top of his underwear. Pupil A stated that [REDACTED] thought one of the teachers saw what was happening so [REDACTED] stopped.

vii. inviting Pupil A around to your property on one or more occasions and/or drinking alcohol with Pupil A whilst [REDACTED] was at your property on those occasions;

and

viii. engaging in sexual activity with Pupil A at your property on one or more occasions.

Pupil A's evidence was that [REDACTED] visited Mr Batterham's home in Hilton on three occasions.

One of those occasions was when Pupil A was in Year 12. Mr Batterham had driven [REDACTED] to his house on a Saturday. They watched the film Casablanca and [REDACTED] drank around four to five wines or beers, which Mr Batterham had provided. Pupil A described them as kissing and caressing each other's genitals and only wearing their underwear. Pupil A stayed at his address for around six to seven hours and then he dropped [REDACTED] off at the top of [REDACTED] road, so that others would not see. Pupil A explained that at the time it made [REDACTED] feel very special, but now it made [REDACTED] feel disgusted.

A further occasion was around the time of Pupil A's A-Level exams. They arranged to meet the next morning and Pupil A got a taxi to his house. As soon as [REDACTED] arrived, they went into Mr Batterham's bedroom and started kissing and removing clothes. Pupil A explained that [REDACTED] performed oral sex on Mr Batterham during this time.

On the last of those occasions, Mr Batterham drove Pupil A to his house and they had some food and wine. After several hours, Pupil A felt drunk and they went upstairs to his bedroom and had sexual intercourse.

Mr Batterham abruptly ended contact with Pupil A after they had engaged in sexual intercourse. [REDACTED]

b. Pupil B between 2000 and 2005, including by;

i. sending Pupil B text messages, including text messages where you commented upon [REDACTED];

Pupil B attended the School from Year 7 to Year 11 in [REDACTED] to [REDACTED]. During that time, Pupil B was both a day pupil and a boarder at different times.

Pupil B had met Mr Batterham as he was one of [REDACTED] teachers in the school house [REDACTED] was in and [REDACTED] was also involved in the [REDACTED] and the [REDACTED].

Pupil X suffered from cancer and as [REDACTED] family lived far away, Pupil B's family were involved in helping Pupil X, in ways such as taking her to hospital appointments. Pupil X passed away in May 2003. Mr Batterham suggested to Pupil B that they should consider getting a memorial bench for Pupil X and they both exchanged mobile numbers. A bench was later put in the School's grounds.

Pupil B explained that [REDACTED] and Mr Batterham would arrange by text messages to meet up at the memorial bench. Pupil B described how [REDACTED] was bullied by other pupils who had seen this and who had assumed there was something going on between them.

On one occasion, Pupil B described walking through the dinner hall wearing a tight top and that Mr Batterham was in the hall at the time. Shortly afterwards, Pupil B received a text message saying words to the effect of 'your breasts look amazing under that tight shirt'. [REDACTED] described the other messages as being flirty and focusing on [REDACTED] appearance.

ii. meeting Pupil B alone in your car on one or more occasions;

Pupil B explained to Mr Batterham that other pupils had commented on them meeting at the bench and Mr Batterham suggested they should meet in his car instead. This happened around once or twice a week during term time and would last around 20 to 30 minutes.

iii. kissing Pupil B on one or more occasions;

On one occasion when they were in the car together and Pupil B was about to leave, Mr Batterham said words to effect of 'say goodbye properly'. Pupil B asked what he meant by this and Mr Batterham said 'give me a kiss'. Pupil B did give him a kiss, but did not think anything of it and compared it as to a family member like an aunt or uncle asking for a kiss. Pupil B explained this became a regular thing when meeting in Mr Batterham's car.

Mr Batterham asked Pupil B not to tell Pupil A about the kissing, but [REDACTED] did and Pupil A became upset about it. Pupil B told Mr Batterham that [REDACTED] told Pupil A and he explained that Pupil A thought they were in a relationship as they had been kissing too.

Pupil A explained in her evidence that [REDACTED] noticed that Mr Batterham appeared to be spending time in a similar manner with Pupil B, who was two years below Pupil A.

When Pupil A was in Year 13, [REDACTED] stated that Pupil B was moved into the same school house as [REDACTED] and they became friends. Pupil B told Pupil A that [REDACTED] had been messaging Mr Batterham and that they had kissed on one occasion.

Pupil A had also confided in Pupil B about what had been happening between [REDACTED] and Mr Batterham and [REDACTED] became upset and angry that he was also contacting Pupil B. [REDACTED].

iv. asking Pupil B to have sexual intercourse with you;

and

v. engaging in sexual activity with Pupil B.

Pupil B explained that in the Summer of 2005, Mr Batterham invited [REDACTED] to his house and [REDACTED] went over there on her scooter. They watched a film and had food, but did not consume any alcohol. Pupil B was sat on Mr Batterham's lap and they started kissing with tongues. Pupil B recalled that Mr Batterham was touching [REDACTED] and [REDACTED] thought that he had an erection and [REDACTED] stopped any further activity taking place as [REDACTED] did not want to have sex. [REDACTED] left after a while and on the journey realised that [REDACTED] had left a DVD at Mr Batterham's address, so returned on [REDACTED] scooter to pick it up.

Once back they kissed again and Mr Batterham asked [REDACTED] to have sex with him, which Pupil B laughed off and left.

2. Your conduct at allegation 1(a) and/or 1(b) was of a sexual nature and/or was sexually motivated.

Having found allegation 1(a) and (b) proved in full, the panel went on to consider allegation 2.

The proven conduct in regard to Pupil A involves sexual intercourse and oral sex. The panel considered those activities were plainly of a sexual nature.

The panel was also satisfied that contact between Pupil B and Mr Batterham detailed at allegation 1(b)(vi) was also plainly of a sexual nature.

Furthermore, the panel noted the similar actions taken by Mr Batterham with both Pupil A and B, such as: taking them for isolated talks, the content of text messages, kissing and bringing them to his home address. The panel was satisfied that it was more likely than not, the purpose of these activities was in the pursuit of a future sexual relationship and therefore find allegation 2 proved in full.

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

Having found all of the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as “the Advice”.

The panel was satisfied that the conduct of Mr Batterham, in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Mr Batterham 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 maintenance of appropriate relationships with pupils are of fundamental importance to members of the profession. Mr Batterham’s actions overstepped the boundary by a wide, if not the widest, mark.

The conduct of Mr Batterham is significantly aggravated by his repeated incidents of sexual misconduct and with more than one pupil. The evidence in this case demonstrated that Mr Batterham showed a willing disregard to the well-being of pupils in his care, who he knew to be vulnerable, which he exploited for his own sexual gratification.

The panel also considered whether Mr Batterham’s conduct displayed behaviours associated with any of the offences listed on pages 12 to 14 of the Advice. The panel found that the offences of sexual activity and sexual communication with a child were

relevant in this respect. 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.

In consideration of these factors, the panel concluded that the conduct of Mr Batterham amounted to misconduct of the most serious nature which fell far short of the standards expected of the profession. Accordingly, the panel was satisfied that Mr Batterham 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.

There can be no doubt as to the importance of appropriate boundaries between pupils and teachers. Significant trust is placed on teachers to keep within those boundaries and the panel was satisfied that Mr Batterham's actions presents a real risk to the erosion of that trust that pupils, parents and others place on the profession. The panel therefore found that Mr Batterham's actions also 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 protection of pupils;
- the maintenance of public confidence in the profession;
- declaring and upholding proper standards of conduct.

In the light of the panel's findings against Mr Batterham which involved multiple occasions of sexual misconduct with pupils, there was a strong public interest consideration in respect of the protection of pupils. Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Batterham 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 Mr Batterham was far beyond that which could reasonably be tolerated.

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 Batterham. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or safeguarding and well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving pupils);
- an abuse of any trust, knowledge, or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or former pupil;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;
- 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);
- violation of the rights of pupils;

The panel considered that Mr Batterham had embarked on a sustained course of sexual misconduct with more than one pupil. Mr Batterham exploited pupils with known vulnerabilities including providing them with alcohol and using them for his own sexual gratification. The panel was satisfied that Mr Batterham presented a real and ongoing risk to the wellbeing of pupils.

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 clear evidence that Mr Batterham's actions were deliberate and there was no suggestion that he was acting under duress. There was no evidence before the panel to establish his contribution to the education sector.

Mr Batterham has failed to fully engage in these proceedings and therefore has not provided any material in mitigation or demonstrated any insight into these issues.

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 Batterham 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 Batterham. 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. Those behaviours include:

- serious sexual misconduct, such as where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person or persons.
- any sexual misconduct involving a child.

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 provisions 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 Batterham should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Batterham 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 findings of misconduct are particularly serious as they include, as the panel says, "repeated incidents of sexual misconduct and with more than one pupil."

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Batterham, 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 Batterham showed a willing disregard to the well-being of pupils in his care, who he knew to be vulnerable, which he exploited for his own sexual gratification.” 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, which the panel sets out as follows, “Mr Batterham has failed to fully engage in these proceedings and therefore has not provided any material in mitigation or demonstrated any insight into these issues.” In my judgement, the lack of full 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, “There can be no doubt as to the importance of appropriate boundaries between pupils and teachers. Significant trust is placed on teachers to keep within those boundaries and the panel was satisfied that Mr Batterham’s actions presents a real risk to the erosion of that trust that pupils, parents and others place on the profession.” I am particularly mindful of the finding of sexual misconduct in this case and the impact that such a finding has on the reputation of the profession.

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

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

I have also considered the impact of a prohibition order on Mr Batterham himself. The panel comment “There was no evidence before the panel to establish his contribution to the education sector.”

A prohibition order would prevent Mr Batterham from teaching and would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel’s comments, “The panel considered that Mr Batterham had embarked on a sustained course of sexual misconduct with more than one pupil. Mr Batterham exploited pupils with known vulnerabilities including providing them with alcohol and using them for his own sexual gratification. The

panel was satisfied that Mr Batterham presented a real and ongoing risk to the wellbeing of pupils.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Batterham 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 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.

I have considered the panel’s comments “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 provisions for a review period.”

I have considered whether not allowing for a review period reflects the seriousness of the findings and is proportionate to achieve the aim of maintaining public confidence in the profession. In this case, the factors which mean that not allowing a review period is necessary to achieve the aim of maintaining public confidence in the profession are the serious misconduct found and the lack of full insight.

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 Andrew Batterham 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 Andrew Batterham 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 Andrew Batterham 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 blue ink, appearing to be 'A.C. M.', followed by a vertical line.

Decision maker: Alan Meyrick

Date: 28 February 2023

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