



Teaching
Regulation
Agency

Mr Steven Birkett: Professional conduct panel outcome

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

April 2018

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

Teacher:	Mr Steven Birkett
Teacher ref number:	9561638
Teacher date of birth:	1 July 1974
TRA case reference:	16452
Date of determination:	24 April 2018
Former employer:	Chenderit School, Archery Road, Middleton Cheney, Banbury Oxfordshire, OX17 2QR ("the School")

A. Introduction

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("TRA") convened on 24 April 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Steven Birkett.

The panel members were Mr Tony James, former teacher panellist, Ms Nicolé Jackson, lay panellist and Ms Kathy Thomson, teacher panellist and chair.

The legal adviser to the panel was Mr Matthew Corrie, Barrister of Blake Morgan LLP. solicitors.

By agreement the allegation was considered at a meeting in private and so neither a case presenter nor the teacher or a representative were present.

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

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 9 April 2018.

It is alleged that you are guilty of conduct that may bring the profession into disrepute in that whilst employed as a teacher by the Chenderit School between May 2001 and May 2017:

1. You engaged in inappropriate use of the internet and/or electronic devices on one or more occasions between 2007 and 2017 in that you:

a. Set up a profile on a website using an email address containing the name of a pupil;

b. Posted photos of children onto a website without the knowledge and/or permission of:

i. Their parents;

ii. The School.

2. You knew or ought to have known in respect of your conduct at allegation 1 that the website was one which was frequented by individuals with a sexual interest in children.

Mr Birkett admits each and every allegation. This is evidenced in the Statement of Agreed Facts which is signed by Mr Birkett on 15 November 2017 and his representations of the same date.

There were no preliminary applications

C. Summary of evidence

Documents

In advance of the hearing, the panel received a bundle of documents which included:

Section 1: Chronology and anonymised pupil list– pages 2 to 3

Section 2: Notice of Proceedings and Response and Notice of Meeting– pages 5 to 11d

Section 3: Statement of Agreed Facts and Presenting Officer Representations – pages 13 to 18

Section 4: TRA documents – pages 20 - 141

Section 5: Teacher documents – pages 143 - 144

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

Witnesses

No witness evidence was heard by the panel.

D. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

On 21 May 2001 Mr Birkett commenced his employment with the School as a history teacher. At the time that these allegations came to light he was head of the History Department. On 2 November 2016 the School's headteacher was contacted by Northamptonshire Police in relation to an investigation into Mr Birkett arising from pictures he had posted on a Russian website. Mr Birkett was suspended pending the conclusion of the investigation.

Although no further action was taken by the Police as no criminal offence had been committed the investigation revealed that:

- a. Mr Birkett had set up an account on a Russian website using an email address containing Pupil A's name;
- b. The website is a photograph sharing website which is legitimate but is known to be frequented by paedophiles;
- c. He posted photographs of Individual A's children (Pupils X and Z) on the site and that these photographs had been obtained from Facebook. He had done this without obtaining consent from either the parents or the School. The images were not sexual or indecent.

In March 2017 the School commenced its own disciplinary action which was based upon the Police investigation. However, on 25 May 2017, prior to the conclusion of the disciplinary process, Mr Birkett resigned.

Findings of fact

Our findings of fact are as follows:

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

The panel has considered each of the particulars of allegation separately.

All of the particulars are admitted by the teacher in a signed statement of agreed facts which he signed on 15 November 2017 and within the statement of the same date in which he states, *"I do not dispute the facts of the case and I recognise I fell short of the standards expected of me to remain a member of the profession."*

In relation to allegation 1a: this was admitted by Mr Birkett during his investigatory interview with the School; the police found that an email address had been set up using Pupil A's name which was linked to Mr Birkett's own personal email account and it has been admitted, as set out above.

With regard to allegation 1b i and ii: this was also admitted during the investigatory interview with the School; the pictures were obtained as part of the police investigation; the police investigation revealed that neither the parents nor the School had provided permission for the photographs to be used and it has been admitted, as set out above.

Allegation 2, has been admitted by way of the statement of facts, specifically at paragraph 14 where it sets out that he admits that *.."he knew or ought to have known that the website was one which was frequented by individuals with a sexual interest in children, and that he was aware of this before posting images to the website."* This is supported by: the police summary regarding the nature and use of the website as being one which, whilst legitimate, is frequented by paedophiles and used to source their material; the length of time (since 2007) he had been registered on the website and the names given to the folders (*"Cute [girl's name] 3/4 yo, Little Cuties, Cute [girl's name] 8yo"*). From this, the panel concludes as is admitted, that Mr Birkett had actual, rather than constructive, knowledge.

The panel considers that the admissions that have been made are clear and unequivocal. Moreover, the panel carefully considered the evidence in the bundle and concludes that the evidence corroborates each of the matters alleged.

Findings as to conduct that may bring the profession into disrepute

Having found all of the particulars of allegation to have been proved, the panel has gone on to consider whether the facts proved amounts to conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document *Teacher Misconduct: The Prohibition of Teachers*, which the panel refers to as “the Advice”. The panel has taken into account that this stage carries no burden of proof and has exercised its own professional judgement.

The panel is satisfied that the conduct of Mr Birkett in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Birkett is in breach of the following standards:

"A teacher is expected to demonstrate consistently high standards of personal and professional conduct.

- *Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by*
 - *Treating pupils with dignity, building relationships rooted in mutual respect, and at all times, observing proper boundaries appropriate to a teacher's professional position;*
 - *Having regard for the need to safeguard pupils' well being, in accordance with statutory provisions;*
- *Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach."*

Moreover, the panel concludes that Mr Birkett's actions were in breach of the School's Acceptable Use Policy including:

- *"All schools based employees must take responsibility for their own use of technologies and the internet, making sure that they are used legally, safely and responsibly:*
- *All school based employees must ensure that all electronic communication with...others is compatible with their professional role and in line with school protocols."*

Further, the panel considers that his actions were also in breach of the School's Staff Code of Conduct, in that [staff]:

- *"Have a duty to keep pupils safe, promote their welfare and to protect them from sexual, physical and emotional harm;*
- *are expected to make responsible and informed judgements about your own behaviour in order to secure the best interests and welfare of the pupils for which that individual is responsible."*

The panel has taken into account the factors listed at page eight of the Advice and concludes that Mr Birkett's actions in uploading photographs of children to a website that he knew was frequented by people with a sexual interest in children, is a gravely serious matter and is conduct which brings the profession into disrepute.

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

The findings are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception. If such behaviour by teachers were to be tolerated, that would inevitably undermine the overall reputation of the profession. The panel, therefore, finds that Mr Birkett's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

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

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have a punitive effect.

The panel has considered the particular public interest considerations set out in the Advice and having done so has found all of them to be relevant in this case, namely:

- The protection of pupils and other members of the public;
- The maintenance of public confidence in the profession;
- Declaring and upholding proper standards of conduct.

The panel considers that the following mitigating features exist:

- No evidence has been presented to the panel to suggest that he is not of previous good character;
- He has made admissions;
- He reports that from the beginning of 2015 he had been experiencing [REDACTED].

The panel considers that the following aggravating features exist:

- His actions were pre-meditated and deliberate;

- It was not an isolated incident in that it was repeated;
- It was a gross breach of Pupil A's privacy in that the email existed on the website for more than two months;
- It was a gross breach of Pupil X and Z's privacy in that their images were posted on the website for at least ten days. There was a potential risk of identification from the school uniform in one of the photographs;
- He uploaded photographs of children to a website that he knew was frequented by people with a sexual interest in children;

In the light of these factors, the panel balanced the interests of Mr Birkett in maintaining his career and the public interest of retaining a teacher against the public interest of maintaining confidence in, and upholding and declaring, proper standards within the profession.

The panel considers that publication of the decision alone would be inadequate to meet the public interest. Given the serious nature of the conduct, the panel considers that applying the standard of the ordinary, intelligent citizen, recommending no prohibition order is likely to compromise public confidence in the profession. Therefore, a prohibition order is both proportionate and necessary in order to protect the public interest because the following features are present:

- The serious departure from the personal and professional conduct elements of the Teachers' Standards;
- Abuse of a position of trust or violation of the rights of pupils;
- Although the images were not indecent or sexual he uploaded them to a website which he knew was frequented by people with a sexual interest in children;
- ...deliberate behaviour which undermines pupils, the profession, the school and colleagues.

The panel considered that, in his representations, Mr Birkett has not provided an adequate explanation for his behaviour. More importantly, there has been no acknowledgment of the effect his actions was likely to have had on the children involved or their families or of the danger that they were exposed to by him. Although Mr Birkett has made admissions to the facts, the panel is not satisfied that he has shown an adequate degree of insight into his conduct.

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

The panel went on to consider whether or not it would be appropriate to recommend that a review period of the order should be considered. The panel was mindful of the Advice that a prohibition order applies for life. However, 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 two years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. The panel has found that Mr Birkett's behaviour was wholly incompatible with being a teacher. Mr Birkett sets out in his representations that he recognises that his life outside the profession will be permanent; the panel agrees with this.

The panel considers that the findings indicate a situation in which a review period would not be appropriate and as such decide 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 sanction and review period.

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

In this case, the panel has found the allegations proven and found that those proven facts amount to conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr Birkett should be the subject of a prohibition order, with no provision for a review period.

In particular the panel has found that Mr Birkett is in breach of the following standards:

"A teacher is expected to demonstrate consistently high standards of personal and professional conduct.

- *Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by*
 - *Treating pupils with dignity, building relationships rooted in mutual respect, and at all times, observing proper boundaries appropriate to a teacher's professional position;*
 - *Having regard for the need to safeguard pupils' well being, in accordance with statutory provisions;*

- *Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach."*

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 or not a less intrusive measure, such as the published finding of 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 Birkett, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed "it was a gross breach of Pupil A's privacy in that the email existed on the website for more than two months; it was a gross breach of Pupil X and Z's privacy in that their images were posted on the website for at least ten days. There was a potential risk of identification from the school uniform in one of the photographs; he uploaded photographs of children to a website that he knew was frequented by people with a sexual interest in children".

A prohibition order would therefore prevent such a serious 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, "there has been no acknowledgment of the effect his actions was likely to have had on the children involved or their families or of the danger that they were exposed to by him. Although Mr Birkett has made admissions to the facts, the panel is not satisfied that he has shown an adequate degree of insight into his conduct."

In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks the future well-being of children. 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, "Mr Birkett's actions in uploading photographs of children to a website that he knew was frequented by people with a sexual interest in children, is a gravely serious matter and is conduct which brings the profession into disrepute."

I have had to consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public 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 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 Birkett himself.

A prohibition order would prevent Mr Birkett 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 concerning, "...deliberate behaviour which undermines pupils, the profession, the school and colleagues."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Birkett has made and 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 that is not backed up by remorse or insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended that no review period should apply.

I have considered the panel's comments "Mr Birkett's behaviour was wholly incompatible with being a teacher. Mr Birkett sets out in his representations that he recognises that his life outside the profession will be permanent; the panel agrees with this."

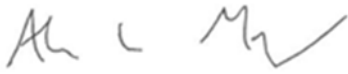
I have considered whether allowing for no review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, there are two factors that in my view mean that a no review period is necessary to achieve the aim of maintaining public confidence in the profession. These elements are lack of insight and the violation of the rights of pupils.

I consider therefore that allowing for a no review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Steven Birkett 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 Steven Birkett 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 Steven Birkett has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.

A handwritten signature in grey ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 26 April 2018

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