



Teaching  
Regulation  
Agency

**Mr James Butterworth-  
Smith:**

**Professional conduct  
panel outcome**

**Panel decision and reasons**

**May 2021**

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

<b>Teacher:</b>	Mr James Butterworth-Smith
<b>Teacher ref number:</b>	1688867
<b>Teacher date of birth:</b>	10 September 1990
<b>TRA reference:</b>	17515
<b>Date of determination:</b>	17 May 2021
<b>Former employer:</b>	Taunton School, Somerset ("the School")

### Introduction

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("the TRA") convened by virtual means on 17 May 2021 to consider the case of Mr James Butterworth-Smith.

The panel members were Mr Ryan Wilson, teacher panellist (in the chair), Ms Susan Humble, lay panellist and Mr Paul McGrath, lay panellist.

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

The presenting officer for the TRA was Mr Luke Berry, of Browne Jacobson solicitors.

Mr Butterworth-Smith was present and he was represented by Mr Lee Hughes, counsel, instructed by Olliers solicitors.

The hearing took place in public and was recorded.

## Allegations

The panel considered the allegation set out in the notice of proceedings dated 27 November 2020.

It was alleged that you, James Butterworth-Smith, are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that you:

1. failed to maintain appropriate professional boundaries toward and/or engaged in an inappropriate relationship with Pupil A, in or around 2017 - 2018, including in that you:
  - a. corresponded with Pupil A by text message;
  - b. allowed Pupil A entry to your flat
  - c. engaged in sexual activity with Pupil A on one occasion or more
2. Your conduct as may be found proven at allegation 1:
  - a. was sexually motivated;
  - b. demonstrated a lack of insight into previous advice and/or guidance you had been given by the school between and/or around August to September 2017.

Mr Butterworth-Smith admitted the allegations and that the admitted conduct amounted to unacceptable professional conduct and conduct likely to bring the profession into disrepute within a statement of agreed facts dated 14 May 2021.

## Preliminary applications

There was a preliminary application made jointly to admit a statement of agreed facts dated 14 May 2021 into evidence.

This document contained admissions made by Mr Butterworth-Smith and the TRA and the panel considered that it was, therefore, clearly relevant to the issues to be determined. Moreover, as the admission of the document caused no prejudice to either party the panel determined that it should be admitted into evidence.

A further preliminary application was made by Mr Hughes on behalf of Mr Butterworth-Smith to admit into evidence:

- i) A letter of apology from Mr Butterworth-Smith dated 14 May 2021;
- ii) A letter from an organisation called I-Talk dated 12 September 2020;
- iii) Written submissions in relation to whether or not a prohibition order should be made dated 17 May 2021.

Mr Hughes sought that these documents be admitted after the decision on facts and unacceptable professional conduct and/or conduct likely to bring the profession into disrepute was made and announced.

Mr Berry agreed on behalf of the TRA that these documents could be admitted into evidence.

The panel accepted that these documents were relevant and concluded that their admission would cause no prejudice to the TRA. Therefore, the application was allowed.

## **Summary of evidence**

### **Documents**

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

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

Section 2: Notice of referral and response, Notice of proceedings and response – pages 5 to 29

Section 3: Teaching Regulation Agency witness statements – pages 31 to 35

Section 4: Teaching Regulation Agency documents – pages 37 to 174

Section 5: Teacher documents – pages 176 to 222

In addition, the panel agreed to accept the following:

- i) A statement of agreed facts dated 14 May 2021;
- ii) A letter of apology from Mr Butterworth-Smith dated 14 May 2021;
- iii) A letter from an organisation called I-Talk dated 12 September 2020;
- iv) Written submissions in relation to whether or not a prohibition order should be made dated 17 May 2021.

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**

No oral evidence was called by either party.

## Decision and reasons

Within oral submissions Mr Berry, on behalf of the TRA, stated that the TRA put its case no higher than set out in the statement of agreed facts signed and dated 14 May 2021.

The panel considered that the admissions set out within the statement of agreed facts to be clear and unequivocal and had regard to the fact that Mr Butterworth-Smith was represented.

The panel, therefore, accepted the admissions within this document and found each of the allegations proved, the panel's findings were that:

**1. Failed to maintain appropriate professional boundaries toward and/or engaged in an inappropriate relationship with Pupil A, in or around 2017 - 2018, including in that you:**

**a. corresponded with Pupil A by text message;**

In relation to allegation 1.a Mr Butterworth-Smith had failed to maintain appropriate professional boundaries towards and engaged in an inappropriate relationship with Pupil A from 2017 to 2018 in that he had corresponded with Pupil A via text message. In particular:

- In 2017 and 2018 he corresponded with Pupil A by text message using his own personal mobile phone;
- In May and August 2017 he exchanged text messages with Pupil A in relation to arranging a private [REDACTED] lesson;
- On 29 June 2018 he engaged in a conversation via text with Pupil A and at 15.24 invited her to his flat.

**b. allowed Pupil A entry to your flat**

In regard to allegation 1.b the panel found that on 31 July 2017 as well as 29 and 30 June 2018 Mr Butterworth-Smith allowed Pupil A to enter his flat which was on school grounds.

**c. engaged in sexual activity with Pupil A on one occasion or more**

In respect of allegation 1.c the panel found that Mr Butterworth-Smith engaged in sexual activity with Pupil A on both 29 and 30 June 2018.

## **2. Your conduct as may be found proven at allegation 1:**

### **a. was sexually motivated;**

In regard to allegation 2.a the panel found that Mr Butterworth-Smith's actions of engaging in sexual activity with Pupil A on 29 and 30 June 2018 were sexually motivated.

### **b. demonstrated a lack of insight into previous advice and/or guidance you had been given by the school between and/or around August to September 2017.**

In respect of allegation 2.b, the panel found that Individual A had spoken to Mr Butterworth Smith about professional boundaries in August 2017 and that by letter dated 25 September 2017 Mr Butterworth-Smith had been advised about professional boundaries. In this context the panel considered that Mr Butterworth-Smith's conduct as found proven at allegation 1.a, 1.b and 1.c to show a lack of insight into the previous advice/guidance.

## **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 Butterworth-Smith, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Butterworth-Smith was in breach of the following standards:

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

The panel considered Mr Butterworth-Smith's proven conduct to be a serious transgression of appropriate professional boundaries between a teacher and a student.

Moreover, the conduct was aggravated, in the panel's view, by the fact that it took place on school premises, that Mr Butterworth-Smith was in a position of trust and he had previously received guidance as to maintaining professional boundaries with pupils.

As well as being in breach of the Teachers' Standards, his conduct was also contrary to the School's Code of Conduct which required professional boundaries to be maintained and forbade sexual relationships between teachers and pupils.

The panel was, therefore, satisfied that the conduct of Mr Butterworth-Smith amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession. The panel, therefore, considered Mr Butterworth Smith to have been 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 and on the reputation of the profession as a whole.

The panel found that Mr Butterworth-Smith's actions constituted conduct that may bring the profession into disrepute.

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

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

The panel considered all the evidence within the bundle as well as the additional documents admitted today.

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;
- the interest of retaining the teacher in the profession.

Mr Butterworth-Smith has been found to have failed to maintain appropriate professional boundaries and to have had an inappropriate relationship with Pupil A. This conduct included communication with Pupil A via his personal mobile, Pupil A attending his flat within the School grounds and ultimately having sex with Pupil A on 29 and 30 June 2018.

In the light of the panel's findings as to Mr Butterworth-Smith's conduct towards Pupil A, the panel considered that there was a strong public interest in respect of the protection of pupils.

Moreover, the panel concluded that the conduct was of such gravity that public confidence in the profession could be seriously weakened if such conduct were not treated with the utmost seriousness when regulating the profession.

Further, the panel considered that the public interest of declaring and upholding proper standards of conduct in the profession was also present as the conduct found against Mr Butterworth-Smith was outside that which could reasonably be tolerated.

The panel considered the public interest in retaining a teacher in the profession but concluded that the other public interest considerations carried greater weight in the circumstances of this case.

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 Butterworth-Smith.

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 Butterworth-Smith.

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 vulnerable pupils) or violation of the rights of 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.

The most serious and concerning conduct was that which took place on 29 and 30 June 2018 where Mr Butterworth-Smith invited Pupil A to his flat and then had sex with her twice. In August and September 2017 Mr Butterworth-Smith had been given guidance and advice about the need to maintain appropriate boundaries with pupils. The need for this guidance had arisen as a result of Pupil A being seen to leave Mr Butterworth-Smith's flat and Mr Butterworth-Smith texting Pupil A. Although that guidance was not within the context of sexual conduct it was something which, in the panel's view, was an aggravating feature.

Mr Butterworth-Smith has made full admissions to the allegations and has apologised for his actions. The panel took these admissions into account and acknowledged that Mr Butterworth-Smith genuinely regrets his actions and the effect that they have had on himself and others.

The panel considered that the following mitigating features applied in this case:

- Mr Butterworth-Smith has a previously good history;
- He was a relatively inexperienced teacher at the time of the events;
- Mr Butterworth-Smith was under considerable pressure with his workload at the School;
- [REDACTED]
- Mr Butterworth-Smith has made admissions and has apologised for his conduct.
- Mr Butterworth-Smith has shown some insight into his conduct.

[REDACTED]

It was further submitted that Mr Butterworth-Smith was not acting under duress, but labouring under such strain [REDACTED] that his ability to rationalise and his culpability for what he did were diminished to levels that were akin to him acting under duress.

The panel was neither directed to nor found within the bundle any medical evidence specifically in support of these contentions. Without such evidence the panel was unable to accept that Mr Butterworth-Smith was not acting deliberately or that he was acting under duress or something close to duress.

The panel did take into account [REDACTED] and considered that this was a somewhat mitigating feature but that it did not absolve him from responsibility for such a serious transgression of what was an acceptable way to behave to Pupil A.

The panel considered the issue of Pupil A's status as a pupil on 29 and 30 June 2018. It was accepted that Pupil A was a pupil at the School on these dates and that Mr Butterworth-Smith's conduct was not appropriate and was unacceptable. However, it was submitted on Mr Butterworth-Smith's behalf that what took place was sex between two consenting adults because although Pupil A remained on the School roll, she had left the School and was not being taught by Mr Butterworth-Smith. The panel rejected this assessment of the conduct and took the view that what took place was sexual relations between a teacher and a current pupil. This was not, therefore, considered to be a mitigating feature.

The panel also took into account the number of positive testimonials submitted in support of Mr Butterworth-Smith which attested both to the difficulties he has experienced [REDACTED] and his positive qualities as a person, a teacher and a musician.

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 Butterworth-Smith 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 Butterworth-Smith.

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 panel considered that having sex with a pupil was towards the most serious end of the spectrum of failures to maintain appropriate professional boundaries and, as set out above, considered that this conduct was aggravated by the fact of the previous advice/guidance on maintaining boundaries with pupils. The panel considered this to be

serious sexual misconduct in that it was sexually motivated and had the potential to cause serious harm to Pupil A.

Further, whilst the panel acknowledged that Mr Butterworth-Smith was remorseful and had made admissions, the panel was not satisfied that there was adequate evidence of insight into his behaviour. In particular, the panel did not consider that Mr Butterworth-Smith had presented adequate evidence of how he would act differently in the future. Therefore, the panel was unable to rule out the risk of a repetition of the conduct should Mr Butterworth-Smith be faced with similar pressures again. 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 Butterworth-Smith should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Butterworth-Smith is in breach of the following standards:

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

The findings of misconduct are particularly serious as they include a finding of sexual misconduct.

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 Butterworth-Smith, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed that it, “considered Mr Butterworth-Smith's proven conduct to be a serious transgression of appropriate professional boundaries between a teacher and a student. Moreover, the conduct was aggravated, in the panel's view, by the fact that it took place on school premises, that Mr Butterworth-Smith was in a position of trust and he had previously received guidance as to maintaining professional boundaries with pupils.”

A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, “whilst the panel acknowledged that Mr Butterworth-Smith was remorseful and had made admissions, the panel was not satisfied that there was adequate evidence of insight into his behaviour.” In my judgement, the lack of full and complete insight means that there is some risk of the repetition of this behaviour and this puts at risk the future well-being 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 that it, “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 and on the reputation of the profession as a whole.

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 Butterworth-Smith himself. The panel comment that it, “took into account the number of positive testimonials submitted in support of Mr Butterworth-Smith which attested both to the difficulties he has experienced [REDACTED] and his positive qualities as a person, a teacher and a musician.”

A prohibition order would prevent Mr Butterworth-Smith 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 “considered that having sex with a pupil was towards the most serious end of the spectrum of failures to maintain appropriate professional boundaries and, as set out above, considered that this conduct was aggravated by the fact of the previous advice/guidance on maintaining boundaries with pupils. The panel considered this to be serious sexual misconduct in that it was sexually motivated and had the potential to cause serious harm to Pupil A.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Butterworth-Smith 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 and complete 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 was not satisfied that there was adequate evidence of insight into his behaviour. In particular, the panel did not consider that Mr Butterworth-Smith had presented adequate evidence of how he would act differently in the future. Therefore, the panel was unable to rule out the risk of a repetition of the conduct should Mr Butterworth-Smith be faced with similar pressures again.”

I have considered whether allowing for no review reflects the seriousness of the findings and is proportionate and necessary to achieve the aim of maintaining public confidence in the profession. In this case, the factors which mean that a no review is proportionate and necessary include the serious sexual misconduct and the lack of complete 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 James Butterworth-Smith 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 James Butterworth-Smith 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 James Butterworth-Smith 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 blue ink, appearing to read 'Alan Meyrick', with a vertical line at the end.

**Decision maker: Alan Meyrick**

**Date: 19 May 2021**

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