



National College for  
Teaching & Leadership

# **Dr Howard Britton: Professional conduct panel outcome**

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

**December 2017**

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

**Teacher:** Dr Howard Britton

**Teacher ref number:** 7864556

**Teacher date of birth:** 29 April 1953

**NCTL case reference:** 16088

**Date of determination:** 19 December 2017

**Former employer:** Queen Ethelburga's Collegiate, York

### **A. Introduction**

A professional conduct panel ("the panel") of the National College for Teaching and Leadership ("the National College") convened on 18 December 2017 to 19 December 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Dr Howard Britton.

The panel members were Dr Angela Brown (lay panellist – in the chair), Mr Steve Woodhouse (teacher panellist) and Mr William Brown (lay panellist).

The legal adviser to the panel was Ms Surekha Gollapudi of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the National College was Ms Samantha Paxman of Browne Jacobson LLP solicitors.

Dr Britton was present and was not represented.

The hearing took place in public and was recorded.

## **B. Allegations**

The panel considered the allegation(s) set out in the Notice of Proceedings dated 26 October 2017.

It was alleged that Dr Britton was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that he:

1. Failed to maintain appropriate professional boundaries with Pupil A between January and June 2005, in that he:
  - a. accepted Pupil A's telephone number
  - b. exchanged flirtatious and / or sexual text messages with Pupil A
  - c. discussed with Pupil A meeting outside of school
  - d. invited Pupil A to his home
  - e. on one or more occasion:
    - i. held hands with Pupil A
    - ii. touched Pupil A's legs
    - iii. allowed Pupil A to touch his legs
2. Failed to maintain appropriate professional boundaries during June and / or July 2005, in that, on one or more occasion he had sexual intercourse with Pupil A
3. His actions as set out above were sexually motivated

Dr Britton admits the facts of allegations 1.a., 1.b., 1.c., 1.d., 1.e.ii-iii, and 2.

Dr Britton denies the facts of allegations 1.e.i and 3.

Dr Britton admits that the facts admitted amount to unacceptable professional conduct and / or conduct that may bring the profession into disrepute.

## **C. Preliminary applications**

There were no preliminary applications.

## **D. 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 – pages 5 to 24

Section 3: NCTL witness statements – pages 26 to 29

Section 4: NCTL documents – pages 31 to 45

Section 5: Teacher documents – pages 47 to 56

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

### **Witnesses**

The panel heard oral evidence from Pupil A called by the presenting officer.

Dr Britton gave oral evidence.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

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

Dr Britton was a teacher of economics at Queen Ethelburga's Collegiate (the "school") between September 2001 and August 2005. During the academic year 2004/2005 it is alleged that Dr Britton had inappropriate contact with Pupil A, a pupil in the sixth form. This contact commenced during one to one coaching sessions. It later progressed to the exchange of sexually explicit text messages and to a physical relationship which started on the day of Pupil A's final exam at the school.

### **Findings of fact**

Our findings of fact are as follows:

The panel has found the following particulars of the allegation(s) against you proven, for these reasons:

- 1. Failed to maintain appropriate professional boundaries with Pupil A between January and June 2005, in that you:**

### **a. accepted Pupil A's telephone number**

This allegation was admitted by Dr Britton within the statement of agreed and disputed facts dated 22 November 2017.

Both Pupil A and Dr Britton confirmed in oral evidence that Pupil A provided Dr Britton with her telephone number.

Dr Britton explained that he had not had a mobile phone for long at the time of this incident, and that he was more used to telephone numbers being accessible through the telephone directory. For this reason, at the time, he did not believe accepting Pupil A's mobile number was inappropriate.

Whilst the panel had regard to Dr Britton's explanation, the panel found that Dr Britton's admission was consistent with the evidence and found allegation 1.a. proven on the balance of probabilities.

### **b. exchanged flirtatious and / or sexual text messages with Pupil A**

This allegation was admitted by Dr Britton within the statement of agreed and disputed facts dated 22 November 2017.

The panel heard evidence from Pupil A that she initiated the flirtatious text messages with Dr Britton. She went on to describe the content of the sexually explicit text messages.

Dr Britton stated in oral evidence that, on occasion, he replied to flirtatious text messages instigated by Pupil A with similar content. He did not believe the language Pupil A said he had used in the texts was language he would have used. He was unable to confirm definitively that he had not sent those text messages.

Dr Britton went on to state that he had replied to Pupil A's text messages with similar content in order to frighten her off as he believed she was pursuing a campaign of sexual harassment against him. Dr Britton stated he was concerned about Pupil A's behaviour and that he did not have the correct training or support to stop it.

The panel did not find this to be a credible response given Dr Britton's experience in the teaching profession. Dr Britton went on to say that prior to teaching Pupil A, he felt he got attention from 10 to 15 students every year and that as a teacher, he got used to dealing with that behaviour.

The panel found Pupil A's evidence on the content of the messages to be credible, and compelling. The panel found this evidence to be consistent with Dr Britton's admission and therefore found allegation 1.b. proven on the balance of probabilities.

### **c. discussed with Pupil A meeting outside of school**

This allegation was admitted by Dr Britton within the statement of agreed and disputed facts dated 22 November 2017.

Pupil A gave oral evidence that during the academic year 2004/2005 she and Dr Britton began to discuss meeting outside of school.

Dr Britton gave oral evidence that these discussions took place at the instigation of Pupil A.

The panel found Dr Britton's admission consistent with the oral evidence and therefore found allegation 1.c. proven on the balance of probabilities.

### **d. invited Pupil A to your home**

This allegation was admitted by Dr Britton within the statement of agreed and disputed facts dated 22 November 2017 although Dr Britton confirmed he did not specifically invite Pupil A to his home, he did not tell her not to come. Dr Britton stated in oral evidence that he felt trapped by the situation and that Pupil A may have gone to the school headteacher if he did not do as she asked. Dr Britton confirmed that Pupil A did not threaten him in this way, this was simply his interpretation of the events.

Dr Britton also confirmed that when she arrived at his house, he did let her in.

Pupil A gave oral evidence that Dr Britton provided his home address to her by text message.

Dr Britton gave oral evidence that he did not believe he provided his home address to Pupil A and that she could have obtained it some other way. The panel did not find this explanation to be credible in light of the confirmation from both Pupil A and Dr Britton that they went on to have sexual intercourse at his house on other occasions.

The panel therefore found allegation 1.d. proven.

### **e. on one or more occasion:**

#### **i. held hands with Pupil A**

The panel had regard to Pupil A's witness statement dated 8 September 2017 in which she described holding Dr Britton's hand under a desk whilst sitting next to him during one to one sessions at school.

Dr Britton gave oral evidence that he would not have held Pupil A's hand in this way as if anyone had seen that both his hands were not on the desk, he would have been dismissed from his position straight away. Dr Britton said that the layout of the room

meant that he would have had no prior notice of another teacher approaching and it would have therefore been too risky to hold hands as it would have been very obvious.

The panel carefully considered the evidence before it and preferred Pupil A's evidence as she was credible, and consistent. The panel therefore found allegation 1.e.i. proven on the balance of probabilities.

**ii. touched Pupil A's legs**

**iii. allowed Pupil A to touch your legs**

Dr Britton admitted within the statement of agreed and disputed facts dated 22 November 2017 that on one or more occasions he touched Pupil A's legs and allowed her to touch his legs.

Dr Britton stated in oral evidence that this contact was initiated by Pupil A. Dr Britton's evidence was that the layout of the desk was such that when Pupil A was sitting next to him, she blocked his exit from his seat and that he was unable to break contact with Pupil A for this reason.

Pupil A confirmed she initiated this contact during her oral evidence.

The panel did not find Dr Britton's explanation to be credible in light of the fact the contact took place on a number of occasions and he had the opportunity to halt the behaviour each time.

The panel found Dr Britton's admission consistent with the oral evidence and therefore found allegations 1.e.ii and 1.e.iii proven on the balance of probabilities.

**2. Failed to maintain appropriate professional boundaries during June and / or July 2005, in that, on one or more occasion you had sexual intercourse with Pupil A**

This allegation was admitted by Dr Britton within the statement of agreed and disputed facts dated 22 November 2017.

Pupil A confirmed in her witness statement dated 8 September 2017 that she saw Dr Britton three or four times at his house and that she had sexual intercourse with him each of those times.

Dr Britton gave oral evidence confirming that he had sexual intercourse with Pupil A at his house. Dr Britton stated that Pupil A first came to his house on the day of her final exam at the school and on this occasion, they kissed. Dr Britton confirmed that on subsequent occasions, Pupil A visited his house and they had sexual intercourse.

Pupil A and Dr Britton both confirmed that the sexual relationship occurred during approximately the four week period after Pupil A's final exam at the school.



Dr Britton confirmed in oral evidence that he believed Pupil A was a former pupil at the time of their sexual relationship. The panel considered the evidence from the school that Pupil A left in June 2005 but was persuaded that there had been an escalation in the relationship between Pupil A and Dr Britton whilst she was still a pupil at the school.

The panel found that there was a possibility that Pupil A could have returned to the school after her exams had concluded in order to conduct resits. In light of this, Pupil A could still have been considered a pupil at the time of Dr Britton's sexual relationship with her.

The panel found that Dr Britton's admission was consistent with the evidence and therefore found allegation 2 proven on the balance of probabilities.

### **3. Your actions as set out above were sexually motivated**

The panel considered whether on the balance of probabilities reasonable persons would think the words and actions found proven could be sexual. The panel then considered whether, in all the circumstances of the conduct in the case, it was more likely than not that the teacher's purpose of such words and actions was sexual.

The panel considered whether, even in the absence of any direct evidence, sexual motivation should be inferred from all the circumstances of the case. The panel had in mind the evidence of the teacher's character and considered whether such evidence had any bearing on the teacher's credibility or propensity to have carried out the alleged facts or to the circumstances in which the teacher found himself.

Dr Britton denied sexual motivation. The panel did however note that Dr Britton confirmed he enjoyed kissing Pupil A on the first occasion when she came to his house, immediately after her last exam at the school and that he had exchanged flirtatious text messages with her over a period of time. The panel also noted that Dr Britton admitted that he had sexual intercourse with Pupil A on more than one occasion.

The panel also placed significant weight on Pupil A's oral evidence that they had planned to have a sexual relationship after she finished her final exam.

The panel could not accept Dr Britton's evidence that the only motivation for these actions was to frighten Pupil A off as he felt trapped in the situation.

Taking into account all of the available evidence, the panel therefore found sexual motivation proven on the balance of probabilities.

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

Having found all of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or 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 is satisfied that the conduct of Dr Britton in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Dr Britton is in breach of the following standards:

- teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher’s professional position;
  - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions;
- teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Dr Britton amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel has also considered whether Dr Britton’s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that the offence of sexual activity is relevant.

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

The panel notes that the facts of allegation 2 took place outside of the education setting. The panel noted Dr Britton’s evidence that Pupil A pursued him for a sexual relationship. The panel also had regard to Pupil A’s evidence that she did instigate parts of their contact, including passing on her telephone number and starting to send flirtatious text messages to Dr Britton. Pupil A gave evidence that she believed she was deeply in love with Dr Britton and that she thought they would have a future together.

The panel went on to consider that there was a position of trust between Dr Britton and Pupil A and it was Dr Britton's responsibility to maintain appropriate boundaries, regardless of Pupil A's actions. The panel accepted Pupil A's evidence that Dr Britton's actions had a profound and lasting effect on her.

The panel has also 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 taken account of 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 of misconduct 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.

Having found the facts of particulars 1, 2 and 3 proved, we further find that Dr Britton's conduct amounts to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

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

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it 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 a number of them to be relevant in this case, namely the protection of pupils; the maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct.

In light of the panel's findings against Dr Britton, which involved Dr Britton exchanging sexually explicit text messages with a pupil whilst he was teaching her and embarking on a sexual relationship with her shortly after her last exam at the school, there is a strong public interest consideration in protecting pupils.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Dr Britton were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel also considers that there is a strong public interest consideration in declaring proper standards of conduct in the profession as the conduct found against Dr Britton was outside that which could reasonably be tolerated.

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Dr Britton.

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Dr Britton. 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 proven. In the list of such behaviours, those that are relevant in this case are:

- 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, eg 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

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of the imposition of a prohibition order. In carrying out this exercise the panel took into account the nature and severity of the behaviour in this case.

The panel noted that there was no evidence that the teacher's actions were not deliberate.

Dr Britton indicated throughout the hearing that he was acting under duress as he felt trapped by Pupil A's actions. The panel did not accept this explanation as he had a number of opportunities to end his relationship with Pupil A. Instead, he did not end the relationship until he had sexual intercourse with Pupil A at his house on at least three occasions.

The panel noted that Dr Britton did have a previously good history.

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 is sufficient.

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

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Dr Britton. 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 decide to recommend that a review period of the order should be considered. 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 proven, would militate against a review period being recommended. One of these behaviours is serious sexual misconduct, for example 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 their professional position to influence or exploit a person or persons. The panel has found that Dr Britton had sexual intercourse with Pupil A on at least three occasions in the weeks after her final exam at the school and that he was sexually motivated in this regard. As such, the panel found serious sexual misconduct was behaviour that was present in this case.

The panel heard evidence from Dr Britton that after he ended his relationship with Pupil A, he left the teaching profession due to his disgust with his own behaviour in having a sexual relationship with Pupil A. Dr Britton went on to say he had no plans to return to the teaching profession.

Whilst the panel accepted Dr Britton does not wish to teach in the future, it also found that Dr Britton did not show insight into the particular dynamics of the teacher and pupil relationship. In particular the panel found that Dr Britton maintained that Pupil A was a sexually active 18 year old at the time of the sexual activity and that she had actively pursued him. Dr Britton failed to understand that the relationship between them was not one of equals and that he abused his position of trust by entering into flirtatious text messages with Pupil A whilst still a pupil at the school, and ultimately by having sexual intercourse with her shortly after her final exam at the school.

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

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

I have given very careful consideration to this case and to the recommendation of the panel in respect of sanction and no 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 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 Britton should be the subject of a prohibition order, with no review period.

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

- teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;
  - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel finds that the conduct of Mr Britton fell significantly short of the standards expected of the profession.

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 or not 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 Britton, 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 found that in light of Dr Britton's actions, which involved, "exchanging sexually explicit text messages with a pupil whilst he was teaching her and embarking on a sexual relationship with her shortly after her last exam at the school, there is a strong public interest consideration in protecting pupils." A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel's comments on insight and remorse which the panel sets out as follows, "Dr Britton did not show insight into the particular dynamics of the teacher and pupil relationship." In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks future pupils' safety. 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 there is a strong public interest consideration in declaring proper standards of conduct in the profession as the conduct found against Dr Britton was outside that which could reasonably be tolerated." 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 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 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 Britton himself.

A prohibition order would prevent Mr Britton from continuing in the teaching profession. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force. The panel observe, "Dr Britton did have a previously good history."

In this case I have placed considerable weight on the panel's comments concerning the lack of insight or remorse. The panel has said Dr Britton, "Dr Britton failed to understand that the relationship between them was not one of equals and that he abused his position of trust by entering into flirtatious text messages with Pupil A whilst still a pupil at the school, and ultimately by having sexual intercourse with her shortly after her final exam at the school."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Britton 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 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 no review period.

I have considered the panel's comments "that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period."

I have considered whether a 2 year 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, I am of the same view as the panel. In my view the sexual misconduct found and the lack of insight or remorse means a two year review period is not sufficient to achieve the aim of maintaining public confidence in the profession.

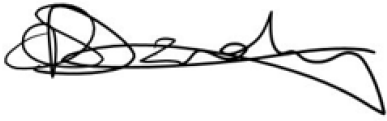
I consider therefore that no review period is required to satisfy the maintenance of public confidence in the profession.

**This means that Mr Howard Britton 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 Britton 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 Britton 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 black ink, appearing to read 'Dandy', with a stylized flourish at the end.

**Decision maker: Dawn Dandy**

**Date: 29 December 2017**

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