



Teaching
Regulation
Agency

Mr Peter Smith: Professional conduct panel outcome

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

February 2021

Contents

Introduction	3
Allegations	4
Preliminary applications	5
Summary of evidence	7
Documents	7
Witnesses	8
Decision and reasons	8
Findings of fact	8
Panel's recommendation to the Secretary of State	15
Decision and reasons on behalf of the Secretary of State	18

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

Teacher:	Peter Smith
Teacher ref number:	9355817
Teacher date of birth:	8 April 1971
TRA reference:	17595
Date of determination:	17 February 2021
Former employer:	Abbeyfield School, Northampton

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 5 February 2020 at Ramada Hotel Butts, Coventry, CV1 3GG, to consider the case of Mr Peter Smith (“Mr Smith”).

The panel members were Mr Chris Rushton (lay panellist – in the chair), Mrs Gail Goodman (teacher panellist) and Mrs Kathy Thomson (former teacher panellist).

The legal adviser to the panel was Ms Carly Hagedorn of Eversheds Sutherland (International) LLP.

The presenting officer for the TRA was Mr Ben Chapman of KCH Garden Square Chambers instructed by Browne Jacobson LLP.

Mr Smith was present and was represented by Mr Ed Brown of the National Association of Schoolmasters / Union of Women Teachers (NASUWT).

The hearing took place in public, save for parts of the hearing which were held in private and was recorded.

The hearing was adjourned part heard on 7 February 2020 to a date to be fixed. At this point, the panel had heard the closing statements from the presenting officer and the teacher’s representative, and the legal advice from the legal adviser prior to deliberating on the facts of the case. The panel adjourned the case at this point to reconvene at a later date to deliberate on findings of fact.

Paragraph 4.3 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the “Procedures”), states that *“where, in the course of the panel’s hearing of a case, a panel member is unable to remain a member of the panel, the TRA will appoint*

another member in that person's place, ensuring that they are fully acquainted with all the documents previously before the panel, including a record of the proceedings."

Mr Chris Major (teacher panellist) and Mrs Susan Humble (lay panellist) were appointed as substitute panel members to replace Mrs Gail Goodman and Mrs Kathy Thomson. In advance of the hearing, Mr Chris Major and Mrs Susan Humble were provided with all papers in the case including the bundles referred to below and a record of the proceedings. Mr Chris Rushton continued the role of Chair for the purposes of this hearing. This panel then reconvened remotely on 16 and 17 February 2021 to consider the case.

The legal adviser to the panel continued to be Ms Carly Hagedorn of Eversheds Sutherland (International) LLP.

The parties appeared remotely on 17 February 2021. The presenting officer for the TRA was Mr Ben Chapman of KCH Garden Square Chambers. Mr Smith was present and was represented by Mr Ed Brown of the National Association of Schoolmasters / Union of Women Teachers (NASUWT). The hearing took place remotely, but with public access, and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 11 December 2019.

It was alleged that Mr Smith had been convicted, at any time, of a relevant offence and was guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute, in that whilst employed as a Teacher of Maths at Abbeyfield School you:

1. On or around 12 May 2014 you were convicted at Wellingborough Magistrates Court of the offence of pursuing a course of conduct which amounts to harassment between 1 May 2013 and 19 December 2013, contrary to ss.2(1) and 2(2) Protection from Harassment Act 1997 and were sentenced to a period of imprisonment of 14 weeks, suspended for 18 months;
2. Withheld relevant information around your conviction including, but not limited to, the sentence of suspended imprisonment which you received;
3. Failed to disclose your previous disciplinary investigations and/or actions in the application form or at all;
4. Engaged in sexual activity in the presence of a child;
5. Your conduct as may be found proven at allegation 2 and/or 3, above lacked integrity and/or was dishonest;

6. Your conduct as may be found proven at 4 above, affected, or had the potential to affect your suitability to work with children.

Mr Smith admitted the facts of allegation 1 and 3. There were no clear admissions on the facts of allegation 4. Mr Smith denied the facts of allegations 2, 5 and 6. Mr Smith denied that the allegations amounted to unacceptable professional conduct and/or conduct which may bring the profession into disrepute. Mr Smith made no comment on whether allegation 1 amounted to a relevant offence.

Preliminary applications

Additional documents

The teacher's representative applied to admit the witness statement of Mr Smith. Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case. The document was not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel was required to decide whether the document should be admitted under paragraph 4.25 of the Procedures.

The panel was satisfied that the document was clearly relevant to the case as it was the written statement from Mr Smith. The presenting officer raised no objection to this application.

The panel decided to admit the document to be paginated as follows:

- Witness statement of Mr Smith, pages 138 to 141.

Amendment to the allegations

An application was made by the presenting officer to alter the notice of proceedings by amending the stem of allegation 1 to remove the statement that 'whilst employed as a Teacher of Maths at Abbeyfield School', as this was factually incorrect in respect of the timing of the conviction. The presenting officer requested that this sentence was replaced with 'whilst engaged in the teaching profession'. The replacement wording for the stem of allegation 1 would therefore read:

'It was alleged that Mr Smith had been convicted, at any time, of a relevant offence and was guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute, in that whilst engaged in the teaching profession you:'

The panel had the power, in the interests of justice, to amend an allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case have been proved.

Before making an amendment, the panel was required to consider any representations. The presenting officer made the application on the ground that the amendment was a factual error only, that did not change the nature, scope, or seriousness of the allegations. The teacher's representative raised no objection to this application.

The panel determined that the amendment proposed to the stem of allegation 1 was to correct a factual error and did not change the nature, scope, or seriousness of the allegations. There was no prospect of the teacher's case being presented differently had the amendment been made at an earlier stage, and therefore no unfairness or prejudice caused to the teacher.

Applications during the course of the hearing

Excluding the public

During the course of the hearing, the teacher's representative made an application for part of the hearing to be held in private in respect of Mr Smith's medical circumstances.

The panel considered whether to exercise its discretion under paragraph 11 of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and paragraph 4.57 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession (the "Procedures") to exclude the public from part of the hearing.

The panel took into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. The panel noted that there were concerns about confidential matters relating to the teacher's health being placed in the public domain. The panel, therefore, considered whether there were any steps short of excluding the public that would serve the purpose of protecting the confidentiality of matters relating to the teacher's health. It decided that there were not.

The panel, therefore, considered that such parts of the hearing should be held in private. It decided that the public interest required that the hearing should be public but decided it would hear certain parts relating to confidential medical circumstances in private.

Additional document

During the course of the hearing, the teacher's representative and the presenting officer reviewed the teacher's medical records and jointly made an application for an agreed summary of the medical records to be admitted. The presenting officer also raised the issue of the late submission of such evidence to the panel.

Like the earlier application in this hearing, the document was not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel was required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures. The panel took into account the late timing of such application as raised by the presenting officer.

Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

The presenting officer had already explained that the summary had been formed by summarising a 42 page medical record. It was stated that a great deal of the information from the record had been redacted for unknown reasons. The panel was not satisfied that this very short summary document, consisting of less than an A4 page, required admission, in the interests of justice. There was insufficient visible information in the summary to reach a conclusion on its relevance. Therefore, the panel rejected the application.

Summary of evidence

Documents

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

Section 1: Chronology – pages 1 to 2

Section 2: Notice of Referral, response and notice of hearing – pages 3 to 17

Section 3: Teaching Regulation Agency witness statements – pages 18 to 21

Section 4: Teaching Regulation Agency documents – pages 22 to 134

Section 5: Teacher documents – page 135

In addition, the panel agreed to accept the following:

Witness statement of Mr Smith – pages 138 to 141

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing and the additional document that the panel decided to admit.

After the decision was announced, the teacher's representative provided the panel with character references for Mr Smith. Under paragraph 4.18 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case. The panel was satisfied that the documents may reasonably be considered to be relevant when going on to consider any mitigating factors when providing its recommendation to the Secretary of State. The panel agreed to accept the

character references into the bundle of documents when considering its recommendation to the Secretary of State:

Character References – pages 142 to 146

Witnesses

The panel heard oral evidence from Witness A and Witness B [Redacted].

The witnesses were called on behalf of the TRA.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Smith applied for a position at the School in March 2018. Mr Smith disclosed a harassment without violence conviction on his application form. Mr Smith was subsequently interviewed for a teaching position at the School in April 2018 where he was questioned about his conviction. Mr Smith started employment at the School in June 2018. On the first day of Mr Smith's employment, the teacher provided the School with his DBS certificate. The DBS certificate disclosed that Mr Smith was sentenced to 14 weeks imprisonment, which was suspended for a period of 18 months. Consequently, Mr Smith was asked to provide further information about the conviction. Mr Smith stated that he did not have any of the court documentation. He did, however, offer his notes which he had provided to his solicitor at the time. The notes revealed that Mr Smith had engaged in sexual activity on a number of occasions [Redacted] in the presence of a child. The School alleged that Mr Smith withheld information surrounding the severity and circumstances of the conviction and failed to disclose information which could impact upon his suitability to work with children. On 12 July 2018, Mr Smith was suspended pending investigation and a probation review meeting was held on 18 July 2018. Mr Smith was dismissed on 19 July 2018. He appealed, but the decision was upheld.

Findings of fact

The findings of fact are as follows:

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

- 1. On or around 12 May 2014 you were convicted at Wellingborough Magistrates Court of the offence of pursuing a course of conduct which amounts to harassment between 1 May 2013 and 19 December 2013, contrary to ss.2(1) and 2(2) Protection from Harassment Act 1997 and were**

sentenced to a period of imprisonment of 14 weeks, suspended for 18 months.

The panel considered all of the evidence before it. The panel noted that Mr Smith admitted to the facts of this allegation. The panel considered the declaration on Mr Smith's application form to the School and the DBS application form where Mr Smith disclosed a conviction for harassment without violence.

There was further evidence of the admission in Mr Smith's written statement. Mr Smith also admitted the offence during the hearing.

The panel was not provided with the DBS certificate, evidence from the PNC or magistrates' court. It had, however, seen Mr Smith's statements which included the custody number from the case.

On this basis, the panel found allegation 1 proved.

3. Failed to disclose your previous disciplinary investigations and/or actions in the application form or at all;

The panel considered all of the evidence before it. The panel noted that Mr Smith did not disclose any disciplinary action from a previous position on his application form to the School. In Mr Smith's application form, he was asked if he had *"been subject to any disciplinary action in a previous position"*. Mr Smith replied *"No"* on the form.

The panel had seen direct evidence within the bundle to confirm that Mr Smith was subject to a formal disciplinary procedure in a previous role amounting to a first written warning.

On requesting further information from Mr Smith in relation to his conviction, the School became aware of a disciplinary investigation which Mr Smith had been subject to at a previous school.

Mr Smith stated that he did not feel he could disclose the previous disciplinary action on his application form because he was subject to confidentiality terms within a compromise agreement. This agreement was signed as part of his departure from the previous school. The panel did not have sight of the compromise agreement, but it was accepted by the parties that a compromise agreement did exist.

The panel noted that Mr Smith was unclear as to whether he was subject to a disciplinary investigation from his previous role when questioned about the incident during his probationary review meeting. The panel took into consideration that the incident occurred in 2011. Mr Smith's application to the School was seven years after this incident took place. The panel noted that the School in its disciplinary process failed to uphold to an allegation similar to this and stated: *"...the incident dated back to 2011 and may not have been relevant to the decision surrounding your appointment"*.

The panel had seen evidence within the bundle that showed that Mr Smith was subject to a formal disciplinary investigation. This led to a formal written warning being placed in Mr Smith's personal file and the warning was to remain active for twelve months. He was

informed of the outcome via letter to his home address. It was clear that Mr Smith had corresponded with his previous employer in relation to the outcome as Mr Smith appealed the decision. That appeal was unsuccessful. The panel, therefore, concluded that Mr Smith was aware that he was subject to a disciplinary investigation in a previous role.

The panel found allegation 3 proved.

4. Engaged in sexual activity in the presence of a child.

The panel assessed all of the evidence before it.

In Mr Smith's notes to his solicitor, Mr Smith stated that *'me and [Child A] play Guitar Hero. Mr Smith's [Redacted] "gets into bed [Redacted]. [Redacted] as I play the game. I join her while [Child A] continues to play the game begrudgingly alone"*. When questioned by the presenting officer whether [Redacted] continued after that point, Mr Smith responded "yes".

The presenting officer asked how old Child A was at the time. Mr Smith said that Child A was [Redacted] years old.

Mr Smith stated that his [Redacted] was *"[Redacted] while I played [Child A] at [Redacted] while [Child A] was in the same room and we were under the covers"*.

In his oral evidence, Mr Smith acknowledged that he did have sex with his [Redacted] while Child A was in the room. However, he stated that Child A had no idea of what he and his [Redacted] were doing. Under questioning, Mr Smith insisted that he and his [Redacted] made no [Redacted] and, consequently, Child A could not have heard any [Redacted].

Witness A confirmed in oral evidence that Mr Smith had told him he did take part in [Redacted] in the presence of a child in the same room.

The panel noted that Mr Smith stated that his [Redacted] and Child A denied anything [Redacted] took place whilst in the presence of Child A.

On the balance of probabilities, the panel found allegation 4 proved.

6. Your conduct as may be found proven at 4 above, affected, or had the potential to affect your suitability to work with children.

The panel considered the evidence before it.

During the hearing, the presenting officer asked Mr Smith whether the engagement in [Redacted] between two adults in the presence of a child would be the sort of thing he would report if he became aware of this as a teacher. Mr Smith responded by saying *"Absolutely, yeah"*. Mr Smith stated in his oral evidence that his conduct was *"absolutely disgusting"*.

Witness A stated that this raised serious concerns in respect of safeguarding. Witness A stated that Mr Smith tried to defend his actions by stating that the [Redacted] took place under a blanket showed a lack of understanding of the need to safeguard children.

Witness A stated that this is not activity that a child should be exposed to and Mr Smith should have realised that this sort of activity should not happen in front of minors.

When this question was put to Witness B, she stated that it would raise a safeguarding concern for such activity to happen in the presence of a child. Witness B stated that this type of activity could cause psychological harm to a child.

In oral evidence, Mr Smith accepted that to engage in [Redacted] in the presence of a child was inappropriate and could cause psychological harm to a child.

The panel concluded that this type of behaviour was wholly inappropriate and cast significant doubt on Mr Smith's suitability to work with children. It raised serious safeguarding issues. These issues were not solely limited to the potential psychological and behavioural harm that it could cause to a child.

The panel found allegation 6 proved.

The panel found the following particulars of the allegations against Mr Smith not proved, for these reasons:

2. Withheld relevant information around your conviction including, but not limited to, the sentence of suspended imprisonment which you received;

Mr Smith disclosed his conviction at the very outset on his application form to the School. The panel heard evidence from Witness A that he had asked Mr Smith to tell him a bit more about the conviction at interview. Witness A stated that Mr Smith did not disclose the details of the sentence at interview.

Mr Smith told the panel that Witness A had never specifically asked a question about the sentence for the conviction. Mr Smith stated that he gave Witness A further information about this conviction when he was asked but he was stopped after a few minutes when Witness A raised his hand in a way that Mr Smith took to mean to stop speaking.

Mr Smith was questioned by the presenting officer on what information he had disclosed to Witness A. Mr Smith explained that had he been given the opportunity by Witness A to divulge further information he would have done so, but he was stopped by Witness A's hand gesture.

The panel was of the opinion that Witness A, being employed as [Redacted] at the School, would have been very experienced in interviewing candidates. The panel noted that the School was willing to employ Mr Smith without having information regarding his sentence. If the School had deemed the nature of the sentence to be relevant, then the School should have gathered this information at the outset.

The panel noted that Mr Smith was forthcoming with statements from the case when asked for further information at a later stage.

Therefore, the panel did not find allegation 2 proved.

5. Your conduct as may be found proven at allegation 2 and/or 3, above lacked integrity and/or was dishonest.

The panel considered all of the evidence before it. The panel only considered allegation 5 in respect of the proved allegation 3.

The panel had regard for the legal adviser's advice when considering an allegation of dishonesty and/or lack of integrity. As for dishonesty, the panel needed first to ascertain subjectively the actual state of Mr Smith's knowledge or belief as to the facts. Secondly, the panel needed to determine whether Mr Smith's state of mind was honest or dishonest by the application of the objective standards of the ordinary honest person.

When considering lack of integrity, the panel recognised that this allegation connotes adherence to the ethical standards of one's own profession that involves more than mere honesty. It is linked to the manner in which the profession professes to serve the public.

The panel firstly turned its mind to the actual state of Mr Smith's knowledge or belief as to the facts. The panel had seen evidence within the bundle that showed that Mr Smith was subject to a formal disciplinary investigation, and he was informed of the outcome via letter to his home address. Mr Smith had corresponded with his previous employer in relation to the outcome as he appealed the decision.

The panel was mindful that Mr Smith had stated that he did not feel that he could disclose whether he was subject to a previous disciplinary investigation due to the confidentiality terms of the compromise agreement.

The panel also had regard to the written evidence. The Outcome of Governing Body Appeal Hearing letter dated 17 November 2011 stated that Mr Smith's written warning was to remain active for twelve months from the date of issue of the warning which was 7 October 2011. The panel accepted that this may have caused confusion for Mr Smith, as he applied for the job at the School in March 2018.

As a result, the panel accepted that Mr Smith may have thought that he was acting in line with his compromise agreement at his previous school when completing the application form. Therefore, the panel decided that when Mr Smith completed the application form, he believed that he did not have to disclose any previous disciplinary investigation.

The panel did not consider that Mr Smith's failure to disclose previous disciplinary investigations and/or actions in the application form was dishonest.

Based on the evidence, the panel concluded that Mr Smith was confused as to whether he needed to disclose the previous disciplinary investigation on his application form. The panel did not consider that Mr Smith's failure to disclose previous disciplinary investigations in the application form lacked integrity. The panel did not feel that Mr

Smith's behaviour was in contrast to the manner in which the profession professes to serve the public.

On the balance of probabilities, the panel did not find allegation 5 proved.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute and/or conviction of a relevant offence

Having found allegations 1, 3, 4 and 6 proved, the panel considered 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 Smith, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr 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
 - at all times observing proper boundaries appropriate to a teacher's professional position

The panel was not satisfied that the conduct of Mr Smith in relation to the facts found proved in allegation 3 involved breaches of the Teachers' Standards. The panel did not, therefore, consider that Mr Smith's conduct fell significantly short of the standards expected of the profession.

The panel was satisfied that the conduct of Mr Smith in allegations 1, 4 and 6 amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Smith's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found that none of these offences was relevant.

The panel noted that allegations 1 and 4 took place outside the education setting. Nevertheless, the panel gave consideration to the potential affect this could have on Mr Smith's suitability to work with children.

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

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

The findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception of the profession.

Having found the facts of particulars 1, 4 and 6 proved, the panel further found that Mr Smith's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Additionally, in respect of allegation 1, the panel was satisfied that the conduct of Mr Smith, in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr 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

- showing tolerance of and respect for the rights of others

The panel took account of the way the teaching profession is viewed by others. The panel considered that Mr Smith's behaviour in committing the offence could affect public confidence in the teaching profession, given the influence that teachers may have on pupils, parents and others in the community.

Although the conduct that led to the conviction did not take place within the context of his teaching role, the panel was satisfied that the conviction was a conviction for a relevant offence because:

- i. Mr Smith's behaviour ultimately led to a sentence of suspended imprisonment, which was indicative of the seriousness of the offence committed;
- ii. Mr Smith had a clear disregard for the police harassment warnings. The panel felt these actions demonstrated a failure to abide by the law;
- iii. Public confidence in the profession is likely to be adversely affected by Mr Smith's conduct and conviction.

The panel took into account the written evidence, where it was noted that Mr Smith was on [Redacted] at the time of the harassment offence took place. The panel noted that Mr Smith continued to teach at the same school for more than 3 years after the harassment conviction.

Nevertheless, the panel found that the seriousness of the offence that led to the conviction was relevant to Mr Smith's ongoing suitability to teach. The panel found that this was a relevant offence. It is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

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 and a conviction of a relevant offence, 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 protection of other members of the public, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining the teacher in the profession.

In the light of the panel's findings against Mr Smith, which involved a relevant offence and sexual activity in the presence of a child, there were strong public interest considerations as detailed below:

- I. In respect of the protection of pupils, given the serious finding of sexual activity in the presence of a child.
- II. Public confidence in the profession could be seriously weakened if conduct such as that found against Mr Smith were not treated with the utmost seriousness when regulating the conduct of the profession.
- III. Retaining the teacher in the profession since limited doubt had been cast upon his abilities as an educator and he was able to make a valuable contribution to the profession.

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 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 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;
- a deep-seated attitude that leads to harmful behaviour;
- the commission of a serious criminal offence, including those that resulted in a conviction, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

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.

Mr Smith had a previously good record. The teacher's representative told the panel that Mr Smith was having [Redacted] during the period of the harassment offence for which Mr Smith was convicted. The panel, however, concluded that this was not a suitable reason to dismiss the seriousness of the offence and the sexual activity in the presence of a child.

As far as the panel was aware, Mr Smith had a previously good history and the panel accepted that the incident was out of character. The teacher's representative provided the panel with five character references.

A previous work colleague said: *"I have known Peter since September 2009, so for almost 12 years now. We met when I moved to Unity College [Redacted]. Although he was in the Maths faculty and I was in the Science faculty we were both rated highly as teachers and got to know one through the outstanding teachers [sic] programme which started soon after I joined."*

A local community club instructor, where Mr Smith volunteers, stated: *"Peter is very well respected and loved by both the students and parents alike for his fun caring manner as well as his natural ability to teach and connect with students of all ages who sometimes pose their own unique learning challenges."*

A parent of one of Mr Smith's private tutees stated: *"It's clear he has a love for education and from everything I have seen our education system would be better if he was able to get back to work."*

A previous colleague stated: *"I worked with Peter for 6 years as part of the maths team at Unity college Northampton. He was a lead teacher and I was [Redacted]."*

One of Mr Smith's current managers stated: *"I find Peter is very well liked by his fellow colleagues and will do his utmost to assist and train them to the highest degree."*

The panel saw evidence that showed Mr Smith was previously subject to a disciplinary warning.

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 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 Smith. Mr Smith's sexual activity with his [Redacted], in the presence of a child in the same room was a significant factor in forming that opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend a review period of the order. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than two years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period, but the panel did not consider any of these to be relevant.

The panel accepted that Mr Smith has shown some insight into his actions. For example, when Mr Smith was questioned by the presenting officer about the sexual activity with his [Redacted], in the presence of a child, Mr Smith stated that his conduct was "*absolutely disgusting*".

The panel noted that there was no direct evidence from Mr Smith's [Redacted] or Child A in respect of the finding of sexual activity in the presence of a child. However, the panel recognised that the evidence came entirely from Mr Smith's own words.

The panel also took into consideration that whilst Mr Smith was sentenced to 14 weeks imprisonment, which was suspended for a period of 18 months, the harassment conviction was without violence.

Mr Smith has since attended [Redacted]. When questioned by the panel, Mr Smith stated that he no longer needed the [Redacted]. Mr Smith also stated that he had a steady job and stable family situation.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a review period after 3 years.

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 some of the allegations proven and found that those proven facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute and/or a relevant conviction. In this case, the panel has found some of the allegations not proven and found that some allegations do not amount to unacceptable professional conduct or conduct likely to bring the profession into disrepute. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Peter Smith should be the subject of a prohibition order, with a review period of 3 years.

In particular, the panel has found that Mr 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
 - at all times observing proper boundaries appropriate to a teacher's professional position
- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - showing tolerance of and respect for the rights of others

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

The findings of misconduct are particularly serious as they include a finding of a conviction of harassment, engaging in sexual activity in the presence of a child and that conduct found proven affected or had the potential to affect Mr Smith's suitability to work with children.

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 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, "In the light of the panel's findings against Mr Smith, which involved a relevant offence and sexual activity in the presence of a child, there were strong public interest considerations: In respect of the protection of pupils, given the serious finding of sexual activity in the presence of a child". 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, "The panel accepted that Mr Smith has shown some insight into his actions. For example, when Mr Smith was questioned by the presenting officer about the sexual activity with his [Redacted], in the presence of a child, Mr Smith stated that his conduct was "*absolutely disgusting*".

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "the panel found that the seriousness of the offence that led to the conviction was relevant to Mr Smith's ongoing suitability to teach. The panel found that this was a relevant offence. It is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession".

Although outside the education setting, I am particularly mindful of the finding of sexual activity in the presence of a [Redacted] year old child 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 Mr Smith himself. He is no longer employed at the School, the panel comment "As far as the panel was aware, Mr Smith had a previously good history and the panel accepted that the incident was out of

character. The teacher's representative provided the panel with five character references".

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

In this case, I have placed considerable weight on the panel's comments "The panel decided that the public interest considerations outweighed the interests of Mr Smith. Mr Smith's sexual activity with his [Redacted], in the presence of a child in the same room was a significant factor in forming that opinion".

I have given less weight in my consideration of sanction therefore, to the contribution that Mr 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, 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 a 3 year review period.

I have considered the panel's comments "Mr Smith has since attended [Redacted]. When questioned by the panel, Mr Smith stated that he no longer needed the [Redacted]. Mr Smith also stated that he had a steady job and stable family situation".

I have considered whether a 3 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 have decided that a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. In reaching this decision I have noted the following "there was no direct evidence from Mr Smith's [Redacted] or Child A in respect of the finding of sexual activity in the presence of a child. However, the panel recognised that the evidence came entirely from Mr Smith's own words".

I consider therefore that a 3 year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Peter Smith is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 24 February 2024, 3 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will

meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Smith remains prohibited from teaching indefinitely.

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

Mr 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 black ink, appearing to read 'SABuxcey', with a stylized, cursive script.

Decision maker: Sarah Buxcey

Date: 19 February 2021

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