



Teaching  
Regulation  
Agency

# **Mr James Gardner: Professional conduct panel outcome**

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

**April 2023**

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

<b>Teacher:</b>	Mr James Gardner
<b>Teacher ref number:</b>	3744574
<b>Teacher date of birth:</b>	22 January 1982
<b>TRA reference:</b>	18976
<b>Date of determination:</b>	5 April 2023
<b>Former employer:</b>	Broomhill Bank School, Tunbridge Wells, Kent

### **Introduction**

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 3 to 5 April 2023 by virtual means, to consider the case of Mr James Gardner.

The panel members were Mr Ian McKim (lay panellist – in the chair), Mr Chris Major (teacher panellist) and Ms Susan Ridge (lay panellist).

The legal adviser to the panel was Mr Graham Miles of Blake Morgan LLP solicitors.

The presenting officer for the TRA was Mr Michael O'Donohoe of Browne Jacobson LLP solicitors.

Mr Gardner was present on the first and second day of the hearing, but did not attend on the third day. He was not represented on any of the hearing days.

The hearing was recorded and took place in private, save that the panel's decision on facts and unacceptable professional conduct/conduct that may bring the profession into disrepute, was announced in public.

## Allegations

The panel considered the allegations set out in the Notice of Hearing dated 17 January 2023.

It was alleged that Mr James Gardner was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

1. Whilst employed as a Teacher, on or around 6 November 2019, he:
  - a. engaged in inappropriate physical contact with a pupil;
  - b. engaged in offensive and/or homophobic dialogue in the presence of one or more pupils, including by describing a singer on the radio as "a faggot";
  - c. displayed unprofessional behaviour by:
    - i smoking in the vicinity of one or more pupils;
    - ii discussing with one or more pupils that he had previously used non-prescription drugs for recreational purposes.
2. Whilst applying for the role of Teacher at Broomhill Bank School and/or following his appointment, he provided false and/or misleading information, and/or failed to disclose relevant information in order to improve his prospects of securing and/or retaining a teaching post, including by failing to disclose:
  - a. the fact that he had not completed his NQT year;
  - b. the fact that he had been dismissed from a previous teaching post for gross misconduct.
3. His conduct as may be found proved at 2a and/or 2b above lacked integrity and/or was dishonest.

Mr Gardner admitted the facts alleged in allegation 2b. Although he admitted some facts of other allegations, there was an element in each of the remaining allegations that was not admitted or in respect of which Mr Gardner's position was not clear. Accordingly, save for allegation 2b, the Committee treated the remaining allegations as not admitted.

## Preliminary applications

### Application for the hearing to take place in private

The panel considered an application from Mr Gardner that the hearing should be held in private. He referred to the deeply personal and confidential nature of his representations

about his [REDACTED] that he submitted in writing and wished to expand upon throughout the hearing. [REDACTED].

Mr O'Donohoe opposed the application for the whole of the hearing to take place in private. He submitted that a public hearing was in keeping with the principle of open justice. However, Mr O'Donohoe did not object to the panel going in to private session in order to hear evidence and submissions about [REDACTED] relating to Mr Gardner. He accepted that, in relation to these [REDACTED], the public interest in the hearing taking place in public was outweighed by Mr Gardner's rights to privacy. Mr O'Donohoe said that he could properly delineate his presentation of the case, such that any logistical consequences of deciding to hold only part of the hearing in private could be easily managed.

The panel agreed that evidence and submissions relating to details of Mr Gardner's [REDACTED] should not be heard in public. The panel carefully considered whether it would be practicable to conduct the hearing in public and go into private session when appropriate. The panel noted that references would likely be made to Mr Gardner's [REDACTED] both at the time of the alleged conduct and currently. Accordingly, these matters were likely to pervade Mr Gardner's own evidence and also form part of his questioning of the TRA's sole witness. Given that Mr Gardner was not represented the panel was concerned that his evidence and submissions would not be so carefully constructed. The panel concluded that it would be impracticable to hold this hearing in public without there being a significant risk of details of [REDACTED] relating to Mr Gardner being referred to in public. The panel also considered that holding the hearing in public would adversely affect the quality of the evidence of Mr Gardner and his ability to participate in the hearing. For this reason, it was also in the interests of justice that Mr Gardner be able to give all of his evidence in private.

Taking all of these matters into consideration, the panel concluded that the whole of the hearing should take place in private. In making this determination, the panel recognised that there would be a public announcement of its decisions as to whether the facts alleged are proven and as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. Furthermore, if the hearing should result in a recommendation being made to the Secretary of State, the decision of the Secretary of State would be made public.

### **Application to amend allegation**

Mr O'Donohoe made an application to amend the reference to '**our** prospects' in allegation 2. Mr O'Donohoe submitted that this was a typographical error and that the correct wording was '**your** prospects'. Mr O'Donohoe submitted that the amendment was in the interests of justice and would not cause any prejudice to Mr Gardner. Mr Gardner did not object to the application. After receiving legal advice, the panel determined that the application for amendment should be granted on the basis that it was in the interests

of justice to correct an obvious error and that no prejudice would be caused to Mr Gardner.

## **Application to admit hearsay evidence**

At the invitation of the panel, Mr O'Donohoe made an application to admit hearsay evidence contained in the bundle of documents, including but not limited to accounts given by pupils who were not being called to give evidence. After hearing submissions from Mr O'Donohoe and receiving legal advice, the panel determined that it would be fair to allow the hearsay evidence to be admitted. The panel concluded that, in the circumstances of this case, it could ensure fairness by making determinations as to the weight (if any) to be attached to the hearsay evidence.

## **Summary of evidence**

### **Documents**

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

Section 1: Chronology and anonymised pupil list – pages 6 to 7

Section 2: Notice of proceedings and response – pages 9 to 23

Section 3: Teaching Regulation Agency witness statements – pages 25 to 62

Section 4: Teaching Regulation Agency documents – pages 64 to 209

Section 5: Teacher documents – pages 212 to 277

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

### **Witnesses**

The panel heard oral evidence from Witness A, [REDACTED], Broomhill Bank School as a witness called by the presenting officer.

The Committee also heard oral evidence from Mr James Gardner.

## **Decision and reasons**

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

Mr James Gardner was employed by Broomhill Bank School, Tunbridge Wells, Kent ('the School') as a PE and Science Teacher with effect from 1 September 2019. The School is

a special needs school for students with communication and interaction difficulties, most of whom have a diagnosis of autism. Mr Gardner had been recruited to that role in or around July 2019, having previously been recommended by a teaching agency. It was alleged that, when applying for the role, he did not disclose that he had not completed the induction period required for a Newly Qualified Teacher (NQT), which at that time was three terms. It was also alleged that he failed to disclose that he had been dismissed from a previous teaching post for gross misconduct.

It was alleged that, on 23 September 2019, Mr Gardner mentioned to his [REDACTED], Individual B, that he had not completed his NQT year. This was information that was relevant to his appointment as it meant that the School needed to appoint and train a mentor and give Mr Gardner a reduced timetable. Nevertheless, on being informed about his status, the School agreed to put Mr Gardner back on the NQT programme, with Individual B taking on the role of [REDACTED]. In the course of liaising with Kent Local Authority NQT team, the School also became aware that Mr Gardner had been dismissed for gross misconduct in an earlier teaching post at [REDACTED].

It was alleged that, during an off-site School event on 6 November 2019, Mr Gardner became involved in an exchange with Pupil B that resulted in Mr Gardner initiating inappropriate physical contact. It was also alleged that Mr Gardner had used homophobic and inappropriate language in the presence of a staff member and a pupil. Further, it was alleged that Mr Gardner had smoked a cigarette during the off-site event and instructed a pupil who had witnessed this not to tell anyone. One of the witnesses interviewed by the School immediately following these events also made reference to further inappropriate comments regarding recreational drug use made to or in the presence of Pupil C.

Mr Gardner was asked to attend a disciplinary meeting with Witness A, [REDACTED], on 14 November 2019. It was alleged that, during this disciplinary meeting, Mr Gardner made a number of admissions. He was subsequently referred to the TRA. The TRA elected to proceed with the allegations set out in the Notice of Hearing. The panel disregarded any evidence about allegations not referred to in the Notice of Hearing.

## **Findings of fact**

The findings of fact are as follows:

### **1. Whilst employed as a Teacher, on or around 6 November 2019, you:**

#### **a. engaged in inappropriate physical contact with a pupil;**

Mr O'Donohoe confirmed that the TRA's case was based upon the alleged contact with Pupil B.

The panel was presented with a signed witness statement from Pupil B dated 20 April 2021, who referred to attending the off-site event on 6 November 2019 when she was playing in goal in a football match. Pupil B said that she had an [REDACTED] in the third game and she left the pitch. Pupil B said that her boyfriend, Pupil A, who was present had tried to calm her down and persuade her to return to the pitch. Pupil B said that Mr Gardner interrupted Pupil A and had placed his hands on his shoulders and pushed him out of the way and told him to get back on the pitch. Pupil B said that Mr Gardner started shouting at her and told her that she had embarrassed him and was representing the School. Pupil B said that Mr Gardner then put his hands on her shoulders and pushed her up against the wall. Pupil B said that Mr Gardner kept his hands on her shoulders for about two minutes. The panel noted that there were some inconsistencies between Pupil B's written statement for this hearing and earlier accounts that she had provided as part of the School's investigation. As Pupil B had not been called to give oral evidence, the panel did not have the opportunity to clarify these matters by questioning Pupil B.

In her evidence, Witness A said that at the disciplinary meeting, Mr Gardner told her that Pupil B had run off crying. He admitted to having touched Pupil A in order to turn him around and send him back on the pitch to play. Witness A said that Mr Gardner told her that he had held Pupil B by the shoulders and that he was almost shaking her by the shoulders saying, *'you need to be back on the pitch'* and *'you can do it'*.

Mr Gardner's evidence was said that he did not push or pull Pupil A or Pupil B. He said that he did gesture to and encourage Pupil B to get back onto the pitch and did so as a matter of urgency but did not use physical force. He felt that Pupil B needed de-escalating and consoling. He said that he placed his outstretched arms on top of her shoulders momentarily and gently to be able to try to allow Pupil B to focus on him and his words and he encouraged her to breathe and focus. Mr Gardner said that he had previously received training that he described as PRICE (Protecting Rights in a Caring Environment). This had included training on de-escalation techniques, which he had attempted to implement in relation to Pupil B.

The panel was satisfied, based on Mr Gardner's own evidence that he had engaged in physical contact with Pupil B. The panel considered whether the contact, as described by Mr Gardner was appropriate. The panel concluded that it was not appropriate. Mr Gardner had referred to the fact that the pupils were engaged in a competitive tournament and he wanted the team to do well. In one of his written responses, Mr Gardner said, *'my enthusiasm and instructions on reflection may have been perceived as having a go at [Pupil B] but this was done with the best interests of the team at heart'*. The panel concluded that it was more likely than not that Mr Gardner's interaction with Pupil B was driven, at least in part, by his desire to get her back on the pitch as soon as possible. Furthermore, this was not a situation in which Pupil B was at risk of causing harm to herself or anyone else. There was no immediate need to resort to any physical contact at that stage.



In the view of the panel, there was no justification for Mr Gardner engaging in any physical contact with Pupil B. The panel did not need to consider making any specific findings as to the nature and duration of the contact.

The panel found allegation 1a proved.

**b. engaged in offensive and/or homophobic dialogue in the presence of one or more pupils, including by describing a singer on the radio as "a faggot"**

Witness A said that, at the disciplinary meeting on 14 November 2019, Mr Gardner told her that when the song by Queen came on the radio, he had said, *'That man can sing for a faggot'*.

In his written response to the allegation, Mr Gardner said:

*'I should never have used inappropriate language as I did when saying Freddie Mercury was a fantastic singer, shame he was a "faggot". I realise this is an offensive word, but didn't mean to cause offence at the time. I didn't mean it to come out like that as I was saying it as a joke, albeit in extremely bad taste it makes me cringe to think that I said it. I am not homophobic or racist in any way but realise how my words were not acceptable and have deep regret as it is not my true character to speak like that. Although it doesn't make it right, I said it to a member of staff in the front of the mini-bus; we had a student in the back listening to his own music on his earphones so I was not talking to him but to member of staff who made the complaint.'*

In his oral evidence, Mr Gardner also accepted that the language he had used was homophobic and offensive. Mr Gardner acknowledged he had been travelling to the off-site event in a seven seater car. He was in the front passenger seat and that another member of staff, Individual C was driving. Pupil C was in the back seat. No other pupils were in the car. Mr Gardner accepted that Pupil C was present in the car, but he disputed that Pupil C had heard him use the offensive word because Pupil C was listening to music on his headphones.

Based on his own evidence, the panel was satisfied that Mr Gardner had used the offensive and homophobic term 'faggot' when Pupil C was present in the car. Although there was no clear evidence that Pupil C had actually heard the particular comment, this was not required in order to find the allegation proved. Furthermore, Mr Gardner acknowledged that there were times during the journey when he had spoken directly to Pupil C. The panel was satisfied that Mr Gardner had created a situation in which Pupil C might have heard the comment and was reckless as to whether he could hear it.

The panel found allegation 1b proved.

**c. displayed unprofessional behaviour by:**

### **i smoking in the vicinity of one or more pupils;**

In her statement prepared for this hearing, Pupil B said that when she and Mr Gardner were in an alleyway next to a building, Mr Gardner pulled out a packet of cigarettes and lit one for himself and then asked her if she wanted one and she said 'no'.

Mr Gardner admitted that he had smoked a cigarette, but denied that he had done so in front of Pupil B. Mr Gardner did acknowledge that he had an unlit cigarette in his hand or mouth and a lighter in his hand when he was on his way to what he described as a smoking area at the back of the venue when he saw Pupil B. He said that he had a conversation with her about the cigarette in which he had said to her 'You don't smoke do you?', to which she responded 'no'. Mr Gardner's evidence was that he then said 'glad to hear it' or words to that effect.

Witness A said that at the disciplinary meeting, she asked Mr Gardner if he had smoked in front of a [REDACTED]. Witness A said that, at one point, Mr Gardner said that he did smoke in front of the students, but that they were all 19, so it did not matter. Witness A said that she pointed out that Pupil B [REDACTED], but that he was a teacher and it did not matter what age the pupils were. Witness A said that Mr Gardner responded by saying, 'OK, yeah, yeah, I see that', or words to that effect.

The panel concluded that it was more likely than not that Mr Gardner had smoked in the vicinity of Pupil B.

The panel found allegation 1c i approved.

### **ii discussing with one or more pupils that you had previously used non-prescription drugs for recreational purposes.**

The TRA's case in relation to this allegation was that Mr Gardner had discussed his previous use of non-prescription drugs with Pupil C when travelling in the car to the off-site event.

The panel was presented with a written account from Individual C. The panel was also presented with a handwritten document that was described as a statement of Pupil C. However, it transpired from the oral evidence of Witness A, that this document was a record of a conversation between Individual C and Pupil C and it was not clear to the panel what reliance could be placed on it.

In her written statement, Individual C said that, during the journey, Mr Gardner had referred to previously smoking 'weed'. Individual C's evidence was that Mr Gardner stated that he, '*used to be a stoner but hasn't smoked since February*'. Individual C also said that Mr Gardner said to Pupil C, '*don't worry, I won't come to work stoned or nothing*'. Individual C was not called to give evidence.

In his oral evidence, Mr Gardner said that he could not recall saying this when travelling in the car. However, he acknowledged that Individual C's account referred to information about Mr Gardner that she could not have obtained from any source other than Mr Gardner. [REDACTED].

The panel was satisfied that Mr Gardner had referred to his previous use of non-prescription drugs when Pupil C had been present in the car. However, in order to find this allegation proved, the panel had to be satisfied that Mr Gardner had engaged in a discussion with Pupil C about his use of drugs. It was not clear from Individual C's written account or from the handwritten account initially attributed to Pupil C that there had been any discussion with Pupil C on this subject. The panel also noted that this was not a matter that Mr Gardner was questioned about in his disciplinary meeting on 14 November 2019. The panel concluded that the evidence presented was not sufficient to find this allegation proved.

The panel found allegation 1c ii not proved.

**2. Whilst applying for the role of Teacher at Broomhill Bank School and/or following your appointment, you provided false and/or misleading information, and/or failed to disclose relevant information in order to improve your prospects of securing and/or retaining a teaching post, including by failing to disclose :**

**a. the fact that you had not completed your NQT year;**

Witness A gave evidence that, in June 2019, the School was seeking to recruit a PE and Science Teacher and was using a teaching agency for that purpose. Mr Gardner was recommended to the School by a teaching agency and a copy of his CV was passed on to the School. In her oral evidence, Witness A acknowledged that she had been provided with a CV for Mr Gardner which was different to the one contained in the hearing bundle and which referred to periods of supply teaching that Mr Gardner had undertaken since his employment at [REDACTED]. Witness A said that neither of the CVs had said anything about Mr Gardner's NQT status and that she had assumed that he had completed his NQT year as he was represented by the teaching agency to be an experienced teacher. Witness A said she was involved in interviewing Mr Gardner, but she had assumed that the normal screening checks would have been carried out by the teaching agency and reported to the School. The panel noted that the only references that the School obtained were from the teaching agency that was placing him and from a school in which he had carried out supply work for a short period. No reference was obtained from [REDACTED].

Witness A said that, on 23 September 2019, Mr Gardner mentioned to his [REDACTED], Individual B, that he had not completed his NQT year. Witness A said that this came as a surprise and it meant that the School needed to appoint and train a mentor and give Mr

Gardner a reduced timetable. Nevertheless, the School agreed to put Mr Gardner back on his NQT programme and Individual B was appointed to be his [REDACTED].

Mr Gardner's evidence was that he had informed the teaching agency about his NQT status and he had not been asked about this during the interview process. His recollection was that he had informed Individual B about his NQT status at the start of September. However, he acknowledged that he had not mentioned this at his interview in June 2019 or any other time following his appointment.

The panel was satisfied that Mr Gardner's failure to disclose this information until 23 September 2019 was for the purpose of improving his prospects of securing or retaining the post of PE and Science Teacher at the School.

The panel found allegation 2a proved.

**b. the fact that you had been dismissed from a previous teaching post for gross misconduct.**

Mr Gardner admitted this allegation.

In the course of liaising with Kent Local Authority NQT team, the School became aware that Mr Gardner had been dismissed for gross misconduct in an earlier teaching post at [REDACTED].

Mr Gardner said that the teaching agency was aware that he had been dismissed from [REDACTED], but he acknowledged that he did not inform the School that he had been dismissed from that school. Mr Gardner said that he had put forward as referees the teaching agency and the name of a school at which he had carried out supply work subsequent to his dismissal from [REDACTED]. In his oral evidence, Mr Gardner said that he wanted the School to be able to focus upon the positive work undertaken in the six months following his dismissal from [REDACTED].

In her oral evidence, Witness A said that she had asked Mr Gardner at his interview why he had left [REDACTED]. She said that Mr Gardner said that he had left because of the extensive travelling involved and that he wanted to be able to spend more time with his young children. Mr Gardner agreed that he had said this to Witness A at the interview and not disclosed the fact that he had been dismissed for gross misconduct.

The panel was satisfied that his failure to disclose the fact that he had been dismissed by [REDACTED] was for the purpose of improving his prospects of securing or retaining the post of PE and Science Teacher at the School.

The panel found allegation 2b proved.

**3. Your conduct as may be found proved at 2a and/or 2b above lacked integrity and/or was dishonest.**

As to the conduct in allegation 2a, the panel was satisfied by Mr Gardner's own account that he had deliberately withheld the fact that he had not passed his NQT year until after he was established as a member of staff in September 2019. He did not refer to his NQT status until after he had, in his own words, 'settled' in the job and formalities had been completed. He acknowledged in his evidence that he had recognised that the information about his NQT status was relevant in terms of the actions that the School would need to take regarding the appointment of a mentor.

The panel was satisfied that that Mr Gardner's failure to disclose his NQT status to the School until 23 September 2019 would be viewed as dishonest by the standards of ordinary decent people. As to lack of integrity, the panel was also satisfied that Mr Gardner's failure was a breach of the ethical standards of the teaching profession.

In relation to the conduct in allegation 2b, the panel was satisfied that Mr Gardner had deliberately concealed the fact that he had been dismissed from [REDACTED]. The panel was satisfied that that Mr Gardner's conduct would be viewed as dishonest by the standards of ordinary decent people. The panel was also satisfied that Mr Gardner's failure was a breach of the ethical standards of the teaching profession

The panel, therefore, concluded that Mr Gardner's conduct in allegations 2a and 2b lacked integrity and was dishonest.

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

Having found allegations 1a,1b, 1c i, 2a, 2b and 3 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 Gardner, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Gardner 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
- showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

The panel considered whether Mr Gardner's conduct displayed behaviours associated with any of the offences listed on pages 12 to 14 of the Advice. Although not charged or convicted of any offence, the panel found that the offences of fraud or serious dishonesty and intolerance and/or hatred on grounds of sexual orientation were relevant. The Advice indicates that where behaviours associated with such potential offences exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

[REDACTED]

The panel was satisfied that the conduct of Mr Gardner in respect of each of the allegations found proved, amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

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 Mr Gardner's status as a teacher, potentially damaging the public perception.

The panel, therefore, found that Mr Gardner'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, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. Prohibition

orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely: the protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

There was a strong public interest consideration in respect of the protection of pupils, given the findings made in relation to allegations 1a, 1b and 1c i

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

The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Gardner 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 Mr Gardner.

In carrying out the balancing exercise, the panel had regard to the public interest considerations in favour of prohibition as well as the interests of Mr Gardner. 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;
- violation of the rights of pupils;
- ... deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- a deep-seated attitude that leads to harmful behaviour;
- dishonesty or a lack of integrity... especially where these behaviours have been repeated or had serious consequences,
- ... concealment including...lying to prevent the identification of wrongdoing;

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.

None of the specific factors identified in paragraph 43 of the Advice were engaged as mitigating factors. The panel went on to consider broader matters arising from the evidence that might provide mitigation.

Mr Gardner submitted that he had found the entire disciplinary process commencing in 2019 and continuing to the present day to be extremely stressful and traumatic. He admitted the facts alleged in a number of the allegations and ultimately conceded that aspects of his conduct lacked integrity and were dishonest. Mr Gardner demonstrated some insight in respect of some of the conduct underlying the allegations. [REDACTED].

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 Gardner 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 Gardner. 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 at paragraph 50 that there are behaviours that, if proved, would militate against the recommendation of a review period. The TRA did not seek to argue that any of these applied in the present case. The panel accepted this proposition.

The Advice goes on to indicate at paragraph 51 that there are further behaviours that would weigh in favour of a longer period than the prescribed minimum of two years. The panel found the following behaviours to be relevant, namely, fraud or serious dishonesty and intolerance and/or hatred on grounds of sexual orientation.



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 review after a period of three 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 allegations 1a,1b, 1c i, 2a, 2b and 3 proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel found allegation 1c ii not proven, I have therefore put those matters entirely from my mind.

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

In particular, the panel has found that Mr Gardner 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
  - showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

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

The findings of misconduct are particularly serious as they include findings of inappropriate physical contact with a pupil, the use of offensive and/or homophobic dialogue and dishonesty.

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 Gardner, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children/safeguard pupils. The panel has observed, "The panel was satisfied, based on Mr Gardner's own evidence that he had engaged in physical contact with Pupil B. The panel considered whether the contact, as described by Mr Gardner was appropriate. The panel concluded that it was not appropriate." 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, "Mr Gardner demonstrated some insight in respect of some of the conduct underlying the allegations. [REDACTED]. In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils'. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Gardner were not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding of dishonesty 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 Gardner himself, the panel comment "Mr Gardner submitted that he had found the entire disciplinary process

commencing in 2019 and continuing to the present day to be extremely stressful and traumatic.” The panel also observed that, “None of the specific factors identified in paragraph 43 of the Advice were engaged as mitigating factors.” A prohibition order would prevent Mr Gardner from teaching and clearly deprive the public of his contribution to the profession for the period that it is in force. I have given less weight in my consideration of sanction therefore, to the contribution that Mr Gardner 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 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 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 three year review period.

I have considered the panel’s comments “The Advice goes on to indicate at paragraph 51 that there are further behaviours that would weigh in favour of a longer period than the prescribed minimum of two years. The panel found the following behaviours to be relevant, namely, fraud or serious dishonesty and intolerance and/or hatred on grounds of sexual orientation.”

I have considered whether a three 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, factors mean that allowing a three year review period is sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the dishonesty found, the lack of full insight and the use of offensive and/or homophobic dialogue.

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

**This means that Mr James Gardner 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 14 April 2026, three 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 Gardner remains prohibited from teaching indefinitely.

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

Mr James Gardner has a right of appeal to the King's Bench Division of the High Court within 28 days from the date he is given notice of this order.

A handwritten signature in black ink, appearing to read "John Knowles". The signature is written in a cursive style with a large initial 'J'.

**Decision maker: John Knowles**

**Date: 12 April 2023**

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