



Teaching
Regulation
Agency

Mr Martin Butler: Professional conduct panel outcome

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

March 2024

Contents

Introduction	3
Allegations	4
Preliminary applications	5
Summary of evidence	5
Documents	5
Witnesses	6
Decision and reasons	6
Findings of fact	7
Panel's recommendation to the Secretary of State	19
Decision and reasons on behalf of the Secretary of State	23

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

Teacher: Mr Martin Butler

Teacher ref number: 9543427

Teacher date of birth: 25 September 1961

TRA reference: 20378

Date of determination: 27 March 2024

Former employer: Shebbear College, Devon

Introduction

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 25 to 27 March 2024 by way of a virtual hearing, to consider the case of Mr Martin Butler.

The panel members were Mr Paul Hawkins (lay panellist – in the chair), Mrs Bev Williams (teacher panellist) and Mrs Bernie Whittle (teacher panellist).

The legal adviser to the panel was Ms Lara Small of Birketts LLP solicitors.

The presenting officer for the TRA was Ms Leah Redden of Browne Jacobson LLP solicitors.

Mr Butler was not present and was not represented.

The hearing took place by way of a virtual hearing in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of hearing dated 11 January 2024.

It was alleged that Mr Butler was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed at Shebbear College between 1 September 2017 and 1 November 2021:

1. He engaged in inappropriate physical contact and/or failed to maintain appropriate boundaries with;
 - a. Pupil A, in that he:
 - i. touched Pupil A's hip(s);
 - ii. touched Pupil A's thigh(s);
 - iii. touched Pupil A's breast;
 - iv. touched Pupil A's bottom;
 - b. Pupil B, in that he:
 - i. touched Pupil B's waist;
 - ii. touched Pupil B's hip;
 - iii. touched Pupil B's breast(s);
 - iv. touched Pupil B's bottom;
 - c. Pupil C, in that he placed his arm around Pupil C and in doing so touched Pupil C's hip.
2. He engaged in inappropriate and/or unprofessional behaviour towards Pupil A and Pupil B, including by deliberately dropping hockey sticks and requesting that Pupil A and Pupil B pick them up, necessitating the two pupils bending over in front of him.
3. His conduct at allegation 1 and/or 2 above was of a sexual nature.

Mr Butler denied the particulars of allegations 1(a), 1(b), 1(c), 2 and 3, as set out in his response to the notice of hearing dated 26 January 2024.

Preliminary applications

Application to proceed in the absence of the teacher

Mr Butler was not present at the hearing nor was he represented. The presenting officer made an application to proceed in the absence of Mr Butler.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of *R v Jones [2003] 1 AC 1* (as considered and applied in subsequent cases, particularly *GMC v Adeogba*).

The panel was satisfied that the notice of hearing had been sent to Mr Butler in accordance with the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession May 2020 (the '2020 Procedures').

The panel noted that Mr Butler had confirmed in writing by email to the presenting officer on 14 January 2024 that he voluntarily waived his right to attend the hearing, that he was content for the panel to make a decision in his absence and that he understood that the panel may make findings against him which may lead to the imposition of a prohibition order.

The panel concluded that Mr Butler's absence was voluntary and that he was aware that the matter would proceed in his absence.

The panel noted that Mr Butler had not sought an adjournment to the hearing and the panel did not consider that an adjournment would procure his attendance at a hearing. There was no medical evidence before the panel that Mr Butler was unfit to attend the hearing. The panel considered that it was in the public interest for the hearing to take place. It also considered the effect on the witnesses of any delay.

Having decided that it was appropriate to proceed, the panel agreed to seek to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mr Butler was neither present nor represented.

Summary of evidence

Documents

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

- Section 1: Notice of hearing and response – pages 6 to 16
- Section 2: Anonymised Pupil List – page 18

- Section 3: TRA witness statements – pages 20 to 274
- Section 4: TRA documents – pages 276 to 462
- Section 5: Teacher documents – pages 465 to 519.

In advance of the hearing, the panel also received a separate bundle containing documents pertaining to the TRA's application to proceed in the absence of the teacher, which was 16 pages in length.

In addition, on the first day of the hearing the panel was provided with a copy of Mr Butler's response to the notice of hearing dated 26 January 2024 which it admitted as evidence and read in full.

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.

Witnesses

The panel heard oral evidence from the following witnesses called by the TRA:

- Witness A, [REDACTED]
- Witness B, [REDACTED]

The panel noted that none of the pupils referred to attended to give oral evidence at the hearing. The panel accepted the advice on hearsay evidence given by the legal adviser and the representations made by the presenting officer. The panel were satisfied that the TRA had made reasonable attempts to secure the attendance of Pupils A, B and C as witnesses.

The panel took care to assess the reliability of the evidence looking for contemporaneous documents e.g. school [REDACTED] interviews of the pupils, and also seeking corroboration for any facts considered in evidence.

Decision and reasons

The panel announced its decision and reasons as follows:

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

On the 1 September 2018, Mr Butler commenced employment as a teacher at Shebbear College ('the School').

On the 22 June 2021, Pupil A disclosed to a staff member at the School that Mr Butler had been touching her. Pupil A was an [REDACTED] at the time.

On the 22 June 2021, the matter was referred to the LADO.

On the 1 July 2021, Mr Butler was suspended whilst an investigation was carried out [REDACTED].

On the 5 July 2021, [REDACTED] interviewed Mr Butler.

On the 8 September 2021, interviews by Witness B of relevant Pupils (including Pupil A) and staff took place at the School. Pupil B and Pupil C alleged that Mr Butler had touched them.

On the 5 November 2021 the matter was referred to the TRA.

Findings of fact

The findings of fact are as follows:

1. You engaged in inappropriate physical contact and/or failed to maintain appropriate boundaries with;

a. Pupil A, in that you:

- i. touched Pupil A's hip(s);
- ii. touched Pupil A's thigh(s);
- iii. touched Pupil A's breast;
- iv. touched Pupil A's bottom

Pupil A's account

The panel considered the notes of the initial disclosure by Pupil A to a teacher at the School on 22 June 2021. In this disclosure, Pupil A stated that *"Mr Butler like since February he's been like touching me a lot. He doesn't do it when others are around. It makes me feel uncomfortable. Does it at break time when walking about. People are there but no teachers around, others don't notice. He has touched me on the chest, on the butt, my shoulders and waist and hips."*

The panel considered Individual A's description of his [REDACTED] interview with Pupil A on 1 July 2021. In this interview, Pupil A *"was able to confirm that Mr Butler had touched her, she felt very uncomfortable and this happened on numerous occasions. [Pupil A] struggled to describe the level of touching, but at one time she did detail it happened in the classroom, that Mr Butler had touched her breast and put his hand on her hip."* In this interview, Pupil A stated that Mr Butler had *"touched her chest area and the top of her hips and outer thighs over her clothing on a number of occasions"*.

The panel considered the [REDACTED] written summary of Individual A's interview with Pupil A on 1 July 2021. This written summary described that *"a schoolgirl who is [REDACTED] has stated to her parents that a teacher at school has touched certain parts of her body being chest, bottom and shoulders and this has made her feel uncomfortable."* The written summary states that Pupil A described [REDACTED] that Mr Butler had touched her chest, top of her hips and other areas of her body over clothing numerous times however she can't say if any of this was intentional or in a sexual way.

The panel considered the interview notes from the interview with Pupil A, taken during the School's investigation, dated 8 September 2021.

During her interview, Pupil A stated that she first became concerned with Mr Butler's behaviour towards her near the start of the school year, in September/October 2020. She stated that she was in an [REDACTED] lesson, and Mr Butler came up behind her, looking at her work and leant forwards, placing both of his hands on her shoulders. Pupil A stated that Mr Butler then asked her to come to the teacher's desk, where he grabbed her, placing his hands on her waist and pulled her round into a position beside him. She stated that Mr Butler's hand was on her hip and that whilst he was reading her work, his hand moved down to her bum and he laid it there.

Pupil A was asked how she was feeling at the time, and she stated that she wondered what was going to happen next. She stated that when Mr Butler finished looking at her work, he moved his hand back onto her hip and told her to go and sit down.

Pupil A stated that this did not happen every lesson, but that Mr Butler would also do things when he saw her around school. Pupil A explained that in October, she was lining up for games, coming down the stairs and between the stairs and [REDACTED] classroom, and Mr Butler put his right hand on her right shoulder, and his hand the moved over her chest and laid on her breast. Pupil A stated that there were other incidents but that she could not remember the specifics.

Pupil A expressed that she would try and avoid Mr Butler and if they had to walk past him, Pupil D went first. She stated that after the 3rd lockdown, it happened more often, such as in [REDACTED], sometimes around school, at break, going to the science block, going to the art room and coming back from lunch.

Pupil A stated that she was aware Pupil B was also a victim, and that they knew it shouldn't be happening but as Mr Butler was a really nice person, they didn't want him to lose his job.

Pupil B's account

The panel considered Individual A's description of his [REDACTED] interview with Pupil B on 7 July 2021. In the notes of this interview, Pupil B had stated [REDACTED] that she had witnessed that Mr Butler would put his arm around Pupil A's waist with his hand on

her hip when she went up to his desk at the front of the class. Pupil B also said she saw Mr Butler touch Pupil A on her chest area, that Mr Butler would leave his desk and walk round to her whereby he would lean over her and his arm would brush her chest area as he pointed things out on her schoolwork.

The panel considered the interview notes from the interview with Pupil B, taken during the School's investigation, dated 8 September 2021.

Pupil B stated during her interview that Pupil A had mentioned Mr Butler's behaviour possibly during March 2021, after the 3rd lockdown. She stated that [REDACTED] it had been going on for a little bit, she explained that when work was finished they would show it to Mr Butler. Pupil B stated that when Pupil A would go up to the teacher's desk, Mr Butler put his arm around her hip, but lower than that on her bum. She stated that his hand was there the whole time she was up there. Pupil B confirmed that she saw this and stated that she told Pupil A when she came and sat back down that she thought it was odd and inappropriate.

Pupil D's account

The panel considered the interview notes from the interview with Pupil D, taken during the School's investigation, dated 8 September 2021.

Pupil D stated in her interview that Mr Butler would touch Pupil A's shoulders, putting his hands on them from behind. She stated that this did not give her cause for concern but that it kept happening.

Pupil D stated that Pupil A first said something about Mr Butler to her in November, as Pupil A had asked her *"do you think Mr Butler is touching me a bit too much or is it just me?"*. Pupil D stated that she asked Pupil A when it had happened and where he had touched her, to which she told her that it happened quite a lot and that Mr Butler touched her on the back and shoulders. It was confirmed by Pupil D that she meant 'bum', when referring to Pupil A's 'back'.

Pupil E's account

The panel considered the notes from the interview with Pupil E, taken during the School's investigation, dated 8 September 2021. In this interview, Pupil E stated that he saw Mr Butler hugging or holding girls mainly in the classroom, and that he would come up behind the girls *"putting his hands on [their] shoulders and sometimes over the front."* Pupil E stated that Mr Butler's behaviour didn't really seem strange.

Pupil F's account

The panel considered the notes from the interview with Pupil F, taken during the School's investigation, dated 8 September 2021.

Pupil F stated that Pupil A had told him about her concerns regarding Mr Butler in the spring, going towards summer. Pupil F stated that he thought it was ok and that Mr Butler was just being friendly. He stated that Pupil A had told him on text after the third lockdown that Mr Butler was *“picking her up, hugging her and stuff”*. Pupil D stated that he told Pupil A to tell a teacher.

[REDACTED] account

The panel considered the notes from the interview with [REDACTED], taken during the School’s investigation, dated 8 September 2021.

[REDACTED] stated during this interview that she became aware that Pupil A was unhappy with Mr Butler’s behaviour. Pupil A had raised this with her in February 2021, but she had discounted the concerns that Pupil A had raised. [REDACTED] stated that the first relevant entry in her diary was dated 14 May 2021, and was in relation to finding a text message on Pupil A’s phone from Pupil A to Pupil F, about Mr Butler.

[REDACTED] stated that the text message said: *“Mr Butler keeps touching me and I don’t know what to do”*, to which Pupil F responded: *“tell [REDACTED]”*.

[REDACTED] stated that Pupil A disclosed, after the 3rd lockdown, that it went further in an [REDACTED] lesson in [REDACTED] classroom, Mr Butler put his hands on her shoulders at her desk, and his hands on her hip/ shoulders when she was at the teacher’s desk.

[REDACTED] submitted during her interview that Pupil A spoke about the school [REDACTED], and said that she felt very uncomfortable in her [REDACTED] costume and didn’t want Mr Butler to see her.

[REDACTED] explained that a couple of times [REDACTED] replied with something like *“anytime”*, and that she realised something was wrong when she saw Pupil A’s face.

[REDACTED] stated that Mr Butler offered to visit [REDACTED] over lockdown, she did not ask him to visit. She stated that there were no particular academic issues with Pupil A. [REDACTED] explained that Mr Butler came [REDACTED] for a coffee and said *“don’t worry she [Pupil A] will be all right. And if not I can come around and give her extra lessons”*. She stated that Mr Butler seemed very over-familiar. She stated that Mr Butler was never invited [REDACTED] over the summer.

Oral evidence and witness statements

The panel considered the oral evidence and witness statement of Witness B, who had carried out the independent investigation on behalf of the School. Witness B stated that when he interviewed Pupil A, he found Pupil A to be very straightforward, with no histrionics and plainly told her account. In Witness B’s view, Pupil A was not over exaggerating nor was she acting like she was trying to get attention. Witness B explained

that he considered Pupil A to give a very credible account of what had happened. Witness B stated that he had found no evidence of Pupil A being a liar or manipulative or a bully.

The panel considered the oral evidence and witness statement of Witness A. In Witness A's oral evidence, he referred the panel to the School's Staff Code of Conduct, in particular the section within it on physical contact with pupils. Witness A explained that whilst the School does not have a 'no touch' policy, the Staff Code of Conduct is clear that any physical contact with pupils should only occur in appropriate situations, for example when comforting a child. Witness A stated that it was not appropriate nor necessary to touch a pupil by putting your arm around them whilst marking their work in a classroom.

Mr Butler's account

The panel considered the notes from the [REDACTED] interview of Mr Butler, dated 5 July 2021.

Mr Butler was informed of the disclosure Pupil A had made about him touching her hip area, and the top of her thighs, and Mr Butler stated that *"but I would never, I would, I just wouldn't do that. I wouldn't put myself in that position."* Mr Butler stated that he had never been on his own with Pupil A.

Mr Butler stated that he was not sure why Pupil A would say such things, and that he has always got on with her. He stated that he was *"happily invited over [REDACTED]"* and that on the 19 May he was told by [REDACTED], who was informed by Pupil A's [REDACTED], how much Pupil A loved being taught by him.

Mr Butler stated *"i-I have no recollection and I'm absolutely convinced that I have not touched Pupil A or any other child...in an inappropriate way."*

Mr Butler stated that Pupil A, Pupil B and Pupil C [REDACTED].

The panel considered the notes of the interview with Mr Butler on 4 August 2021, carried out as part of the School's investigation. Mr Butler denied the allegations and stated categorically that he did not have any physical contact with pupils, other than the occasional light tap on the shoulder to say well done or to offer reassurance. Mr Butler offered a possible explanation as to why the pupils would make statements which are untrue, in that two or three weeks before 22 June 2021 Mr Butler had told off Pupil A and Pupil B [REDACTED]. From the bundle, the panel established that this incident took place on 14 June 2021. It was clear that a number of the disclosures about Mr Butler's behaviour had been made by Pupil A before this date.

The panel considered Mr Butler's written statements. Mr Butler stated that Pupil A's statement is flawed, and that people do not notice his behaviour because it is not

happening. He stated that Pupil B did not want to speak to [REDACTED], and that Pupil A was likely feeding her a narrative. Mr Butler also submitted that the [REDACTED] students including Pupil B and Pupil E, had obviously been discussing Pupil A's claim prior to the disclosure being made.

Mr Butler explained that [REDACTED] concluded there was insufficient evidence to conclude that [REDACTED], nor could sexual intent be proven. He stated that Pupil A used to make excuses to remove herself from the playground [REDACTED] for example, implying that her account is not credible.

Mr Butler submitted that Pupil A was a known bully, who, according to parents, took great pleasure in inflicting pain on others.

Mr Butler stated that a colleague had recognised Pupil A's attention seeking behaviour towards him, and he stated that her disclosures are gaining her much attention.

Mr Butler stated that the group of pupils mentioned were all part of [REDACTED] and had been discussing matters, which [REDACTED] highlighted stating that some hearsay/gossip was being formulated.

Mr Butler stated that previously staff have had to prevent Pupil A, B and C from 'hounding' him.

Having considered all of the evidence in respect of the alleged touching by Mr Butler of Pupil A on the hip(s), thigh(s), breast and bottom, the panel determined that on the balance of probabilities it was more likely than not to have happened. This is on the basis that Pupil A made a number of disclosures to [REDACTED], fellow pupils, the School and [REDACTED] over a number of months about Mr Butler touching her in the classroom in the way described above. These disclosures were specific and consistent, indicating this was not a 'spur of the moment' disclosure. Pupil A's account is corroborated by Pupils, B, D, E and F and by [REDACTED], as described above.

The panel found allegation 1(a) proven.

1. You engaged in inappropriate physical contact and/or failed to maintain appropriate boundaries with;

b. Pupil B, In that you:

- i. touched Pupil B's waist;**
- ii. touched Pupil B's hip;**
- iii. touched Pupil B's breast(s);**
- iv. touched Pupil B's bottom**

Pupil B's account

The panel considered the notes from the [REDACTED] interview with Pupil B on 7 July 2021. Pupil B stated that Mr Butler had made her feel uncomfortable and had touched her in the classroom mainly and sometimes on the playing field. Pupil B stated that Mr Butler would put his arm around her shoulders and sometimes “below” in that his hand would be on her hip.

Individual A notes that Pupil B was “*better with the descriptions*” and how she described there were two forms of touching, in that Mr Butler would put his arm around her waist and hand on her hip, whilst he remained sat down, and secondly that Mr Butler would lean across her desk and touch the front of her chest area.

The panel considered the notes from the interview with Pupil B, taken during the School's investigation, dated 8 September 2021.

Pupil B stated that when she went up to the desk [REDACTED] to show Mr Butler her work, he would have his arm around her waist whilst he was writing, with his hand on her bum.

Pupil B submitted that Mr Butler would sometimes put his arm around her and Pupil A during games. She stated that when she was on the climbing frame during summer term, she was climbing up and Mr Butler was near and came close, as he thought she needed help. Pupil B stated that she did not ask for help, but Mr Butler pushed her up with his hands on her feet and then on her bum. She stated that she might have said “*stop*”, but not in a serious way. Pupil B stated that it felt odd and she felt uncomfortable, and that Mr Butler did not offer to help anyone else.

Oral evidence and witness statement

The panel considered the oral evidence and witness statement of Witness B, who stated that he did not find Pupil B to be as credible as Pupil A in her interview and stated that she was not as clear but was able to relay what had happened. Witness B was not of the view that Pupil B had fabricated her account.

Mr Butler's account

The panel considered the notes from the [REDACTED] interview of Mr Butler, dated 5 July 2021.

Mr Butler stated that there were times when he was concerned about the behaviour of Pupils A, B and C. Mr Butler gave an example of one time when he was sat on a sofa within the School and two girls sat to his right, and Pupil B tried to sit on his knee so he had to physically move her. He stated that he put his hands on her back and told her she could not do this and reported this instantly. He submitted that he does not understand

why a pupil who alleges 'inappropriate touching' would try to sit on his lap, especially if they are claiming to avoid him.

The panel considered Mr Butler's written statements. Mr Butler stated that Pupil B asked for assistance on occasion, and that any 'touch' would have been accidental.

Mr Butler submitted that Pupil B openly described him as a good teacher.

Mr Butler stated that Pupil B was not clear on the touching, as she stated that it was like a side hug and that occasionally his hand would be on her hip. He stated that this 'side hug' she described is no different to the 'side hug' other adults are doing with students as shown on the School website. The panel considered the photograph shown on the School website of a teacher holding a pupil.

Mr Butler stated that he is not a '*very huggy person*' as Pupil B stated. He submitted that he does not hug students.

In Mr Butler's written statements, Mr Butler stated that a teacher would assist a student if they thought they were about to fall. He stated that a teacher would be in more trouble for not intervening. Mr Butler stated that Pupil E had not seen anything concerning Pupil A, but that Pupil E saw him put his arm around Pupil B to help her on a climbing activity by holding her waist/lower back.

Having considered all of the evidence in respect of the alleged touching by Mr Butler of Pupil B on the waist, hip(s), breast and bottom, the panel determined that on the balance of probabilities it was more likely than not to have happened.

The panel found allegation 1(b) proven.

1. You engaged in inappropriate physical contact and/or failed to maintain appropriate boundaries with;

c. Pupil C, in that you placed your arm around Pupil C and in doing so touched Pupil C's hip.

The panel considered the notes from the interview with Pupil C, taken during the School's investigation, dated 8 September 2021.

During the interview Pupil C stated that Mr Butler touched her in a way that made her feel uncomfortable once. She stated that she could not remember the lesson, but it was some point after the third lockdown, she was standing at the teacher's desk to show him her work, and Mr Butler told her it was really good and then gave her a hug. Pupil C stated that Mr Butler put one arm around her and put his hand onto her hip.

Pupil C explained that it was not too long of a hug, but made her feel uncomfortable. She stated that Mr Butler hugged her a couple of times but that was fine, and that normally it was not that far down.

Pupil E's account

The panel considered the notes from the interview with Pupil E, taken during the School's investigation, dated 8 September 2021.

Pupil E stated in their interview that Mr Butler hugged girls in the classroom and named Pupil C as one of the 3 girls he would hug. Pupil E also named Pupil C as one of the 3 girls he said that Mr Butler put his arm around when pupils are at the teacher's desk.

Mr Butler's account

The panel considered Mr Butler's written statements. In his written statement, Mr Butler stated that on the day of his dismissal he bumped into Pupil C's [REDACTED] outside of school who greeted him warmly and told Mr Butler that Pupil C missed him desperately and couldn't wait for Mr Butler to come back. Mr Butler stated that Pupil C is not a traumatised child nor is this [REDACTED] who believes that [REDACTED] has been touched inappropriately.

Having considered all of the evidence in respect of the alleged touching by Mr Butler of Pupil C on the hip, the panel determined that on the balance of probabilities it was more likely than not to have happened.

The panel found allegation 1(c) proven.

2. You engaged in inappropriate and/or unprofessional behaviour towards Pupil A and Pupil B, including by deliberately dropping hockey sticks and requesting that Pupil A and Pupil B pick them up, necessitating the two pupils bending over in front of you.

The panel considered the notes from the interview with Pupil A, taken during the School's investigation, dated 8 September 2021.

Pupil A expressed that she picked up that Mr Butler was always choosing her to help him. She explained that during the end of the spring term after the third lockdown, Mr Butler had asked her and Pupil B to come into the playground and help him with something. Pupil A stated that they felt worried at what was to come. She stated that Mr Butler asked them to help him take equipment onto the field, so they took them out and he gave them sweets for helping.

Pupil A stated that Mr Butler kept dropping the hockey sticks down the stairs so that she and Pupil B had to pick them up for him. She stated that this happened twice, and that it seemed odd. Pupil A submitted that maybe once could be an accident but twice seemed

deliberate. Pupil A confirmed that they were wearing skorts, and that they would have to bend down several times to pick up the hockey sticks. She stated that Mr Butler wanted them to bend over and it seemed odd, but they didn't say anything.

The panel considered the interview notes from the interview with Pupil B on 8 September 2021, taken during the School's investigation. In this interview, Pupil B stated that there was an incident where she and another pupil were getting hockey sticks and Mr Butler dropped them twice, noting that this "*seemed clumsy*".

The panel considered the reference to this incident in the School's investigation report prepared by Witness B. In the investigation report it states that two pupils give an account of being asked by Mr Butler to help carry out hockey sticks and how he twice dropped several sticks deliberately on the stairs forcing them to bend down to pick the sticks up for him. It states that neither of the pupils understood what he was doing but said it felt very odd and the pupils were wearing games kit at the time. The investigation report continues by stating that the pupils reported [Mr Butler] "*dropped the hockey sticks deliberately on the stairs as they went down....so that he was looking down at them from above.*"

The panel considered Mr Butler's written statements, where he stated that Pupil A referred to him dropping the hockey sticks down the stairs. Mr Butler submitted that the hockey sticks were kept in a downstairs cupboard, and so there would be no need to go down any stairs. Mr Butler also queried why looking down on the children would be considered inappropriate behaviour, and that surely if anyone was trying to look at children they would look from below them rather than from above.

The panel considered the oral evidence of Witness A, who stated that hockey sticks in the School could be stored either in the prep school staffroom (which is upstairs) or in a separate store area upstairs in the sports hall.

Having considered all of the evidence in respect of this allegation, the panel determined that, on the balance of probabilities it was more likely than not that this did not happen.

Even if this did occur, the panel determined that there was insufficient evidence that dropping the hockey sticks was a deliberate action by Mr Butler or that it was inappropriate and/or unprofessional behaviour.

The panel found allegation 2 not proven.

3. Your conduct at allegation 1 and/or 2 above was of a sexual nature.

Given the panel found allegation 2 not proven, the panel did not consider whether Mr Butler's conduct at allegation 2 was of a sexual nature, but it did consider whether his conduct at allegation 1 was of a sexual nature.

The panel noted that Mr Butler denied that his conduct was of a sexual nature.

The panel was referred to the case of *Sait v The General Medical Council [2018] EWHC 3160 (Admin)* and s78 Sexual Offences Act 2003.

The panel considered the Court of Appeal's decision in *General Medical Council v Haris [2021] EWCA Civ 763*. The court found in this case that, "*in the absence of a plausible innocent explanation for what he did, the facts spoke for themselves*".

The panel considered whether there was a "*plausible innocent explanation*" for Mr Butler's behaviour.

On that basis, the panel could not find a "*plausible innocent explanation*" for the conduct, stating that they felt that the pattern of behaviour was of a sexual nature. The panel noted that touching Pupil A and B in a similar way, on the balance of probabilities, amounted to conduct which was of a sexual nature. The panel noted that, whilst none of the children had stated that Mr Butler had touched them intimately, the age of the children [REDACTED] meant that they would not necessarily know or understand whether the touching was sexual or intimate or not.

The panel specifically noted that by the very nature of the parts of the children's body which Mr Butler has been found to have touched (specifically Pupil A on the breasts and bottom, Pupil B on the breasts and bottom), the panel must necessarily find that this touching is of a sexual nature. Mr Butler has not provided a plausible innocent explanation for this conduct. The panel finds that the behaviour constitutes inappropriate touching of [REDACTED] pupils on the breasts and bottom.

The panel found allegation 3 proven, in that Mr Butler's conduct at allegations 1(a) and (b) above was of a sexual nature.

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

Having found a number of the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document *Teacher Misconduct: The Prohibition of Teachers*, which is referred to as "the Advice".

The panel was satisfied that the conduct of Mr Butler, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2 (Personal and Professional Conduct), Mr Butler 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, and maintain high standards...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Mr Butler amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Butler's conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice.

The panel found that the offence of sexual activity was relevant. The Advice indicates that where behaviours associated with such an offence exist, a panel is more likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

Accordingly, the panel was satisfied that Mr Butler 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.

The panel therefore found that Mr Butler actions constituted conduct that may bring the profession into disrepute.

Having found the facts of allegations 1(a), 1(b), 1(c) and 3 proved, the panel further found that Mr Butler's conduct amounted 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 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.

The panel was aware that 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 had regard to the particular public interest considerations set out in the Advice and, having done so, found the following to be relevant in this case, namely: the safeguarding and wellbeing of pupils; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In light of the panel's findings against Mr Butler, which involved inappropriate physical contact of a sexual nature and/or failing to maintain appropriate boundaries with Pupil A, Pupil B and Pupil C by inappropriate touching, there was a strong public interest consideration in the safeguarding and wellbeing of pupils.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Butler was 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 Butler 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 Butler. The panel was mindful of the need to strike the right balance between the rights of the teacher and the public interest.

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 Butler. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving pupils);
- sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;
- violation of the rights of pupils.

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.

There was no evidence that Mr Butler's actions were not deliberate.

There was no evidence to suggest that Mr Butler was acting under extreme duress.

There was no evidence that Mr Butler demonstrated exceptionally high standards in both personal and professional conduct and has contributed significantly to the education sector.

The panel considered Mr Butler's written submissions and noted his points of mitigation. Mr Butler submitted that the [REDACTED] impact on him has been catastrophic, and that he has lost [REDACTED]. He stated that he has no savings as they went on a solicitor during the initial days of his hearing.

Mr Butler submitted that the pupils' evidence is based on hearsay and gossip, and that he has evidence provided by excellent teachers, parents and students which should not be cast aside.

The panel was provided with evidence to attest to Mr Butler's history and ability as a teacher. Mr Butler provided written character references from the following individuals:

- Individual C, previous colleague

- Individual D, previous colleague at the School
- Individual E, previous colleague at the School
- Individual F, previous colleague at Kingswood Primary School
- Individual G, parent of children at the School
- Individual H, parent of children at the School
- Individual I, parent of child at the School
- Individual J, parent of child at the School
- Individual K, parent of children at the School
- Individual L, [REDACTED] at Kingswood Primary School
- Individual M, [REDACTED] at White Hall Academy
- Individual N, parent of child at the School
- Individual O, [REDACTED]

The character references contained positive comments about Mr Butler and his ability as a teacher. The panel noted the following in particular:

- *“I have never seen Martin conduct himself with anything but the utmost professionalism.”*

Individual C , previous colleague of Mr Butler

- *“I had the pleasure of working with Martin for 4 years. During this time I witnessed Martin’s professional approach to teaching. He was very popular with both pupils and staff alike.”*
- *“Not once did I witness, or be made aware of, behaviour from Martin towards anyone that was not in accordance with safeguarding procedures.”*

Individual D, previous colleague at the School

- *“Martin was a well-liked member of staff at the School and in all the years I worked closely alongside him I can say he was an incredibly conscientious teacher, who had a clear understanding of Shebbear’s safeguarding policy”*

Individual E, previous colleague at the School

- *“His enthusiasm for the job and his kind nature made him an excellent mentor to less experienced teachers and helped everyone around him feel like part of a team. He is compassionate and caring and would do anything to help other people.”*
- *“I think very highly of his character and would never doubt the appropriateness of his behaviour in any situation. I would happily leave him in charge of my own children. Any school has been lucky to ever have him as part of their team.”*

Individual F, previous colleague at Kingswood Primary School

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 Butler 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 Butler. A lack of insight and remorse was a significant factor in forming that opinion as the panel considered there was a risk of repetition. Due to the findings of behaviour of a sexual nature with children in a school setting, the panel considered Mr Butler’s behaviour to be incompatible with being a teacher. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend a review period of the order. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct, such as 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 his professional position to influence or exploit a person or persons, and any sexual misconduct involving a child. The panel found that Mr Butler was responsible for inappropriate physical contact and/or failing to maintain appropriate boundaries with Pupil A, Pupil B and Pupil C by inappropriate touching of a sexual nature. The panel was

mindful of the fact that these offences took place on school premises whilst Mr Butler was acting in his capacity as a teacher.

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

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

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

In this case, the panel has found 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.

In this case, the panel has also found one of the allegations 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 Martin Butler should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Butler 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, and maintain high standards...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The findings of misconduct are very serious as they include a finding of sexually motivated behaviour by a teacher towards pupils.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In assessing 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 Butler, 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 and safeguard pupils. The panel recorded its view that, "In light of the panel's findings against Mr Butler, which involved inappropriate physical contact of a sexual nature and/or failing to maintain appropriate boundaries with Pupil A, Pupil B and Pupil C by inappropriate touching, there was a strong public interest consideration in the safeguarding and wellbeing of pupils." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which it sets out as follows, "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 Butler. A lack of insight and remorse was a significant factor in forming that opinion as the panel considered there was a risk of repetition. Due to the findings of behaviour of a sexual nature with children in a school setting, the panel considered Mr Butler's behaviour to be incompatible with being a teacher. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect." In my judgement, the lack of full insight and remorse means that I agree with the panel 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 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." I am particularly mindful of the finding of sexually motivated behaviour towards pupils in this case and the very serious negative impact that such a finding could have 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 and conduct that may bring the profession into disrepute, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Butler himself. The panel note that “There was no evidence that Mr Butler demonstrated exceptionally high standards in both personal and professional conduct and has contributed significantly to the education sector.” However, it also records having considered a number of character statements attesting to Mr Butler’s professional and helpful nature and his ability as a teacher. The panel also note Mr Butler’s submissions regarding the profound personal impact that this process has had on him.

A prohibition order would prevent Mr Butler 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 serious nature of the misconduct found against Mr Butler, involving as it does sexually motivated behaviour towards pupils.

I have also placed weight on the lack of evidence of full insight and remorse demonstrated by Mr Butler and the consequent risk that there could be a repetition of this behaviour.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Butler 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 that no provision should be made for a review period.

In doing so, the panel has referred to the Advice which indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct, such as 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 his professional position to influence or exploit a person or persons, and any sexual misconduct involving a child.

I have considered the panel's comments "The panel found that Mr Butler was responsible for inappropriate physical contact and/or failing to maintain appropriate boundaries with Pupil A, Pupil B and Pupil C by inappropriate touching of a sexual nature. The panel was mindful of the fact that these offences took place on school premises whilst Mr Butler was acting in his capacity as a teacher."

I have considered whether not allowing a 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 review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the very serious nature of the misconduct found, which included sexually motivated behaviour towards pupils, and the lack of evidence of full insight and/or remorse.

This means that Mr Martin Butler 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 Butler 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 Martin Butler 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.



Decision maker: Marc Cavey

Date: 4 April 2024

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