



Teaching
Regulation
Agency

Mr James Waters: Professional conduct panel outcome

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

November 2020

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

Teacher:	Mr James Waters (previously known as James Drapper)
Teacher ref number:	1572836
Teacher date of birth:	8 April 1990
TRA reference:	18915
Date of determination:	17 November 2020
Former employer:	Holmesdale School, ("the School"), Maidstone Kent

Introduction

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("the TRA") convened on 16 November 2020 by virtual hearing, to consider the case of Mr James Drapper.

The panel members were Mr Ryan Wilson (teacher panellist – in the chair), Ms Kelly Thomas (lay panellist) and Ms Marjorie Harris (former teacher panellist).

The legal adviser to the panel was Mrs Luisa Gibbons of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Andrew Cullen of Browne Jacobson LLP solicitors.

Mr Drapper was present and was represented by Mr Simon Pettet of NASUWT.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 14 October 2020.

It was alleged that Mr Drapper was guilty of having been convicted of a relevant offence, in that at Maidstone Combined Court on or around 13 June 2019, he was convicted of possessing an offensive weapon in a public place on 12 May 2019 – 14 May 2019, contrary to the Prevention of Crime Act 1953 s1.

Mr Drapper admits both the allegation and that the fact admitted amounts to conviction of a relevant offence.

Preliminary applications

The panel noted that since the date of the referral to the TRA in this case, new Teacher Misconduct Disciplinary procedures for the teaching profession were published in May 2020 (the “May 2020 Procedures”). The panel understands that the earlier provisions contained within the Teacher misconduct disciplinary procedures for the teaching profession updated in April 2018 (the “April 2018 Procedures”) apply to this case, given that those provisions applied when the referral was made. Although the panel has the power to direct that the May 2020 Procedures should apply in the interests of justice or the public interest, the panel had received no representations that this should be the case. For the avoidance of doubt, therefore, the panel confirms that it has applied the April 2018 Procedures in this case.

Admission of Documents

Mr Drapper applied to admit two documents. Those documents were not served in accordance with the requirements of paragraph 4.20 of the April 2018 Procedures, and as such the panel was required to consider whether those documents should be admitted under paragraph 4.25 of the April 2018 Procedures at the discretion of the panel. The panel took into account the representations of the teacher and that there was no objection to the admission of the documents by the presenting officer. Under paragraph 4.18 of the April 2018 Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case. The panel was satisfied that the documents are relevant to the case. The first document is relevant to Mr Drapper’s mitigation and his teaching proficiency and the second document is relevant to the credibility of the assistant headteacher who is to be called to give evidence and of Mr Drapper himself.

Public Hearing

The panel has considered whether to exercise its discretion under paragraph 11 of the Teachers’ Disciplinary (England) Regulations 2012 (the “Regulations”) and paragraph

4.57 of the April 2018 Procedures for the Teaching Profession to exclude the public from all or part of the hearing. This follows a request by the teacher that part of the hearing should be in private by reason of the confidentiality of matters relating to Mr Drapper's health and the potential impact of evidence upon others.

The panel has determined to exercise its discretion under paragraph 11(3)(b) of the Regulations and the second and third bullet points of paragraph 4.57 of the April 2018 Procedures that the public should be excluded from the hearing in its entirety, save for those announcements required to be made in public.

The panel has taken into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. On this occasion, however, the panel considers that the request for the hearing to be heard in private, is a reasonable one given concerns about confidential matters relating to the teacher's health being placed in the public domain and the potential impact upon others. The panel considered, in particular, the latter to be a very real risk which, on this occasion, outweighed the general rule that hearings should be held in public. The panel has considered whether there are any steps short of excluding the public that would serve the purpose of addressing these concerns, but considers that the matters are so intertwined with the facts of this case, that it would not be practicable to completely exclude references to them.

The panel has had regard to whether the teacher's request runs contrary to the public interest. The panel is required to announce its decisions in public as to whether the facts have been proven and whether those facts amount to conviction of a relevant offence. In the event that the case continues any decision of the Secretary of State will also be in public. The panel considers that in the circumstances of this case that the public interest will be satisfied by these public announcements and by part of the hearing taking place in public. This will ensure that public confidence in these proceedings and in the standards of the profession are maintained.

Summary of evidence

Documents

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

Section 1: Procedural Documents – pages 1 to 18

Section 2: Teaching Regulation Agency witness statement – pages 19 to 21

Section 3: Teaching Regulation Agency documents – pages 22 to 89

Section 4: Teacher documents – pages 90 to 128

In addition, the panel agreed to accept the following:

A reference of the headteacher of a previous school at which Mr Drapper had worked – page 129

A police statement of the assistant headteacher at the School – pages 130 to 131;

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

Witnesses

The panel heard oral evidence from the assistant headteacher at the School called by the Presenting Officer and from Mr Drapper, himself.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Drapper began working as an IT teacher at the School on 25 February 2019. On 16 May 2019, he was arrested and detained by the police for being in possession of an offensive weapon. He was suspended from working, pending completion of an investigation. He appeared before Maidstone Crown Court on 13 June 2019 and was remanded in prison, subject to sentencing. On 21 June 2019, Mr Drapper was granted bail with a curfew condition and an electronic monitor. At a disciplinary investigation meeting on 5 July 2019, Mr Drapper resigned his position at the School and his employment ceased on 31 August 2019. Mr Drapper was sentenced on 23 October 2019.

Findings of fact

The findings of fact are as follows:

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

At Maidstone Combined Court on or around 13 June 2019, you were convicted of possessing an offensive weapon in a public place on 12 May 2019 to 14 May 2019, contrary to the Prevention of Crime Act 1953, s1.

The allegation was admitted and was supported by evidence presented to the panel. The panel has seen the Certificate of Conviction which confirms the fact of the conviction, although does not state the dates on which the possession of the offensive weapon took place. Those dates are, however, admitted. The date of 14 May 2019 is confirmed by a colleague who witnessed you having an offensive weapon in your car on that date. The

panel has also seen the sentencing remarks of Maidstone Crown Court. This allegation was therefore, found proved.

The facts that led to the conviction were agreed. These were as follows. On or around 12 May 2019, you attended an individual's property with the intention to kill that individual or cause that individual serious harm. In advance of attending that property, you purchased a number of items including a hammer. You attended that property with the hammer concealed, but did not take any action to harm that individual. On 14 May 2019, you attended the School and disclosed to a colleague that you had thoughts of harming an individual and invited your colleague to your vehicle to show him something contained therein. Your colleague, observed various items within your vehicle including a hammer. You were accompanied [redacted] and the police and the LADO were informed. On 13 June 2019, you pleaded guilty to possessing an offensive weapon in a public place on 12 May to 14 May 2019. On 23 October 2019, you were sentenced to a two year community order with two conditions that required you to complete 50 rehabilitation activity requirement days and 100 hours of unpaid work taking account of the time you spent on remand and days of tagged curfew.

Findings as to conviction of a relevant offence

Having found the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to a conviction of a relevant offence.

The panel was satisfied that the conduct of Mr Drapper, in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr Drapper was in breach of the following standards:

Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by

- showing tolerance of and respect for the rights of others
- not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs

The panel considered that the individual's actions were less relevant to teaching, working with children and working in an education setting. Although, Mr Drapper made his disclosure to his colleague in the School, it was a matter arising out of his personal circumstances [redacted]. The panel did not believe Mr Drapper posed any risk to the pupils or staff, at that time.

The panel noted that the behaviour involved in committing the offence could have had an impact on members of the public. Mr Drapper told the individual who he had intended to harm of what he had planned to do and Mr Drapper recognises that would have led that individual to feel very scared and caused emotional trauma.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Drapper's behaviour in committing the offence could affect public confidence in the teaching profession, given the influence that teachers may have on pupils, parents and others in the community. The panel considered that the average member of the public would be concerned about a teacher with a conviction of this nature teaching in a school.

The panel noted that Mr Drapper's behaviour did not lead to a sentence of imprisonment, which was indicative that the offence was not at the highest end of the possible spectrum. However, the Judge described the case as "alarming and disturbing" and stated to Mr Drapper, "I'm sure you appreciate the seriousness of it".

This was a case concerning an offence involving possession of weapons which the Advice states is likely to be considered a relevant offence. The panel did not consider this to be an offence involving violence given that Mr Drapper disclosed the matter [redacted].

The panel took into account that Mr Drapper was suffering [redacted] at the time of committing the offence, [redacted]. The Sentencing Remarks show that a sentence was imposed to both punish Mr Drapper (100 hours of unpaid work) and to provide him with the tools and support to rehabilitate (50 rehabilitation activity requirement days). It was of concern that Mr Drappers' disclosed intention in relation to the weapon was [redacted], but the Judge recognised that Mr Drapper did not intend to carry out that threat, but to alert his colleague and to draw attention [redacted]. Mr Drapper has provided the panel with seven character references produced for the criminal proceedings. Some of these references describe Mr Drapper having been honest previously [redacted]. The events leading to his conviction were described by some as being out of character.

One of those references referred to Mr Drapper as being a competent teacher, with good subject knowledge and described him as conscientious about his work, that he worked professionally with his colleagues and forged some positive relationships with students. Another referee described Mr Drapper to be a very capable and an informative member of staff who had offered support to the referee in settling into his role. That referee described Mr Drapper as a 'very kind caring teacher'. A further reference referred to Mr Drapper having spent a considerable amount of time supporting students in and outside of his timetabled allocation to ensure that they achieved a high degree of success; that he was a respected member of staff who had the support of his colleagues.

The panel has also seen two references prepared by previous schools for the purpose of Mr Drapper's application to the School. The first attested, inter alia, to his good standard of teaching ability, subject knowledge, relationship with pupils and parents and his behaviour management. The second confirmed that Mr Drapper had not been involved in any disciplinary or capability investigations and that there were no safeguarding concerns.

Although the panel found that the evidence of Mr Drapper's teaching proficiency was of note, the panel was concerned that despite Mr Drapper having had [redacted] prior to this incident since 10 October 2016, he was unable to make the right choices that would have prevented him from purchasing the items that led to his conviction. The panel found that the seriousness of the offending behaviour that led to the conviction was relevant to Mr Drapper's ongoing suitability to teach. Mr Drapper has not demonstrated his ability to appropriately manage stressful situations. The panel considered that a finding that this conviction was for a relevant offence was necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of a conviction of a relevant offence, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

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

In the light of the panel's findings against Mr Drapper, which involved possession of a weapon, there was a strong public interest consideration in respect of the protection of the public given Mr Drapper's disclosed intention with regard to harming another individual.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Drapper 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 Drapper was outside that which could reasonably be tolerated.

The panel balanced this against the strong public interest consideration in retaining Mr Drapper in profession, since no doubt had been cast upon his abilities as an educator and he is able to make a valuable contribution to the profession. In the circumstances of this case, the panel was of the view that the public interest considerations of protection of the public; upholding public confidence in the profession; and declaring proper standards

of conduct, outweighed, at the present time, the public interest in retaining Mr Drapper in the profession. The panel could not yet be satisfied that Mr Drapper has demonstrated his ability to make appropriate choices when faced with difficult situations, although he has recognised appropriate coping mechanisms and the panel could see that he has moved forwards in a very positive way from the incident that led to his conviction.

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 Drapper.

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 Drapper. 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;
- actions or behaviours that undermine ... the rule of law...;
- possession ofother weapons;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

The panel did not believe Mr Drapper to have a deep-seated attitude that leads to harmful behaviour. Mr Drappers' approach to his rehabilitation and understanding of the consequences of his actions indicated a positive attitude. Nevertheless, [redacted].

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.

It is clear that Mr Drapper's actions were deliberate, given the element of planning, although the panel accepted he was experiencing [redacted], at the time.

There was no evidence to suggest that Mr Drapper was acting under duress. Although he was experiencing [redacted] at the time, he now recognises he ought to have sought help at an earlier stage.

Mr Drapper did have a previously good history. Although the threat to another individual was out of character, Mr Drapper does have a history of struggling to manage his own wellbeing.

The panel has referred above in its findings to a number of references which described Mr Drapper's competence as a teacher and attested to his positive relationship with both students and colleagues alike. He was clearly a valued teacher. The assistant headteacher of the school gave oral evidence that was consistent with the other references the panel received and which the panel has recognised in its findings. He spoke of Mr Drapper being a very good teacher, attesting to his good relationship with pupils, his behaviour management, his organisation and the valued input he made to the pupils' progress.

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 Drapper 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 Drapper. Whilst Mr Drapper has recognised the steps he should take going forwards and taken his rehabilitation forwards in a positive way, he is still on the path to demonstrating his ability to adopt appropriate coping mechanisms. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate 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. None of those behaviours apply in this case.

Mr Drapper gave evidence that demonstrated his understanding of the matters that led to this incident and the consequences for others of his behaviour. He has worked upon building positive relationships. Mr Drapper has almost one year of rehabilitation sessions still to complete having attended approximately 17 sessions of the 50 that are required, and has realised that he has been given the opportunity to develop his resilience and to learn from this experience. He has expressed genuine remorse and the panel was impressed by his level of insight. 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

provision for a review period in four years. The panel considered this to be an appropriate length of time for Mr Drapper to learn the skills he needs going forwards and fulfil his aspirations.

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 the allegations proven and found that those proven facts amount to a conviction of a relevant offence.

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

In particular, the panel has found that Mr Drapper 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
 - showing tolerance of and respect for the rights of others
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs

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

The findings of misconduct are particularly serious as they include a finding of a conviction for possessing an offensive weapon in a public place and the facts that led to that conviction involved attending an individual's property with the intention to kill that individual or cause that individual serious harm.

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 Drapper, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed, “Mr Drapper made his disclosure to his colleague in the School, it was a matter arising out of his personal circumstances. The panel did not believe Mr Drapper posed any risk to the pupils or staff, at that time.” The panel noted however that the behaviour involved in committing the offence could have had an impact on members of the public.

I have also taken into account the panel’s comments on insight and remorse, the panel noted, “Mr Drapper gave evidence that demonstrated his understanding of the matters that led to this incident and the consequences for others of his behaviour. He has worked upon building positive relationships”. The panel also commented “he has expressed genuine remorse and the panel was impressed by his level of insight”.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “the average member of the public would be concerned about a teacher with a conviction of this nature teaching in a school”. I am particularly mindful of the finding of a conviction of possessing a dangerous weapon in this case and the impact that such a finding has on the reputation of the profession.

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order as a failure to uphold those high standards. In weighing these considerations, I have had to consider the matter from the point of view of an “ordinary intelligent and well-informed citizen.”

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Drapper himself and noted the panel’s comment “Mr Drapper’s competence as a teacher and attested to his positive relationship with both students and colleagues alike. He was clearly a valued teacher”.

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

In this case, I have placed considerable weight on the panel’s comments “they could not yet be satisfied that Mr Drapper has demonstrated his ability to make appropriate choices when faced with difficult situations”.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Drapper 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.

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 Drapper of prohibition.

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 4 year review period.

I have considered the panel's comments "Mr Drapper has almost one year of rehabilitation sessions still to complete having attended approximately 17 sessions of the 50 that are required, and has realised that he has been given the opportunity to develop his resilience and to learn from this experience". The panel has also said that a 4 year review period would "be an appropriate length of time for Mr Drapper to learn the skills he needs going forwards and fulfil his aspirations".

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 provision for a review period in four years.

I have considered whether a 4 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, two factors mean that a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the seriousness of the conviction and although Mr Drapper has recognised the steps he should take and has taken his rehabilitation forward in a positive way, he is still on the path to demonstrating his ability to adopt appropriate coping mechanisms.

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

This means that Mr James Drapper 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 01 December 2024, 4 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 Drapper remains prohibited from teaching indefinitely.

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

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

A handwritten signature in black ink, appearing to read 'SABuxcey', with a horizontal line underneath.

Decision maker: Sarah Buxcey

Date: 23 November 2020

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