



Teaching
Regulation
Agency

Dr Clement Earle: Professional conduct panel outcome

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

June 2021

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

Teacher:	Dr Clement Earle
Teacher ref number:	8351924
Teacher date of birth:	23 November 1958
TRA reference:	19013
Date of determination:	14 June 2021
Former employer:	Freiston Hall School, Lincolnshire

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 14 June 2021 to consider the case of Dr Clement Earle (“Dr Earle”).

The panel members were Chris Rushton (lay panellist – in the chair), Asma Majid (lay panellist) and John Martin (teacher panellist).

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

The presenting officer for the TRA was Ian Perkins of Browne Jacobson LLP solicitors.

Dr Earle was not present and was not represented.

The hearing took place in public and was recorded, save for part of the hearing relating to Dr Earle’s [redacted], which were heard in private.

Allegations

The panel considered the allegation set out in the notice of proceedings dated 15 April 2021.

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

1. He was convicted on a guilty plea on 26th September 2019 at Lincoln Magistrates' Court for the offence of running an unregistered school, (Freiston Hall).

Dr Earle admitted to the facts of the allegation. However, Dr Earle did not admit that the facts of the allegation amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Preliminary applications

Proceeding in Absence

The panel considered whether this hearing should continue in the absence of the teacher.

The panel was satisfied that the TRA complied with the service requirements of paragraph 19 (1) a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel was also satisfied that the notice of proceedings complied with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, updated April 2018 (the "Procedures").

The panel determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher.

The panel has taken as its starting point the principle from R v Jones that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one. In considering the question of fairness, the panel has recognised that fairness to the professional is of prime importance but that it also encompasses the fair, economic, expeditious and efficient disposal of allegations against the professional, as was explained in GMC v Adeogba & Visvardis.

In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel firstly took account of the various factors drawn to its attention from the case of R v Jones.

The TRA sent Dr Earle the notice of proceedings dated 15 April 2021 to his last known address. The panel considered the statement from Dr Earle outlining the reasons as to why he would not be attending the virtual hearing, [redacted]

The panel also noted the statement from Dr Earle's representative in an email dated 5 March 2021 where it was confirmed that *"Dr Earle would not attend a virtual hearing or a hearing in person due to [redacted] however in order to facilitate the resolution of this matter, I confirm Dr Earle consents to this matter being heard in his absence"*.

The panel was satisfied that Dr Earle was aware of the proceedings and deliberately absented himself from attending the hearing. In addition, the panel did not consider there to be any prospect of an adjournment resulting in Dr Earle attending voluntarily.

Dr Earle was not legally represented at the hearing and has not provided any indication that he would wish to adjourn to obtain legal representation. Dr Earle answered "no" when asked about whether he intended to be represented at the hearing in his response to the notice of proceedings.

The panel had the benefit of representations made by Dr Earle to ascertain the lines of defence. The panel did not identify any significant gaps in Dr Earle's documentary evidence. Should such gaps arise during the course of the hearing, the panel would consider whether the hearing should be adjourned for documents to become available and in considering whether the presenting officer had discharged the burden of proof. The panel was also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The case will proceed as a disputed case, and the panel will have to consider whether the presenting officer has discharged the burden of proof. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel recognised that the allegation against the teacher is serious and that there is a real risk that if proven, the panel will be required to consider whether to recommend that the teacher ought to be prohibited from teaching.

The panel recognised that the efficient disposal of allegations against teachers is required to ensure the protection of pupils and to maintain confidence in the profession. The panel also recognised that an adjournment would have been of no benefit to Dr Earle.

Taking account of the factors detailed above, the panel decided to proceed with the hearing in the absence of Dr Earle.

Excluding the Public

The panel considered whether to exercise its discretion under paragraph 11 of the Regulations and paragraph 4.57 of the Procedures to exclude the public from all or part of the hearing. This follows the panel's concerns about confidential matters relating to the teacher's [redacted] being placed in the public domain. The panel took into account the fact that the hearing is proceeding in the teacher's absence and exercised caution for such confidential matters relating to the teacher's [redacted] to be placed in the public domain.

The panel determined to exercise its discretion under paragraph 11(3)(a) of the Regulations and the first bullet point of paragraph 4.57 of the Procedures that the public should be excluded from the hearing.

The panel took into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. On this occasion, however, the panel considered that parts of the hearing should be heard in private, given the concerns about confidential matters relating to the teacher's [redacted] being placed in the public domain and the fact that the hearing is proceeding in the teacher's absence. The panel therefore determined that any parts of the hearing which relate to the teacher's [redacted] are to be excluded from the public hearing.

The panel is required to announce its decisions in public as to whether the facts have been proven and whether those facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In the event that the case continues any decision of the Secretary of State will also be in public. Those public announcements 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: Notice of referral and response – pages 2 to 22

Section 2: TRA documents – pages 23 to 110

Section 3: Teacher documents – pages 111 to 182

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

Witnesses

No witnesses were called to give evidence on behalf of the TRA or Dr Earle.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Dr Earle was headteacher of Freiston Hall School (“the School”) which was set up in or around April 2017. The School received a number of inspections by Ofsted, under section 97 and section 99 of the Education and Skills Act 2008 (“the Act”), in 2017 and 2018. The School ceased to operate by the September 2018. Dr Earle was convicted on a guilty plea on 26 September 2019 at Lincoln Magistrates’ Court for the offence of running the unregistered School.

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:

- 1. You were convicted on a guilty plea on 26th September 2019 at Lincoln Magistrates’ Court for the offence of running an unregistered school, (Freiston Hall).**

The panel considered Dr Earle’s admission to the facts of this allegation in his response to the notice of proceedings. The panel also considered the memorandum of entry entered into the register of the Lincolnshire Magistrates’ Court which set out Dr Earle’s guilty plea to conducting an unregistered independent educational institution, namely the School, contrary to section 96 of the Education and Skills Act 2008 between 31 October 2017 and 12 July 2018. The panel also noted Dr Earle’s Police National Check (PNC) record setting out the details of his conviction.

The panel found allegation 1 proved.

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

Having found the allegation proved, the panel went on to consider whether the facts of the proved allegation 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 Dr Earle, in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, Dr Earle 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:
 - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Dr Earle amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession. The panel noted that Dr Earle was informed on 18 May 2017 by the Department for Education that “*A school must be registered before it operates, if it meets the criteria for registration*”. The panel acknowledged that Dr Earle may have received some conflicting advice from independent consultants that he could run the School without registration.

Ofsted collected evidence during the November 2017 inspection (in accordance with section 97 of the Act) that full time education was being provided by the School, which is a criterion for registration. The panel noted that Dr Earle was verbally cautioned as part of this investigation in November 2017 and in his presence, a warning notice was issued that a criminal offence was being committed and should cease to do so as soon as possible. Despite the May 2017 notification and November 2017 inspection, Dr Earle continued to run the School for a considerable period until the School ceased to operate in September 2018.

The panel noted that the School was attended by extremely vulnerable pupils and therefore the need to safeguard the pupils should have been of paramount importance. The panel noted that Dr Earle should have put his pupils’ needs at the forefront to ensure that the School was registered before operation in order for the requisite standards be enforced and, consequently, for pupils to receive a high quality education.

The panel also considered whether Dr Earle's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice.

The panel found that none of these offences was relevant.

Dr Earle received a conditional discharge and was ordered to pay £1000 costs and a £20 surcharge for conducting an unregistered independent educational institution. The maximum sentence for this offence was 6 months imprisonment and unlimited fine. The panel was informed by the presenting officer that this conviction was not alleged to be a relevant offence, as defined in the Advice, because under section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000, the TRA is prevented from treating a conditional discharge as a conviction.

The panel took into account the way in which 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 panel therefore found that Dr Earle's actions constituted conduct that may bring the profession into disrepute.

Having found the facts of particulars of allegation 1 proved, the panel further found that Dr Earle'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/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, declaring and upholding proper standards of conduct.

In the light of the panel's findings against Dr Earle which involved a conviction for the offence of running an unregistered school (Freiston Hall), there was a strong public

interest consideration in the need to safeguard pupils and ensure that all pupils receive a high quality education which meet the requisite standards.

There was a strong public interest to uphold public trust in the profession and maintain high standards of ethics and behaviour.

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

The panel heard no evidence in relation to Dr Earle's ability as an educator and whether he would be able to make a valuable contribution to the profession going forward.

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

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 Dr Earle. 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.

The panel considered that Dr Earle failed to act within the statutory frameworks which set out a teacher's professional duties and responsibilities. The panel considered this to be a serious departure from the personal and professional conduct elements of the Teachers' Standards. The panel also noted the serious potential safeguarding risk to vulnerable pupils by operating an unregistered school, at which requisite standards could not be enforced.

Even though the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider any mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

No mitigation evidence was presented by Dr Earle for the panel to take into consideration when reaching its decision. As such, there was no evidence that Dr Earle's actions were not deliberate nor evidence to suggest that Dr Earle was acting under duress. There was no evidence to demonstrate whether Dr Earle had a previously good history as an educator. The panel noted that the presenting officer stated that Dr Earle had not been involved in any previous TRA misconduct hearings.

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 Dr Earle 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 Dr Earle. The potential safeguarding risk to vulnerable pupils was a significant factor in forming that opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

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

The panel noted that Dr Earle provided no evidence to demonstrate any remorse for his conduct. Further, the panel considered that Dr Earle lacked insight in respect of the potential safeguarding risk to vulnerable pupils attending an unregistered school without requisite standards.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a 3 year 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 the single allegation proven and found that the proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

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

In particular, the panel has found that Dr Earle 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:
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was also “satisfied that the conduct of Dr Earle amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.”

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 Dr Earle, 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, “the School was attended by extremely vulnerable pupils and therefore the need to safeguard the pupils should have been of paramount importance. The panel noted that Dr Earle should have put his pupils' needs at the forefront to ensure that the School was registered before operation in order for the requisite standards be enforced and, consequently, for pupils to receive a high quality education.”

A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, “The panel noted that Dr Earle provided no evidence to demonstrate any remorse for his conduct. Further, the panel considered that Dr Earle lacked insight in respect of the potential safeguarding risk to vulnerable pupils attending an unregistered school without requisite standards.”

In my judgement, the lack of insight means that there is some risk of the repetition of this behaviour and this puts at risk the future well being 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, "it took into account the way in which 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."

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 Dr Earle himself. The panel comment "No mitigation evidence was presented by Dr Earle for the panel to take into consideration when reaching its decision. As such, there was no evidence that Dr Earle's actions were not deliberate nor evidence to suggest that Dr Earle was acting under duress. There was no evidence to demonstrate whether Dr Earle had a previously good history as an educator. The panel noted that the presenting officer stated that Dr Earle had not been involved in any previous TRA misconduct hearings."

A prohibition order would prevent Dr Earle from teaching and 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 concerning the lack of insight or remorse.

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

I have considered the panel's comments "the panel considered that Dr Earle lacked insight in respect of the potential safeguarding risk to vulnerable pupils attending an unregistered school without requisite standards."

I have considered whether a 3 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, the factors which mean that a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession are the criminal offending found, and the lack of either insight or remorse.

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

This means that Dr Clement Earle 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 28 June 2024, 3 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Dr Clement Earle remains prohibited from teaching indefinitely.

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

Dr Clement Earle 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.



Decision maker: Alan Meyrick

Date: 23 June 2021

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