



Teaching
Regulation
Agency

Mr Frank Lewis: Professional conduct panel outcome

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

July 2018

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

Teacher: Mr Frank Lewis

TRA reference: 16689

Date of determination: 9 July 2018

Former employer: Mesivta High School, Prestwich, Manchester

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 9 July 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Frank Lewis.

The panel members were Mr Michael Lewis (teacher panellist – in the chair), Mr Steve Oliver (teacher panellist) and Ms Karen McArthur (lay panellist).

The legal adviser to the panel was Ms Eve Piffaretti of Blake Morgan LLP solicitors.

The presenting officer for the TRA was Ms Lucy Coulson of Browne Jacobson LLP solicitors.

Mr Lewis was present and was represented by Mr Harry Bentley of Counsel.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation set out in the Notice of Proceedings dated 27 March 2018.

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

Whilst employed as a Teacher at Mesivta High School:

1. On or around 26 July 2017 he behaved inappropriately and/or aggressively towards Pupil A by slapping him across the face.

Mr Lewis admitted the facts of the allegations and that those facts amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

The panel agreed to admit a letter from Mr Lewis' general practitioner dated 26 June 2018. No objection was made on behalf of the TRA.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 2 to 3

Section 2: Notice of Proceedings and Response – pages 5 to 14

Section 3: Statement of Agreed Facts – page 16

Section 4: Teaching Regulation Agency documents – pages 18 to 44

Section 5: Teacher documents – pages 46 to 93

In addition, as noted above, the panel agreed to accept a letter from Mr Lewis' general practitioner dated 28 June 2018, which was added to section 5 in the bundle of documents and marked page 94.

The panel members confirmed that they had read all the documents.

Statement of agreed facts

The panel considered a Statement of Agreed Facts which was signed by Mr Lewis and dated 23 March 2018.

Witnesses

No witnesses were called by the presenting officer given that Mr Lewis had admitted the facts of the allegation.

The panel heard oral evidence in mitigation from Mr Lewis and evidence as to Mr Lewis' character from Witness A and Witness B who were called by Mr Lewis' representative.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Mr Lewis was employed at Mesivta High School ("the School"), Prestwich, between August 2005 and July 2017. Mr Lewis was initially employed as the principal from August 2005 until 2010. He was subsequently employed as a Jewish studies teacher until his resignation in July 2017. Within these roles Mr Lewis was referred to as "Rabbi Lewis".

On or around 26 July 2017 it is alleged that Mr Lewis behaved inappropriately and/or aggressively towards Pupil A by slapping him across the face.

Mr Lewis reported the incident to Individual A, the headteacher of the School on 26 July 2017 and admitted that he had slapped Pupil A once across the face.

On 28 July 2017 the allegation against Mr Lewis was referred to the Bury local authority designated officer ("LADO"). On the same date Pupil A's parents and Pupil A confirmed in writing that they did not want the matter to be referred to the police and were content for the matter to be dealt with by the School following their own internal procedures.

Mr Lewis resigned from his employment at the School on 1 August 2017. On 21 August 2017 the allegation was referred to the TRA's predecessor, the National College for Teaching and Leadership, by the LADO.

The School conducted an internal investigation into Mr Lewis' behaviour and on 17 September 2017 a governors' disciplinary panel meeting took place.

Findings of fact

Our findings of fact are as follows:

Whilst employed as a teacher at Mesivta High School:

1. On or around 26 July 2017 you behaved inappropriately and/or aggressively towards Pupil A by slapping him across the face.

Mr Lewis accepts that on 26 July 2017 he behaved inappropriately and aggressively towards Pupil A by slapping him across the face.

The allegation has been admitted. The panel noted that Mr Lewis' admission is consistent with the evidence that the panel has considered within the bundle of documents including Mr Lewis' contemporaneous written account of the incident. The panel therefore finds the facts of the allegation proved.

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

Mr Lewis accepts that his admitted conduct amounts to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Having found the allegation to have been proved, the panel has gone on to consider whether the facts of those proved allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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

The panel is satisfied that the conduct of Mr Lewis in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Lewis 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;

The panel finds that Mr Lewis' conduct represents misconduct of a serious nature which fell significantly short of the standards expected of a teacher. Teachers should not strike pupils. Consequently, the panel finds Mr Lewis guilty of unacceptable professional conduct.

The panel has taken into account how 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 has also taken into account the uniquely influential role that teachers hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. The public expectation is that pupils will be safe in school and will not be slapped by a teacher. Therefore, the panel finds that Mr Lewis' conduct may bring the reputation of 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 is 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 has to consider whether it is an appropriate and proportionate measure, and whether it is 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 has considered the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case, namely the protection of pupils, the maintenance of public confidence in the profession and the declaring and upholding proper standards of conduct.

There is a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate and aggressive behaviour, namely slapping a pupil in the face.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Lewis were not treated seriously when regulating the conduct of the profession.

The panel considered that there is a strong public interest in declaring proper standards of conduct in the profession. The conduct found against Mr Lewis was outside that which could reasonably be tolerated.

The panel considered that there was also strong public interest in retaining Mr Lewis in the profession, since no doubt has been cast upon his abilities as an educator. Mr Lewis has had a long and unblemished career and the panel took into account the oral evidence, references and testimonials which attested to his teaching ability. In particular the panel heard and tested the oral evidence from two character witnesses who attested to Mr Lewis's character and outstanding abilities from direct personal experience. The

panel was satisfied that Mr Lewis could continue to make a valuable contribution to the profession in the future, given his particular expertise.

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 Lewis.

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Lewis.

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. The following behaviour is relevant in this case:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;

Even though there was behaviour that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

In light of the panel's findings it considered that the following mitigating factors are present in this case:

- Mr Lewis has over 35 years' service as a teacher and has an otherwise unblemished record.
- Mr Lewis had not been subject to any previous regulatory or disciplinary proceedings. There have been no prior complaints in relation to his conduct. He is of good character.
- Mr Lewis made factual admissions at an early stage and has been open and honest throughout. He has fully engaged with his employer and subsequently with the TRA. He had attended to give evidence in mitigation and did so candidly.
- The panel also heard oral evidence in mitigation from Witness A and Witness B. The panel found both character witnesses to be honest and credible in their evidence of Mr Lewis's practice as a teacher.
- In addition, the panel were also provided with sixteen positive character references and testimonials, including from people of seniority and standing in the educational, legal and faith communities who have worked with Mr Lewis for many

years. It is clear they have high regard for his teaching abilities, his scholarship, his personal integrity, his commitment, dedication and passion for teaching.

- The panel considered that, since the incident that took place on 26 July 2017, Mr Lewis had demonstrated insight into his failings and shown profound regret and remorse.
- Mr Lewis acknowledged that he had a health condition and that this, combined with the circumstances present at the time, may have had an impact on his uncharacteristic behaviour.
- There was no evidence of any deep seated attitudinal problem. Mr Lewis told the panel that he had forfeited the mutual trust and respect by his action towards Pupil A, for which he apologised.
- The panel accepted that Mr Lewis's conduct as found proved was an isolated incident and out of character and concluded that the risk of repetition was very low.
- The panel concluded that Mr Lewis had momentarily lost self- control in response to the challenging situation.

The aggravating features in this case were that:

- His actions amounted to a clear breach of the Teachers' Standards.

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 is sufficient.

The panel is of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order is a proportionate and appropriate response.

Given that the conduct found proven was an isolated incident and in the light of the mitigating factors that were present in this case, the panel has determined that a recommendation for a prohibition order will not be appropriate in this case. In all the circumstances the panel concluded that the nature and severity of the behaviour is not at the most serious end of the spectrum. In arriving at this conclusion the panel placed particular emphasis on the insight shown by Mr Lewis and that fact that he has been open and honest about his actions.

The panel also took into account of the fact that, given his experience and prior good history, there was every prospect that Mr Lewis could be an asset to the profession in the future. Mr Lewis had demonstrated insight into the circumstances which led to these proceedings. The panel considers that Mr Lewis now has a far greater understanding and recognition of his health condition and the strategies required to manage it. Mr Lewis

reassured the panel by outlining the steps he would take, such as reducing his workload, taking more exercise and rest so as to avoid placing himself in a similar situation in future. In all the circumstances the panel considered that the risk of repetition was extremely low given the integrity, insight, regret and remorse demonstrated by Mr Lewis.

In these circumstances, the panel concluded that the publication of the adverse findings it has made is sufficient to send an appropriate message to the teacher and the teaching profession, as to the standards of behaviour that are not acceptable. It also meets the public interest requirement of declaring and upholding proper standards of conduct.

This was a proportionate outcome which struck a fair balance between the need to protect the public interest and the impact on Mr Lewis having regard to the fact that findings were serious and would undoubtedly affect Mr Lewis' s professional reputation and employment prospects. The panel was satisfied that its decision maintains public confidence and upholds professional standards.

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 sanction.

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

In this case, the panel has found the 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 Mr Lewis should not be the subject of a prohibition order.

In particular the panel has found that Mr Lewis 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.

The panel finds that the conduct of Mr Lewis 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 or not 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 Lewis, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed “There is a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate and aggressive behaviour, namely slapping a pupil in the face.” A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “ The panel considered that, since the incident that took place on 26 July 2017, Mr Lewis had demonstrated insight into his failings and shown profound regret and remorse.” The panel has also accepted that Mr Lewis’s conduct, “as found proved was an isolated incident and out of character and concluded that the risk of repetition was very low.” 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, “that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Lewis were not treated seriously when regulating the conduct of the profession.”

I have had to consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public 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 Lewis himself. The panel comment, “Mr Lewis has had a long and unblemished career and the panel took into account the oral evidence, references and testimonials which attested to his teaching ability.” The panel also say it was satisfied Mr Lewis, “could continue to make a valuable contribution to the profession in the future, given his particular expertise.”

A prohibition order would prevent Mr Lewis from continuing in the teaching profession. 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 concerning insight and remorse. The panel has said, "In arriving at this conclusion the panel placed particular emphasis on the insight shown by Mr Lewis and that fact that he has been open and honest about his actions." The panel go on to say, "Mr Lewis had demonstrated insight into the circumstances which led to these proceedings. The panel considers that Mr Lewis now has a far greater understanding and recognition of his health condition and the strategies required to manage it."

I have also placed considerable weight on the panel's view on the conduct and mitigating factors, "Given that the conduct found proven was an isolated incident and in the light of the mitigating factors that were present in this case, the panel has determined that a recommendation for a prohibition order will not be appropriate in this case." Furthermore, I note the panel's comments on the nature and severity of the behaviour, "In all the circumstances the panel concluded that the nature and severity of the behaviour is not at the most serious end of the spectrum."

In my view it is not necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is backed up by the remorse and insight shown by Mr Lewis, along with the mitigating circumstances in this case, in my view satisfies the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is not proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

A handwritten signature in black ink, appearing to read 'Dawn Dandy', with a stylized, flowing script.

Decision maker: Dawn Dandy

Date: 12 July 2018

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