



Teaching
Regulation
Agency

Mr David Sergio Malengela: Professional conduct panel outcome

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

September 2018

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

Teacher: Mr David Sergio Malengela
Teacher ref number: 1163726
Teacher date of birth: 6 April 1977
TRA reference: 16839
Date of determination: 4 September 2018
Former employer: St Peter's School, Huntingdon

A. Introduction

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("the Agency") convened on 3 and 4 September 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr David Sergio Malengela.

The panel members were Professor Ian Hughes (lay panellist – in the chair), Mr Peter Cooper (Teacher panellist) and Mr Tony Woodward (lay panellist).

The legal adviser to the panel was Mr Dean Hickey of Eversheds Sutherland (International) LLP.

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

Mr Malengela was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 28 June 2018.

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

1. failed to properly administer one or more trips to France taking place in and around May – July 2017, including by:
 - a. informing parents that the cost of one of more trips had increased when:
 - i. a price increase had not been agreed and/or costed by the School;
 - ii. you had no evidence and/or good reason to justify the price increase.
 - b. requesting that monies for one or more trips be paid directly to you in the form of cash payment;
 - c. failing to respond adequately or at all to requests made by the School Finance team for accurate data and/or information relating to trip; and
2. conduct at allegation 1. as may be found proven lacked integrity and/or was dishonest.

C. Preliminary applications

The panel considered an application from the presenting officer to proceed in the absence of Mr Malengela.

After hearing submissions from the presenting officer and receiving legal advice, the chair announced the decision of the panel as follows:

The panel decided that the hearing should proceed in the absence of Mr Malengela for the following reasons:

- the Notice of Proceedings was sent to Mr Malengela in accordance with Rule 4.11;
- in Mr Malengela's response to the Notice of Proceedings, it was indicated that he did not intend to appear at the hearing nor did he intend to be represented;
- there is a public interest in the proper regulation of the profession and the protection of the public and the need for hearings to take place within a reasonable time; and

- the TRA had made arrangements for two witnesses to attend this hearing to give evidence. The panel took into account the interests of those witnesses and the costs associated with their attendance in balancing fairness to Mr Malengela, fairness to the TRA as regulator and the wider public interest.

D. Summary of evidence

Documents

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

Section 1: Chronology – pages 2 to 3

Section 2: Notice of Proceedings and response – pages 5 to 11

Section 3: Teaching Regulation Agency witness statements – pages 14 to 66

Section 4: Teaching Regulation Agency documents – pages 68 to 242

Section 5: Teacher documents – pages 244 to 274

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

Witnesses

The panel heard oral evidence from:

Witness A, Business Manager, St Peter's School, Huntingdon and

Witness B, Finance Assistant, St Peter's School, Huntingdon.

E. Decision and reasons

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

The panel confirmed that it had read all the documents provided in the bundle and the additional documents 12(a) to 12(j) which were provided by the presenting officer in advance of the hearing.

The panel had the benefit of and took into account the advice from the legal adviser on the Supreme Court case of *Ivey v Genting Casinos (UK) Ltd* and the resultant change to the application of the test of dishonesty in criminal law proceedings. Specifically, it heard and noted that the test in *R v Ghosh* which was previously applied has now been found to be an incorrect application of the law.

The panel also noted that it was advised by the legal adviser that the concepts of dishonesty and lack of integrity are separate and distinct and that integrity connotes adherence to the ethical standards of one's own profession that involves more than mere honesty. Further, it is linked to the manner in which the profession seeks to serve the public.

Mr Malengela commenced employment on a fixed-term contract at St Peter's School, Huntingdon ('the School') as a teacher of modern foreign languages. As part of his role, Mr Malengela was tasked with organising overseas trips. In the summer of June 2016, Mr Malengela was tasked with organising overseas trips. In the summer of June 2016, Mr Malengela commenced the planning of three residential trips to France for the summer term of 2017. Between February 2017 and May / June 2017, numerous requests were made of Mr Malengela for financial information and pupil numbers by the School finance team. Mr Malengela resigned from his post on 17 May 2017. A subsequent disciplinary investigation by the School alleged serious irregularities in the administration of the trips.

Findings of fact

The panel's findings of fact were as follows:

- 1. Failed to properly administer one or more trips to France taking place in and around May – July 2017, including by:**
 - a. informing parents that the cost of one or more trips had increased when**
 - i. a price increase had not been agreed and/or costed by the School;**
 - ii. you had no evidence and/or good reason to justify the price increase.**

In respect of both of allegation 1.a.i. and 1.a.ii. the panel found the above particulars of the allegation proven, for these reasons:

In respect of the Paris trip, the panel has seen evidence in Exhibit JM1 attached to Witness B's witness statement (enclosed in the hearing bundle at page 51) of Mr Malengela's inflation of the price of a trip without sufficient reason to do so. The panel is of the opinion that the email from Witness B to Mr Malengela demonstrates that, firstly, there were inconsistencies in what parents were told was the total cost of the trip, and, secondly, that any proposed increases in the cost had not been adequately communicated to, nor agreed by, the School finance team.

In regards to the issue of the behaviour deposit referenced in the undated letter to parents which the panel understands was composed and signed by Mr Malengela (enclosed in the hearing bundle at page 108), the panel notes that, the letter provides that, "in addition [to the cost of the trip stated as £390]...[a] £20 refundable behaviour deposit for the Hotel Bon-Sejour". However this is contrary to what is stated in the invoice and itinerary sent by the tour operator dated 15 June 2017 (enclosed in the bundle at

pages 114 to 120). Specifically at page 117, it is clearly stated that, in respect of the Hotel, no behaviour deposit is required. The panel considers this example to be representative of Mr Malengela's informing parents that the cost of the trip has increased without sufficient evidence or good reason to do so.

The panel also heard compelling oral evidence from both witnesses called by the presenting officer. Each witness gave evidence in respect of 1.a.i. and 1.a.ii. The panel tested this evidence through questioning and found the evidence given by both witnesses to be credible and persuasive.

The panel, therefore, found both of these allegations proven, on the balance of probabilities. As the panel has found both 1.a.i. and 1.a.ii. proven, the panel therefore also found that Mr Malengela's actions did represent a failure to properly administer the trips which took place between May and July 2017.

b. requesting that monies for one or more trips be paid directly to you in the form of cash payment;

On this allegation, the panel heard oral evidence from Witness A. The presenting officer asked Witness A to reaffirm paragraph 22 of her witness statement which was included in the hearing bundle at pages 14 – 35. Witness A reaffirmed that she had witnessed Mr Malengela requesting from parents of those pupils who were to attend the trip that an additional payment of €20 was due to be paid to him personally as the children boarded the coach on departure.

The panel then proceeded to question Witness A and tested her evidence. The panel found Witness A to be a persuasive and credible witness. The panel therefore preferred Witness A's evidence given in testimony over the account given by Mr Malengela on page 248 of the hearing bundle.

In addition, the panel noted that the witness statement taken from Individual C as part of the School's disciplinary investigation states Mr Malengela had requested payment in euros, "David asked for 25 euros for a security deposit and the science museum was 10 euros for adults and 5 euros for students [at the briefing sessions for parents]"

As such, the panel found, on the balance of probabilities, that Mr Malengela was more likely than not to have asked for monies to be paid directly to him in the form of cash payments.

The panel, therefore, on the basis of the above reasons, found this allegation proven, on the balance of probabilities.

As the panel has found this allegation proven, the panel further found that Mr Malengela's actions in requesting additional cash payments to be paid directly to him amounted to a failure to properly administer this aspect of the trips which took place between May and July 2017.

c. failing to respond adequately or at all to requests made by the School Finance team for accurate data and/or information relating to trip;

On this allegation, the panel heard oral evidence from Witness B who referred the panel to her evidence (Exhibit JM1) in the bundle as examples of where she had repeatedly contacted Mr Malengela to request financial information pertaining to the trips that he was organising. Witness B told the panel that the responses that she received from Mr Malengela did not give her the information she required and had requested. The panel questioned Witness B and tested her evidence. The panel found Witness B to be a persuasive and credible witness and preferred her evidence given in testimony to the explanation offered by Mr Malengela on page 249 of the hearing bundle.

The panel was persuaded by the evidence given by Witness B and finds that the information requests were reasonable and clearly required responses. The panel was persuaded that there was no good reason why Mr Malengela was not able to comply with the requests. Further, the panel also finds that where Mr Malengela responded to requests, his responses were unhelpful and had the potential to mislead the School's finance team.

The panel, therefore, on the basis of the above reasons, found this allegation proven, on the balance of probabilities. As the panel has found this allegation proven, the panel further found that Mr Malengela's actions in failing to adequately respond to reasonable requests from the School finance team for information amounted to a failure to properly administer the trips which took place between May and July 2017.

2. Your conduct at Allegation 1 as may be found proven lacked integrity and/or was dishonest.

In light of its findings in allegation 1, the panel found that that Mr Malengela's conduct in allegations 1.a.i., 1.a.ii., 1.b, and 1.c displayed a lack of integrity.

In regards to Mr Malengela's conduct at allegation 1.a.ii., the panel also found that this was dishonest.

The panel came to this decision taking into account its earlier findings in respect of allegation 1 and carefully considered all of the evidence that was presented before it and that which it heard through oral testimony. The panel had regard to the testimony from both Witness A and Witness B in respect of Mr Malengela's behaviour and whether they believed that his actions in his dealings with the School finance team amounted to dishonesty. The panel found this oral evidence both persuasive and credible.

The panel therefore concludes that, on the balance of probabilities, it is satisfied that Mr Malengela's conduct lacked integrity and that in his actions pertaining to the conduct in

allegation 1 a ii. and that he was dishonest according to the standards of ordinary decent people.

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

Having found all of the allegations to have been proven, the panel went on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and 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 was satisfied that the conduct of Mr Malengela in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part 2, Mr Malengela is in breach of the following standards:

- Teachers act with honesty and integrity (as taken from the preamble of the Teachers’ Standards);
- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour...; and
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

The panel was satisfied that the conduct of Mr Malengela fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Malengela’ s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice.

The panel has found that the offence of fraud or serious dishonesty is relevant in respect of allegation 1.a.ii.

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 taken account of the uniquely influential role that teachers can hold in pupils’ lives and that pupils must be able to view teachers as role models in the way they behave.

The panel therefore found that Mr Malengela’s actions constituted 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 which 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and maintaining confidence in the regulatory process.

In light of the panel's findings against Mr Malengela, which involved behaviours displaying both dishonesty and lack of integrity, there is a strong public interest consideration in ensuring that public confidence in the profession is not seriously weakened. Conduct such as that found against Mr Malengela must be treated with the utmost seriousness when regulating the conduct of the profession.

Similarly, the panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Malengela was outside that which could reasonably be tolerated.

Notwithstanding 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 Malengela.

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 Malengela. 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 proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position of trust; and

- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;

Even though there were behaviours 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.

The panel found that there was no evidence that Mr Malengela's actions were not deliberate. Further, the panel found that Mr Malengela's repeated failure to adequately respond to entirely appropriate requests for information from colleagues in the School's finance office demonstrated his deep-seated attitude and reluctance to seek help and advice from others.

Mr Malengela suggested in his evidence that he was experiencing personal difficulties including health issues. The panel has considered this but was not provided with medical evidence in support.

The panel found Mr Malengela's actions to be calculated and deliberate.

The panel gave consideration to the integral relationship between parents and teachers and it considered Mr Malengela's actions to be a clear breach of this trust.

The panel is of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order is not a proportionate and appropriate response. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences of prohibition for Mr Malengela.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of the teacher. Mr Malengela's conduct in respect of the allegations it found proven was a significant factor in forming that opinion. 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 them to decide to recommend that a review period of the order should be considered. The panel were 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.

In its findings, the panel determined that Mr Malengela displayed behaviours amounting to fraud or serious dishonesty and in addition demonstrated a clear lack of integrity. As such, the panel felt the findings indicated a situation in which a review period would not

be appropriate and decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision 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 sanction and no review period.

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 allegations proven and found that those 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 Malengela should be the subject of a prohibition order, with no review period.

In particular the panel has found that Mr Malengela is in breach of the following standards:

- Teachers act with honesty and integrity (as taken from the preamble of the Teachers' Standards);
- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour...; and
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

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

The findings of misconduct are particularly serious as they include in relation to allegation 1 a finding of dishonesty and lack of integrity.

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 Malengela, 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 made no comment on risk to pupils.

I have also taken into account the panel's comments on insight, remorse and mitigation which the panel sets out as follows, "The panel found that there was no evidence that Mr Malengela's actions were not deliberate." The panel also say, "Mr Malengela suggested in his evidence that he was experiencing personal difficulties including health issues. The panel has considered this but was not provided with medical evidence in support." In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks the integral relationship between parents and teachers." 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, "Conduct such as that found against Mr Malengela must be treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding of dishonesty and lack of integrity 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 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 Malengela himself.

A prohibition order would prevent Mr Malengela 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 finding of dishonesty and lack of integrity. The panel has said, " In its findings, the panel determined that Mr Malengela displayed behaviours amounting to fraud or serious dishonesty and in addition demonstrated a clear lack of integrity."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Malengela 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 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 aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended no review period.

I have considered the panel's comments " the panel felt the findings indicated a situation in which a review period would not be appropriate and decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period."

I have considered whether no review period reflects the seriousness of the findings and is a proportionate to achieve the aim of maintaining public confidence in the profession. I am in agreement with the panel and believe in light of the serious misconduct in this case and the lack of any insight, remorse or evidenced mitigation no review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr David Sergio Malengela 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 Malengela 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 David Sergio Malengela 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 'Dawn Dandy', written in a cursive style.

Decision maker: Dawn Dandy

Date: 5 September 2018

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