



Teaching
Regulation
Agency

Mr Joshim Nur: 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 Joshim Nur

Teacher ref number: 0536389

Teacher date of birth: 17 June 1984

TRA reference: 14239

Date of determination: 6 September 2018

Former employer: London Nautical School, London

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 6 September 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Joshim Nur.

The panel members were Dr Robert Cawley (teacher panellist – in the chair), Mrs Julia Bell (teacher panellist) and Mrs Claire McManus (lay panellist).

The legal adviser to the panel was Ms Surekha Gollapudi of Eversheds Sutherland (International) LLP solicitors.

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

Mr Nur 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 18 October 2017.

It was alleged that Mr Nur was guilty of conduct that may bring the profession into disrepute, in that:

1. Between August 2006 and April 2009 he engaged in a relationship with Child A:
 - a. in circumstances where he knew and/or should have known that she was under the age of 16;
 - b. which included sexual activity and/or sexual intercourse on more than one occasion whilst she remained under the age of 16.

The teacher denies the allegations.

C. Preliminary applications

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

The panel was satisfied that the TRA complied with the service requirements of paragraph 19(a) to 19(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, (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 understood that its discretion to commence a hearing in the absence of the teacher must be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel took account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1.

In particular, the panel noted that: notice was sent to an address that the teacher previously responded to; the teacher had also previously responded to emails sent to him; following his subsequent non response, enquiries were made through a tracing

agent to try to trace the teacher; the hearing had already been adjourned on a previous occasion at the teacher's request, and therefore there had been a longer period for the teacher to become aware of the proceedings. The panel considered that attempts were made to contact Mr Nur on a number of occasions, without response, despite his previous engagement. The panel therefore considered that the teacher had waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

The panel had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. Mr Nur did not request that this hearing be adjourned and there was no indication that an adjournment might result in him attending the hearing.

The panel had regard to the extent of the disadvantage to the teacher in not being able to give his account of events. The panel noted that it had the benefit of representations made by the teacher and was able to ascertain the lines of defence. The panel did not identify any significant gaps in the documentary evidence provided to it and noted that should such gaps arise during the course of the hearing, the panel may take them into consideration in considering whether the hearing should be adjourned for such 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 panel had regard to the seriousness of this case, and the potential consequences for the teacher and has accepted that fairness to the teacher is of prime importance. However, it considered that in light of the teacher's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; and taking into account the effect of a further delay both on the teacher himself, and on the Agency; that on balance, these were serious allegations and the public interest was in the hearing proceeding.

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 4

Section 2: Notice of Proceedings and Response – pages 6 to 20

Section 3: Teaching Regulation Agency witness statements – pages 22 to 26

Section 4: Teaching Regulation Agency documents – pages 28 to 172

Section 5: Teacher documents – pages 174 to 175

The panel also received a bundle of papers in support of the presenting officer's application to proceed in the absence of the teacher.

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

Witnesses

The panel did not hear oral evidence from any witnesses.

E. Decision and reasons

The panel announced its decision and reasons as follows:

Mr Nur was employed as a Physics teacher at the London Nautical School from June 2006. It is alleged that during the summer holiday, immediately following his appointment, he travelled to Bangladesh and married a 13 year old child, either knowingly or in circumstances in which he ought to have known her age. It is further alleged that he had a sexual relationship with her which started when she was under the age of sixteen.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegations against you proven, for these reasons:

1. Between August 2006 and April 2009 you engaged in a relationship with Child A:

a. In circumstances where you knew and/or should have known that she was under the age of 16

The panel had regard to the written statement of Child A who stated that she had a direct conversation with Mr Nur three days prior to their marriage in Bangladesh in which she confirmed that she was 13 years old and was studying in year 8 at school. Child A said that before this conversation, she had been the subject of a video recording taken by Mr Nur's father in which she confirmed these same details, and that she believed that Mr Nur had watched this video.

Child A had remained consistent in her account between her initial complaint, interview with the police and these proceedings. The panel found Child A's evidence to be compelling and credible.

Mr Nur has stated in written evidence that he was deceived by Child A's family as to his wife's age at the time of their marriage. He stated that he was unaware of her real age until she made a complaint to the police in 2013. Shortly afterwards in Family Court proceedings in 2014 a clavicle bone test was undertaken to determine her real age.

Mr Nur stated that he had understood that his wife was eighteen years old at the time of their marriage. The panel saw evidence that this statement was supported by a marriage certificate which was used in order to apply for a passport for Child A following their marriage.

The panel did not find it plausible that Mr Nur could have mistaken a 13 year old child for an eighteen year old, and that this misconception continued over a four year period. The panel was particularly concerned in light of the fact he worked in a secondary school and had daily interactions with children of this age.

The panel found this allegation proven, on the balance of probabilities.

b. Which included sexual activity and/or sexual intercourse on more than one occasion whilst she remained under the age of 16

The panel had regard to the evidence of Child A in which she stated that sexual activity started shortly after her marriage to Mr Nur. She also confirmed that she was taken to an appointment with the family planning clinic in 2007 (when she was aged 13 or 14 years old) and that she took contraceptive pills every day.

Mr Nur now accepts that Child A was 13 years old in 2006. However, he maintains that he was unaware of this at the time of their marriage, believing her to be eighteen years old.

Mr Nur does not deny that he had sexual intercourse with Child A during their marriage. This is supported by the evidence of the Family Court Order which identified that, "full sexual relations between the mother and father commenced in early part of 2007 when she was only 13 or 14 years of age."

The panel found this allegation proven, on the balance of probabilities.

Findings as to conduct that may bring the profession into disrepute

Having found the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to 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", and such relevant standards as were in place at the time of the allegations.

The panel is satisfied that the conduct of Mr Nur in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Nur 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
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities

The panel is satisfied that the conduct of Mr Nur amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession at the time. The panel has taken account of Mr Nur's contention that he was misled as to his wife's age at the time of their marriage. However, his naivety and ignorance does not mitigate or absolve him of his wider professional responsibilities.

The panel has also considered whether Mr Nur's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found the offence of sexual activity is relevant.

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 findings are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore finds that Mr Nur's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Nur, which involved his marriage to a child aged 13 years old, the panel considers that public confidence in the profession could be seriously weakened if his conduct were not treated with the utmost seriousness when regulating the conduct of the profession.

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

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

In carrying out the balancing exercise the panel has considered the public interest factors both in favour of and against prohibition as well as the interests of Mr Nur. 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
- sexual misconduct, eg involving actions that were sexually motivated or of a sexual nature

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 considered whether there was any mitigation and found that Mr Nur was a good teacher, described as a, "gifted and valued staff member" by the headteacher.

However, there was no evidence that the teacher's actions were not deliberate and the panel found he knew, or should have known Child A's age at the time of their marriage. The panel acknowledged that Mr Nur appeared to be acting under pressure from his family to enter into the marriage, given that he met Child A just three days prior to their wedding. This was supported by the Family Court, who considered Mr Nur to have also been a victim in this situation.

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 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 for the teacher of prohibition.

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 Mr Nur. Child A's young age (13) at the time of their marriage, and the length of time of the sexual relationship were both significant factors 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 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 proven, would militate against a review period being recommended. These behaviours include serious sexual misconduct, eg where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons. The panel has found that Mr Nur entered into a marriage and a sexual relationship with a 13 year old child. The panel found this behaviour to be extremely serious and noted that Mr Nur did not demonstrate any insight into his actions or their impact on Child A.

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

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of sanction and 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 Nur should be the subject of a prohibition order, with no provision for a review period.

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

The findings of misconduct are particularly serious as they include a finding of sexual activity.

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 Nur, 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 pupils. The panel has observed “Mr Nur entered into a marriage and a sexual relationship with a 13 year old child.” I have also taken into account the panel’s comments on insight which the panel sets out as follows, “Mr Nur did not demonstrate any insight into his actions or their impact on Child A.”

In my judgement the lack of insight means that there is some risk of the repetition of this behaviour. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “The 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.” I am particularly mindful of the finding of sexual activity 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 Nur himself. The panel report that Mr Nur, “was a good teacher, described as a, “gifted and valued staff member” by the headteacher.”

A prohibition order would prevent Mr Nur 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 circumstances of this case. The panel has said, “there was no evidence that the teacher’s actions were not deliberate and the panel found he knew, or should have known Child A’s age at the time of their marriage. The panel acknowledged that Mr Nur appeared to be acting under pressure from his family to enter into the marriage, given that he met Child A just three days prior to their wedding. This was supported by the Family Court, who considered Mr Nur to have also been a victim in this situation.”

I have also placed considerable weight on the finding of the panel concerning “Child A’s young age (13) at the time of their marriage, and the length of time of the sexual relationship.”

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

I have considered the panel’s comments that it, “did not find it plausible that Mr Nur could have mistaken a 13 year old child for an eighteen year old, and that this misconception continued over a four year period. The panel was particularly concerned in light of the fact he worked in a secondary school and had daily interactions with children of this age.”

I have considered whether allowing for no 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, there are factors that in my view 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 serious nature of the sustained sexual activity and the lack of insight.

I consider therefore that allowing for no review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Joshim Nur 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 Joshim Nur 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 Joshim Nur 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 blue ink, appearing to read 'Alan Meyrick', followed by a vertical line.

Decision maker: Alan Meyrick

Date: 10 September 2018

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