



Teaching
Regulation
Agency

Mr Hamzah Arbi: Professional conduct panel outcome

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

May 2018

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

Teacher:	Mr Hamzah Arbi
Teacher ref number:	1162953
Teacher date of birth:	10 February 1989
TRA reference:	16659
Date of determination:	15 May 2018
Former employer:	Aylward Academy, London

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the Agency”) convened on 15 May 2018 at the Ramada Hotel & Suites Coventry, The Butts, Coventry, CV1 3GG to consider the case of Mr Hamzah Arbi.

The panel members were Mrs Alison Platts (lay panellist – in the chair), Mr Colin Parker (teacher panellist) and Mr Tony James (former teacher panellist).

The legal adviser to the panel was Mr Delme Griffiths of Blake Morgan LLP, solicitors.

The presenting officer for the Agency was Mr Ben Bentley of Browne Jacobson LLP, solicitors.

Mr Arbi was present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation set out in the Notice of Proceedings dated 23 February 2018.

It was alleged that Mr Arbi was guilty of having been convicted of a relevant offence, in that, whilst employed as a teacher at Aylward Academy in London:

- 1. At Wood Green Crown Court on or around the 29 June 2017, he was convicted of Theft, an offence which occurred on 14 June 2016, contrary to the Theft Act 1968 s.1. He was given a custodial sentence of 6 months' incarceration and ordered to pay a Victim Surcharge of £115.00 and Costs of £2,800.00**

In his response to the Notice of Proceedings Mr Arbi confirmed that he admitted both the allegation and that the conviction was for a relevant offence.

C. Preliminary applications

Application for the hearing to be held in private

The panel carefully considered a request made by Mr Arbi for the hearing to take place in private.

In his response to the Notice of Proceedings, Mr Arbi indicated that he wished for the entirety of the hearing to be heard in private. However, in his submission to the panel, Mr Arbi confirmed he was willing to limit his request to any part of the hearing in which matters relating to his health and the health of family members was addressed. Relevant medical evidence was included in the papers, which Mr Arbi relied upon in mitigation.

The presenting officer did not object to the exclusion of the public from any part of the hearing in which health issues were addressed but did oppose the entirety of the proceedings being heard in private.

The panel took into account the fact that there is a presumption that these proceedings will take place in public and there is a public interest in the openness and transparency of the disciplinary process.

The panel also noted that the outcome of the hearing would be announced in public.

The panel determined that the public interest in these proceedings taking place in public outweighed Mr Arbi's concerns and decided that it was not appropriate for the entirety of the hearing to take place in private.

However, the panel agreed that if, at any stage, matters pertaining to the health of Mr Arbi or any member of his family arose during the course of the hearing, the public ought to be excluded.

Insofar as documents pertaining to Mr Arbi's health or the health of any member of his family are included within the hearing papers these would be taken as read.

Application to admit additional evidence

The panel considered an application by Mr Arbi to adduce additional documents comprising further medical evidence and references.

The panel decided to admit the documents.

Firstly, on balance, the panel considered that the documents were relevant given Mr Arbi's wish to rely upon the documents in mitigation for the reasons set out. The

additional documents were supplementary to documents already included within the hearing bundle.

The presenting officer did not object to the documents being admitted.

In those circumstances, the panel also decided that it was appropriate for the documents to be admitted in the interests of a fair hearing.

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 11

Section 3: Teaching Regulation Agency documents – pages 13 to 115

Section 4: Teacher documents – pages 75 to 115

In addition, as noted above, the panel agreed to accept additional documentation comprising further medical evidence and references following an application by Mr Arbi. These were added to the hearing bundle at pages 116 to 127.

Witnesses

The presenting officer called no witnesses.

The panel heard oral evidence from Mr Arbi.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel carefully considered this case and reached a decision.

The panel read all of the documents included in the hearing bundle. It accepted the legal advice provided.

Throughout the relevant time for the purposes of these proceedings, Mr Arbi was employed by the Aylward Academy in Edmonton, London ("the Academy") as an ICT teacher.

Mr Arbi had commenced work at the Academy on a fixed-term contract from 6 July 2015.

On 17 June 2016, Mr Arbi was suspended following an allegation of theft of Academy equipment, namely Lego Mindstorm sets ("the Equipment") on 14 June 2016.

The theft was reported to the police and an investigation commenced, during the course of which Mr Arbi attended an investigatory interview on 1 July 2016.

A decision was ultimately made to prosecute Mr Arbi and the matter proceeded to trial in June 2017.

In the intervening period, Mr Arbi's fixed-term contract at the Academy ended.

The Academy was informed on 6 July 2017 that Mr Arbi had been found guilty of theft and received a custodial sentence. He was referred to the Agency in August 2017.

Findings of fact

Our findings of fact are as follows:

You are guilty of receiving convictions, at any time, of relevant criminal offences in that you were convicted of the following offence in that whilst employed as a teacher at Aylward Academy, in London, you:

- 1. At Wood Green Crown Court on or around the 29 June 2017, you were convicted of Theft, an offence which occurred on 14 June 2016, contrary to the Theft Act 1968 s.1. You were given a custodial sentence of 6 months' incarceration and ordered to pay a Victim Surcharge of £115.00 and Costs of £2,800.00.**

The panel was presented with a certificate of conviction from the Wood Green Crown Court.

This confirmed that Mr Arbi was convicted on 29 June 2017 of theft under section 1 of the Theft Act 1968. He was sentenced by the Court to 6 months imprisonment, ordered to pay a victim surcharge of £115 and costs of £2,800.

The panel carefully considered all of the evidence within the hearing bundle relating to the circumstances of this offence. This included written, hearsay accounts of staff members at the Academy.

The incident in question took place on 14 June 2016 when the head of ICT at the Academy, observed Mr Arbi accessing an Ebay account and searching for equivalent items to the Equipment for sale.

Mr Arbi and a colleague were subsequently observed leaving the premises with black bags, which contained the Equipment.

Later on that evening, the Equipment was identified as being on sale on Ebay via an account, which Mr Arbi had access to.

Whilst Mr Arbi accepted that he had taken the Equipment, during the course of his interview on 1 July 2016 he suggested that he had done so to build at home, for no improper purpose, and that it was his wife who had added the items on Ebay. This was maintained in his written response to the TRA.

Nevertheless, Mr Arbi was found guilty of theft at Wood Green Crown Court following a trial by jury. The conviction was not appealed or otherwise challenged by Mr Arbi who accordingly accepted the facts of allegation 1.

In those circumstances, the panel accepted the certificate of conviction as conclusive proof of the commission of the offence of theft on 14 June 2016 by Mr Arbi.

The panel accordingly found allegation 1. proven.

Findings as to conviction of a relevant offence

Having found allegation 1 proven, the panel went on to consider whether the conviction was for a relevant criminal offence.

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 Mr Arbi involved breaches of the Teachers’ Standards. The panel considered that by reference to Part Two, Mr Arbi is in breach of the following 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 noted that Mr Arbi's actions were relevant to teaching given the offence concerned the theft of school property.

The panel did not consider that Mr Arbi's actions had a potential impact on the safety or security of pupils or members of the public.

The panel also took account of how the teaching profession is viewed by others. The panel considered that Mr Arbi's behaviour in committing the offence could affect public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.

Mr Arbi's behaviour ultimately led to him receiving a sentence of imprisonment, which is indicative of the seriousness of the offence committed.

This offence was of theft from a person or other serious theft, which the Advice states is likely to be considered a relevant offence.

The panel also took into account all of the information provided by Mr Arbi relating to the circumstances of the offence.

On balance, the panel concluded that the seriousness of the offending behaviour that led to the conviction is relevant to Mr Arbi's ongoing suitability to teach, which Mr Arbi admitted. The offence was one of dishonesty and led to a term of imprisonment. In those circumstances, the panel considered that a finding that the conviction is a relevant offence is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the panel's findings, it was necessary for it 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 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 a punitive effect.

The panel considered 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

Given that Mr Arbi had been convicted for an offence of theft, which was sufficiently serious to warrant a custodial sentence, the panel considered that public confidence in the profession could be seriously weakened if such conduct was not treated with the utmost seriousness when regulating the conduct of the profession.

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

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether it would be proportionate to impose a prohibition order taking into account the effect that this would have on Mr Arbi.

In carrying out the balancing exercise, the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Arbi. 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;
- abuse of position or trust;
- dishonesty; and
- the commission of a serious criminal offence.

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.

In light of its findings and having carefully considered the parties' submissions, the panel considered that aggravating features in this case included that:

- The offence was serious. Mr Arbi's actions were deliberate and he was not acting under duress. His conduct involved dishonesty and amounted to a serious breach of trust.
- Mr Arbi continued to deny his culpability, in relation to the offence, following his imprisonment and in his written submission to the Agency. It was only in oral evidence to the panel that Mr Arbi accepted his wrongdoing. The panel was therefore concerned that Mr Arbi had failed to demonstrate sufficient insight and he himself volunteered that he was still in the process of rehabilitation.
- There was a detrimental impact on the Academy.

In terms of mitigating factors, the panel considered that:

- Mr Arbi showed regret and remorse. He accepted and apologised for the impact his conduct had on his colleagues and his family.
- Mr Arbi's family circumstances appeared to have been challenging and continue to be so.
- The panel was provided with some positive character references and testimonials. Mr Arbi was an active member of his community and demonstrated passion in relation to his role as an educator, including outside school. Whilst there was reference within the papers and in evidence to two prior cautions these were disregarded by the panel given they were unrelated, historic matters.
- Mr Arbi had fully engaged with these proceedings and attended the hearing to give evidence. He made admissions in relation to the allegation.

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 was of the view that applying the standard of the ordinary intelligent citizen, it would not be proportionate or appropriate to recommend no prohibition order in this case. 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 the consequences for Mr Arbi of prohibition.

The panel was of the view that prohibition is both proportionate and appropriate. The panel decided that the public interest considerations outweigh the interests of Mr Arbi. The seriousness of the offence together with the level of insight shown by Mr Arbi were significant factors in forming that opinion. Mr Arbi accepted that he continued on a path of rehabilitation. 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 it would be appropriate for them to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice advises 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. One of these behaviours includes theft from a person or other serious cases of theft, which is relevant in this case.

Whilst the panel considered this, on balance the panel felt the findings indicated a situation in which a review period would be appropriate. The panel therefore concluded that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period of 3 years. Mr Arbi had been punished for his conduct. He had shown clear regret and remorse and some insight into the consequences of his actions. In oral evidence, Mr Arbi was emotional and demonstrated that he understood he had let himself down together with his family and colleagues. He showed a longstanding passion for teaching and had overcome personal challenges to enter the profession. There was evidence that he had made a positive impact in his community.

For these reasons, the panel concluded that a review period of 3 years was proportionate and would enable Mr Arbi to continue the process of rehabilitation and demonstrate that he had gained full insight into the nature and effect of his conduct.

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 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 a relevant criminal conviction. The panel has made a recommendation to the Secretary of State that Mr Arbi should be the subject of a prohibition order, with a review period of three years.

In particular, the panel has found that Mr Arbi is in breach of the following 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 findings of misconduct are particularly serious as they include a finding of theft.

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 a relevant criminal conviction, 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 Arbi, 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 that it, “did not consider that Mr Arbi's actions had a potential impact on the safety or security of pupils or members of the public”.

I have also taken into account the panel's comments on insight and remorse which the panel sets out as follows, “The panel was therefore concerned that Mr Arbi had failed to demonstrate sufficient insight and he himself volunteered that he was still in the process of rehabilitation.” In my judgement the lack of full 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, “Mr Arbi's behaviour in committing the

offence could affect public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.”

I am particularly mindful of the fact that this was a case of theft from a school that led to a custodial sentence, 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 a relevant criminal conviction, 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 Arbi himself. I have taken into account the panel’s comments, “The panel was provided with some positive character references and testimonials. Mr Arbi was an active member of his community and demonstrated passion in relation to his role as an educator, including outside the School.”

A prohibition order would prevent Mr Arbi from teaching and would 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 full insight or remorse. The panel has said both that, “Mr Arbi continued to deny his culpability, in relation to the offence, following his imprisonment and in his written submission to the Agency. It was only in oral evidence to the panel that Mr Arbi accepted his wrongdoing.” But has also observed, “Mr Arbi showed regret and remorse. He accepted and apologised for the impact his conduct had on his colleagues and his family.”

I have given less weight in my consideration of sanction, to the contribution that Mr Arbi 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 full 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 a 3 year review period.

I have considered the panel's comments "a review period of 3 years was proportionate and would enable Mr Arbi to continue the process of rehabilitation and demonstrate that he had gained full insight into the nature and effect of his conduct."

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, there are three 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 custodial sentence which reflects the seriousness of the theft, the fact that the theft was from a school and the lack of full insight.

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

This means that Mr Hamzah Arbi 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 29 May 2021, 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, Mr Hamzah Arbi remains prohibited from teaching indefinitely.

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

Mr Hamzah Arbi 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: 21 May 2018

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