



Teaching
Regulation
Agency

Mr Jonathan Samuel: Professional conduct panel outcome

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

April 2018

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

Teacher: Mr Jonathan Samuel

Teacher ref number: 0741215

Teacher date of birth: 28 June 1961

TRA case reference: 15211

Date of determination: 30 April 2018

Former employer: Cambian Devon School, Devon

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“TRA”) convened on 30 April 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Jonathan Samuel.

The panel members were Ms Karen McArthur (lay panellist – in the chair), Mr Anthony Bald (teacher panellist) and Mr Phillip Riggon (teacher panellist).

The legal adviser to the panel was Miss Anna Lois Parry of Eversheds Sutherland solicitors.

In advance of the meeting, the TRA agreed to a request from Mr Samuel that the allegations be considered without a hearing after taking into consideration the public interest and the interests of justice. Mr Samuel provided a signed Statement of Agreed Facts and admitted unacceptable professional conduct and or conduct that may bring the profession into disrepute. The panel considered the case at a meeting without the attendance of the presenting officer or Mr Samuel.

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

Mr Samuel was not represented.

The meeting took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 17 October 2017.

It was alleged that Mr Samuel was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed as a Teacher at the Cambian Devon School from December 2015 to March 2016:

1. On or around 9th February 2016, he engaged in inappropriate and/or aggressive physical contact with Pupil A.
2. His conduct as may be found proven at allegation 1, amounted to a criminal offence contrary to s39 Criminal Justice Act 1988 for which he accepted a caution on or around 20th July 2016.

Mr Samuel admits the facts of the allegations and admits that they amount to unacceptable professional conduct and or conduct that may bring the profession into disrepute.

C. Preliminary applications

There were no preliminary applications.

C. 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 1 to 3
- Section 2: Notice of referral, response and notice of meeting – pages 4 to 10b
- Section 3: Statement of Agreed Facts and presenting officer representations– pages 11 to 16
- Section 4: TRA documents – pages 17 to 61
- Section 5: Teacher documents – pages 62 to 63

In addition, the panel had sight of the CCTV footage which was referred to in the bundle and was made available to the panel to view during the meeting.

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

Statement of Agreed Facts

The panel considered a Statement of Agreed Facts which was signed by Mr Samuel on 6 December 2017.

D. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

In advance of the meeting, the TRA agreed to a request from Mr Samuel that the allegations be considered without a hearing. The panel considered at the outset whether the allegation should be considered at a public hearing at which the parties would be entitled to attend, or a private meeting without the parties present. The panel considered the interests of justice and given that the facts of the allegation have been admitted, that Mr Samuel has requested a meeting and the panel has the benefit of Mr Samuel's representations, the panel was of the view that justice would be adequately served by considering this matter at a meeting. The panel was satisfied that Mr Samuel understood the process.

The panel carefully considered the public interest. The panel noted that if the case proceeded in a meeting, there would be a public announcement of the panel's decision. The panel also had in mind that if a hearing was convened, there would be a costs to the public purse, which may not be justified if the matter could be determined in a meeting. The panel also had regard to the delay that would be caused by convening a hearing and considered it to be in the public interest to reach a final determination in this matter without further delay. The panel therefore decided to proceed with a meeting, but noted that it could, at any stage of the meeting, reconsider this issue.

Mr Samuel had been employed as an art and food technology teacher at Cambian Devon School ("the School") since 1 December 2015. The allegations arise from an incident that occurred between Mr Samuel and Pupil A on or around 9 February 2016. Following the incident, Mr Samuel completed an incident report form and recorded that he had engaged in an argument with Pupil A which resulted in him pushing Pupil A against a wall and a bench. The School investigated the matter and Mr Samuel was dismissed from his role in March 2016. On or around 20 July 2016, Mr Samuel accepted a caution for assault by beating, contrary to s.39 of the Criminal Justice Act 1988.

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. On or around 9th February 2016, you engaged in inappropriate and/or aggressive physical contact with Pupil A.

This allegation has been admitted in full by Mr Samuel, including in the response to the notice of referral and Statement of Agreed Facts, both signed by Mr Samuel and dated 6 December 2017.

The panel also considered the documentary evidence within the bundle where there is further evidence to support the facts of this allegation. On 9 February 2016, Mr Samuel completed an Incident Report Form and recorded that he had pushed Pupil A against the bench and told him to back off. The panel noted that this had been completed on the same day as the alleged incident.

In addition, the panel considered a Safeguarding Tracking Pack which was completed on 10 February 2016 and recorded that an incident had occurred between Mr Samuel and Pupil A which had resulted in Mr Samuel pushing Pupil A. The Safeguarding Tracking Pack referred to the CCTV and the panel considered this CCTV footage which showed Mr Samuel pushing Pupil A. The CCTV was of poor quality and the footage appeared to be different in some aspects to that which had been described within the bundle. The panel noted that the force of the physical contact led to Pupil A moving backwards. The panel considered that this was evidence of Mr Samuel engaging in inappropriate and aggressive physical contact with Pupil A.

The panel considered the referral to the Local Authority Designated Officer which describes the incident and summarises the account provided by Pupil A. This further supports the facts of allegation 1.

The panel also took account of the evidence collated by the School during its internal investigation and noted the admission made by Mr Samuel during a disciplinary meeting held at the School in March 2016. Mr Samuel acknowledged that his response had not been reasonable or proportionate. The panel saw no evidence that this admission had been made under duress or by mistake.

The panel has also seen evidence of a police caution which establishes that Mr Samuel has made an admission of guilt in respect of committing the conduct described.

The panel was of the view that pushing a pupil was inappropriate and aggressive physical contact.

The allegation has been admitted and the panel is satisfied that the documentary evidence supports the admission. The allegation is therefore found proven,

2. Your conduct as may be found proven at allegation 1, amounted to a criminal offence contrary to s39 Criminal Justice Act 1988 for which you accepted a caution on or around 20th July 2016.

This allegation has been admitted by Mr Samuel, including in the response to the notice of referral and Statement of Agreed Facts, both signed by Mr Samuel and dated 6 December 2017.

Common assault and battery are the offences under s.39 Criminal Justice Act 1988. The panel noted that an offence of common assault is committed when a person either assaults another person or commits a battery. An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force. A battery is committed when a person intentionally and recklessly applies unlawful force to another.

The panel considered that when Mr Samuel grabbed Pupil A and pushed him, he applied force to Pupil A and intentionally or recklessly caused Pupil A to apprehend the immediate infliction of unlawful force.

The panel also noted the content of the Certificate of Adult Simple Caution which confirms the caution.

The allegation has been admitted and therefore is found proven.

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

Having found both allegations to have been proven, the panel has gone on to consider whether the facts of those proven 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”.

In the Statement of Agreed Facts, Mr Samuel accepts that his admitted conduct amounted to unacceptable professional conduct and or conduct that may bring the profession into disrepute.

The panel is satisfied that the conduct of Mr Samuel in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, the teacher 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 is satisfied that the conduct of Mr Samuel amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Samuel's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and found that the offence of violence is relevant. The panel noted that Mr Samuel had behaved inappropriately and aggressively towards a pupil who was within his care. The panel considered the definition of violence and noted that there is a wide spectrum of behaviours associated with violence. The CCTV evidence demonstrated the degree of contact and the panel noted that the violence was towards the lower end of the spectrum of violence. It was brief in nature and involved holding Pupil A's upper arms and pushing him backwards. Notwithstanding this the panel considered that Mr Samuel did display violence towards Pupil A.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

Accordingly, the panel is satisfied that Mr Samuel is 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 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.

This conduct resulted in Mr Samuel accepting a caution for the offence of common assault and battery contrary to s39 of the Criminal Justice Act 1988. The panel noted that another pupil was present and witnessed Mr Samuel's conduct towards Pupil A. The panel considered that his behaviour could affect the public's confidence in the teaching profession given the influence that teachers have on pupils.

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

Having found the facts of particulars 1 and 2 proved, the panel further finds that Mr Samuel's conduct amounts to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct 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, declaring and upholding proper standards of conduct and the interest of retaining the teacher in the profession.

The panel's findings against Mr Samuel involved engaging in aggressive and inappropriate physical contact towards Pupil A. There is a strong pupil interest consideration in respect of the protection of pupils given the findings of Mr Samuel's inappropriate and aggressive behaviour towards Pupil A.

The panel also found conduct that may bring the profession into disrepute. The panel considered that public confidence in the profession could seriously be weakened if conduct such as that found against Mr Samuel was not treated with the utmost seriousness when regulating the conduct of the profession.

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 Samuel was outside that which could reasonably be tolerated.

The panel considered that there was a public interest consideration in retaining the teacher in the profession. The panel was particularly persuaded by the fact that Mr Samuel was a teacher in a school that worked exclusively with pupils who present with challenging behavioural and emotional difficulties and considered that there was a strong public interest consideration in retaining a teacher who is trained and willing to work with challenging pupils. It would appear that staff within this environment were subject to training beyond that given to teachers in a mainstream environment.

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 Samuel.

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 teacher. 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;

Given the findings of unacceptable professional conduct, involving breaches of the Teachers' Standards, this factor is a relevant one. The panel accepted the evidence of Mr Samuel that he had been provoked by Pupil A. However, by reacting in the way that he had, he failed to maintain a high standard of behaviour and the panel considered that it is entirely unacceptable for a teacher to assault a pupil, notwithstanding the circumstances that lead to the incident.

- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;

The inappropriate and aggressive physical contact was against a pupil and there was evidence to suggest that another pupil witnessed the incident. The panel took account of the impact the incident was likely to have had on the pupils. The panel found no evidence that the misconduct had a significant or enduring impact on any of the pupils.

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.

There was no evidence that Mr Samuel's actions were not deliberate

There was no evidence to suggest that Mr Samuel was acting under duress,

The panel was disappointed that it had not seen any supportive references provided from any schools or personal referees that can attest to Mr Samuel's abilities as a teacher.

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. The panel has decided that the public interest considerations outweigh the interests of the teacher. 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 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. These behaviours include violence. The panel has found that Mr Samuel has been responsible for violent behaviour towards a pupil and the Advice states that in such a case, the panel should consider recommending to the Secretary of State that a prohibition order is imposed with no provision for the teacher to apply for it to be set aside after any period of time.

However, the panel carefully considered the circumstances of the misconduct. The panel accepted that Mr Samuel was taunted and felt threatened by Pupil A's behaviour. It was noted that Pupil had an object in his hand at the time of the incident which was seen by the panel on the CCTV. The panel was persuaded that Mr Samuel was provoked during this short lived incident and reacted inappropriately to his provocation.

The panel considered that there was a wide range of possible training available to Mr Samuel and noted that he had been on restraint training previously.

The panel also considered that there has been significant investment in Mr Samuel as a teacher. He was prepared to work with pupils who displayed challenging behaviour and that investment should, if possible and where appropriate, be safeguarded.

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period.

The panel considers that a two year review period would enable Mr Samuel to reflect on the impact of his misconduct and undergo appropriate training to address the issues raised in this case.

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 Samuel should be the subject of a prohibition order, with a review period of two years.

In particular the panel has found that Mr Samuel 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 also considered whether Mr Samuel's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and found that the offence of violence is relevant.

The findings of misconduct are particularly serious as they include a finding of violence against a pupil.

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 Samuel 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 Mr Samuel's behaviour "involved engaging in aggressive and inappropriate physical contact towards Pupil A. There is a strong pupil interest consideration in respect of the protection of pupils given the findings of Mr Samuel's inappropriate and aggressive behaviour towards Pupil A." A prohibition order would therefore prevent such a risk from being present in the future. I have also taken into account the panel's comments on other mitigation, which include that it "was disappointed that it had not seen any supportive references provided from any schools or personal referees that can attest to Mr Samuel's abilities as a teacher." The panel has also commented that it "accepted that Mr Samuel was taunted and felt threatened by Pupil A's behaviour. It was noted that Pupil had an object in his hand at the time of the incident which was seen by the panel on the CCTV. The panel was persuaded that Mr

Samuel was provoked during this short lived incident and reacted inappropriately to his provocation.”

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “his behaviour could affect the public’s confidence in the teaching profession given the influence that teachers have on pupils.”

I am particularly mindful of the finding of violence 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 Samuel himself. I have read the comments of the panel where they say, “there has been significant investment in Mr Samuel as a teacher. He was prepared to work with pupils who displayed challenging behaviour and that investment should, if possible and where appropriate, be safeguarded.”

A prohibition order would prevent Mr Samuel from working 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 the fact that Mr Samuel had received additional training and that his reaction was, “entirely unacceptable for a teacher to assault a pupil, notwithstanding the circumstances that lead to the incident.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Samuel 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.

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 2 year review period.

I have considered the panel's comments "The panel considered that there was a wide range of possible training available to Mr Samuel and noted that he had been on restraint training previously."

The panel has also said that a 2 year review period would "enable Mr Samuel to reflect on the impact of his misconduct and undergo appropriate training to address the issues raised in this case."

I have also noted that the guidance indicates that , "in such a case, the panel should consider recommending to the Secretary of State that a prohibition order is imposed with no provision for the teacher to apply for it to be set aside after any period of time."

I have therefore given careful consideration to all of the factors in this case. I have decided that I support the panel in this case. On balance a prohibition order with a 2 year review period is in my view proportionate and in the public interest.

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

This means that Mr Jonathan Samuel 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 2020, 2 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 Jonathan Samuel remains prohibited from teaching indefinitely.

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

Mr Jonathan Samuel has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he/she is given notice of this order.



Decision maker: Alan Meyrick

Date: 4 May 2018

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