



Teaching
Regulation
Agency

Mr Hamish Ellwood: 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 Hamish Ellwood

Teacher ref number: 9442543

Teacher date of birth: 18 January 1973

TRA reference: 15054

Date of determination: 18 May 2018

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the Agency”) convened on 18 May 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Hamish Ellwood.

The panel members were Mr Melvyn Kershaw (former teacher panellist – in the chair), Mr Colin Parker (teacher panellist) and Ms Karen McArthur (lay panellist).

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

In advance of the meeting, the Agency agreed to a request from Mr Ellwood that the allegations be considered without a hearing after taking into consideration the public interest and the interests of justice. Mr Ellwood provided a signed Statement of Agreed Facts and admitted conviction of relevant offences. The panel considered the case at a meeting without the attendance of the presenting officer or Mr Ellwood.

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 29 January 2018.

It was alleged that Mr Ellwood was guilty of having been convicted of a relevant offence, in that he was convicted in the Worcester Crown Court on 2 October 2015 of:

1. Possessing an indecent photograph or pseudo-photograph of a child on 9th July 2013 contrary to s160 Criminal Justice Act 1988, for which he was issued a community order, an unpaid work requirement, a sex offenders notice of 5 years, a sexual harm prevention order for 5 years, forfeiture of the computer hard drive tower, and ordered to pay a victim surcharge of £60.
2. Possessing an indecent photograph or pseudo-photograph of a child on 25th July 2013 contrary to s160 Criminal Justice Act 1988, for which he was given a concurrent community order.
3. Possessing an indecent photograph or pseudo-photograph of a child on 9th June 2013 contrary to s160 Criminal Justice Act 1988, for which he was given a concurrent community order.

Mr Ellwood has admitted the fact of the convictions.

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 2 to 3

Section 2: Notice of Referral, Response and Notice of Meeting – pages 5 to 10b

Section 3: Statement of Agreed Facts and Presenting Officer Representations – pages 12 to 17

Section 4: Teaching Regulation Agency documents – pages 19 to 35

Section 5: Teacher documents – pages 37 to 54

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 Ellwood on 28 March 2018.

D. Decision and reasons

The panel announced its decision and reasons as follows:

In advance of the meeting, the Agency agreed to a request from Mr Ellwood that the allegations be considered without a hearing. The panel has the ability to direct that the case be considered at a hearing if required in the interests of justice or in the public interest. The panel did not determine that such a direction is necessary or appropriate in this case.

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:

You are guilty of receiving a conviction, at any time, of a relevant criminal offence in that you were convicted in the Worcester Crown Court on 2 October 2015 of the following offences:

- 1. Possessing an indecent photograph or pseudo-photograph of a child on 9th July 2013 contrary to s160 Criminal Justice Act 1988, for which you were issued a community order, an unpaid work requirement, a sex offenders notice of 5 years, a sexual harm prevention order for 5 years, forfeiture of the computer hard drive tower, and ordered to pay a victim surcharge of £60.**

The panel has had regard to the certificate of conviction and PNC record evidencing this conviction.

The panel also had regard to the Statement of Agreed Facts in which Mr Ellwood admitted the allegation.

The panel has therefore found this allegation proven.

- 2. Possessing an indecent photograph or pseudo-photograph of a child on 25th July 2013 contrary to s160 Criminal Justice Act 1988, for which you were given a concurrent community order.**

The panel has had regard to the certificate of conviction and PNC record evidencing this conviction.

The panel also had regard to the Statement of Agreed Facts in which Mr Ellwood admitted the allegation.

The panel has therefore found this allegation proven.

3. Possessing an indecent photograph or pseudo-photograph of a child on 9th June 2013 contrary to s160 Criminal Justice Act 1988, for which you were given a concurrent community order.

The panel has had regard to the certificate of conviction and PNC record evidencing this conviction.

The panel also had regard to the Statement of Agreed Facts in which Mr Ellwood admitted the allegation.

The panel has therefore found this allegation proven.

Findings as to conviction of a relevant offence

The panel is satisfied that the conduct of Mr Ellwood in relation to the facts it has found proved involved breaches of the Teachers' Standards. We consider that by reference to Part Two, Mr Ellwood 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.

The panel noted that the individual's actions were relevant to teaching, working with children and working in an education setting.

The panel noted that the behaviour involved in committing the offences could have an impact on his suitability to teach.

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

The panel noted that the teacher's behaviour did not lead to a sentence of imprisonment which is indicative that the offences were at the less serious end of the possible spectrum.

This is a case of offences involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting any such activity, including one off incidents, which the Advice states are likely to be considered a relevant offence.

The panel has considered Mr Ellwood's account of the particularly difficult family circumstances which occurred at the time of his committing these offences and that he

committed the offences whilst investigating whether a third party was viewing such images. The panel acknowledged that Mr Ellwood accepted responsibility for his actions during the police investigation.

However, the panel has found the seriousness of the offending behaviour that led to the convictions is relevant to the teacher's ongoing suitability to teach. The panel considers that a finding that these convictions are relevant offences 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 in respect of a conviction of a relevant offence, 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.

The panel's findings against Mr Ellwood involved his conviction of three offences related to possessing an indecent photograph or pseudo-photograph of a child. The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Ellwood were not treated with the utmost seriousness when regulating the conduct of the profession.

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

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 Ellwood.

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 Ellwood. 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;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one-off incidents.

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 accepts that the teacher was experiencing difficult family circumstances at the time of committing the offences.

The teacher did have a previously good history. However whilst the panel accepted that the incidents were out of character, it was concerned that Mr Ellwood accessed indecent images on three separate occasions over approximately one month.

The panel has seen evidence of the teacher's good character however it has not been provided with references from any colleagues that can attest to his 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. 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 Ellwood. The serious nature of the convictions were 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 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 is any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child.

The panel acknowledged that Mr Ellwood has expressed significant remorse as to his actions and accepts that he should have approached his concerns about a third party viewing such images differently, and not undertaken his own investigation.

However, the panel felt the extremely serious nature of the convictions 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 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 convictions of a relevant offence. The panel has made a recommendation to the Secretary of State that Mr Ellwood should be the subject of a prohibition order, with no review period.

In particular the panel has found that Mr Ellwood 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.

The panel finds that the actions of Mr Ellwood, “were relevant to teaching, working with children and working in an education setting.”

The findings of misconduct are particularly serious as they include a finding of conviction of three offences relating to, “possessing an indecent photograph or pseudo-photograph of a child”.

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 Ellwood, 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 “The panel noted that the behaviour involved in committing the offences could have an impact on his suitability to teach.”

I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “The panel accepts that the teacher was experiencing difficult family circumstances at the time of committing the offences.” The panel has also commented that whilst it, “accepted that the incidents were out of character, it was concerned that Mr Ellwood accessed indecent images on three separate occasions over approximately one month.” The panel go on to say that it, “acknowledged that Mr Ellwood has expressed significant remorse as to his actions and accepts that he should have approached his concerns about a third party viewing such images differently, and not undertaken his own investigation. However, the panel felt the extremely serious nature of the convictions 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 provision for a review period.” 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 considers that a finding that these convictions are relevant offences is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.” Furthermore the panel say it considered that Mr Ellwood’s behaviour in committing the offences, “would affect the 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 finding of convictions of relevant offences relating to possessing an indecent photograph or pseudo-photograph of a child 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 Ellwood himself. The panel say it has, “seen evidence of the teacher’s good character however it has not been provided with references from any colleagues that can attest to his abilities as a teacher.”

A prohibition order would prevent Mr Ellwood from continuing in the teaching profession. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case I have placed considerable weight on the panel’s comments concerning the serious nature of the convictions.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Ellwood has made and is making 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 given the serious nature of the behaviour would 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 am mindful of the Advice which indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours is any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. The panel say, “the extremely serious nature of the convictions indicated a situation in which a review period would not be appropriate”.

I agree with the panel and in light of the Advice and the serious nature of the conduct I consider therefore that no review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Hamish Ellwood 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 Ellwood 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 Ellwood 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', with a stylized, cursive script.

Decision maker: Dawn Dandy

Date: 23 May 2018

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