



Teaching
Regulation
Agency

Mr James Garner: Professional conduct panel outcome

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

August 2018

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

Teacher: Mr James Garner
Teacher ref number: 1171849
Teacher date of birth: 14 January 1991
TRA reference: 15746
Date of determination: 31 August 2018
Former employer: St Mary's Catholic High School, Manchester

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 31 August 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Garner.

The panel members were Mr Ian Hughes (lay panellist – in the chair), Ms Margaret Windsor (teacher panellist) and Mr Colin Parker (teacher panellist).

The legal adviser to the panel was Ms Eve Piffaretti of Blake Morgan LLP, solicitors.

The presenting officer for the TRA was Ms Louisa Atkins of Browne Jacobson LLP, solicitors.

Mr James Garner was not 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 13 June 2018.

It was alleged that Mr Garner was guilty of having been convicted of a relevant offence, in that whilst employed as a teacher at St Mary's High School, Manchester:

1. On or around 20 October 2017 he was convicted at Greater Manchester Magistrates' Court of the offence of Fraud by false representation, contrary to sections 1 and 2 of the Fraud Act 2006.

In his response to the Notice of Proceedings Mr Garner admitted the facts of the allegation and that conviction was for a relevant offence.

C. Preliminary applications

Proceeding in absence

The panel announced its decision and reasons as follows:

The panel was satisfied that the Notice of Proceedings had been properly served in accordance with the Rules.

"The panel considered exercising its discretion to proceed in the absence of Mr Garner or to adjourn. The panel proceeded with great care and caution and with close regard to the overall fairness of the proceedings. The panel decided that the hearing should proceed in the absence of Mr Garner for the following reasons:-

- The panel considered the seriousness of the case and the risk of unfairness in proceeding in Mr Garner's absence. The panel noted that Mr Garner had submitted written representations which it would carefully consider in determining the case.
- Mr Garner is aware of today's hearing and has confirmed that he will not be attending. The panel concluded that he had voluntarily waived his right to attend or to be represented.
- Mr Garner had not requested an adjournment. He had given no indication that he might attend at a future date. The panel was satisfied that no purpose would be served by an adjournment.
- There is a public interest in hearings taking place within a reasonable time and the panel considered that it would also be in Mr. Garner's interests for the case to be concluded."

Application for consideration of a private/ public hearing

The panel carefully considered a request made by Mr Garner in his response to the Notice of Proceedings for the outcome of the hearing to be announced in private. The panel announced its decision and reasons as follows:

"There is a legitimate public interest in the openness of the Teaching Regulation Agency's Disciplinary Procedures and the panel recognise that the hearing should be held in public unless there is a good reason for all or part of the hearing being in private. The panel has a discretion as to whether all or part of the hearing should be in private but the panel bore in mind its decisions must be given in public and that it has no discretion in this regard.

In his written submissions Mr Garner refers to the potential impact that announcement of the outcome of the hearing in public could have on third parties. The presenting officer submitted that the case would be presented without reference to a third party. Ms Atkins also submitted that the panel could use their discretion under Rule 4.60 to anonymise the name of the school in this case.

The panel has been referred to the requirements of Rule 4.57 and in particular has been advised that we should weigh up any potential damage to the private life of the teacher and any third parties were the hearing to be held in public as against the extent of any prejudice to the legitimate public interest in the proceedings.

The panel concludes that it would be contrary to the public interest for the hearing to be held in whole in private session, having regard to the need for the TRA to be open and transparent in its procedures, to maintain the public confidence in the profession and to uphold proper standards of conduct.

However, the panel took account of the potential impact the case could have on a third party and noted that there was reference in the case papers to Mr Garner's health. The panel decided that should there be a need to mention any details of Mr Garner's health or third parties not already in the public domain the presenting officer should alert the panel to that. The panel will consider going into private session at that point. The panel ask that the presenting officer take this into account when making her submissions.

The panel did not consider that the name of the school should be anonymised, noting that Mr Garner's criminal conviction was already in the public domain.

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 – page 2

Section 2: Notice of Proceedings and Response – pages 4 to 10

Section 3: Teaching Regulation Agency documents – pages 12 to 96

Section 4: Teacher documents – page 98

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

Witnesses

No witnesses were called by the presenting officer.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Throughout the relevant time for the purposes of these proceedings, Mr Garner was employed by St Mary's Catholic High School ("the School") as a technology teacher. He was responsible for delivering technology lessons to key stage 3 and BTEC/ GCSE Engineering to Year 10 and 11. He was also responsible for the procurement of iPads, software licenses and ancillary equipment on behalf of the school.

Mr Garner had commenced work at the School on 1 September 2013.

On 18 May 2016, Mr Garner was suspended following an allegation that he had stolen money from the school.

An investigation commenced by Wigan Council, during the course of which Mr Garner resigned from the School on 27 May 2016. Mr Garner attended an investigatory interview on 14 June 2016. During the investigation, additional allegations indicated that Mr Garner may have fraudulently signed a number of school petty cash receipts, received payments not owed to him and falsely claimed from school funds for invoices for IT services.

On 17 August 2016 Wigan Council reported the matter to the police and sent them the file of evidence gathered during the investigation.

On 25 October 2016 Mr Garner was arrested and admitted to Greater Manchester Police that he had committed fraud. A decision was made to prosecute Mr Garner and on 20 October 2017 he was convicted of fraud by misrepresentation. He was sentenced for this offence at Bolton Crown Court on 1 December 2017.

The School referred Mr Garner to the TRA.

Findings of fact

Our findings of fact are as follows:

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

1. On or around 20 October 2017 you were convicted at Greater Manchester Magistrates' Court of the offence of Fraud by false representation, contrary to sections 1 and 2 of the Fraud Act 2006.

The panel was presented with a memorandum of conviction from the Greater Manchester Magistrates Court.

This confirmed that Mr Garner was convicted on 20 October 2017 of fraud by false representation under sections 1 and 2 of the Fraud Act 2006. He was committed to Bolton Crown Court for sentencing.

The panel carefully considered all of the evidence within the hearing bundle relating to the circumstances of this offence. This included the sentencing remarks of His Honour Judge Clayson at the sentencing hearing which took place at Bolton Crown Court on 1 December 2017. The panel noted that Mr Garner was sentenced to 10 months imprisonment, suspended for a period of two years, 10 hours of rehabilitation activity and 150 hours of unpaid work. A Proceeds of Crime hearing was to be held but the panel had no evidence on the outcome of that hearing.

His Honour stated that Mr Garner was *"very knowledgeable in relation to IT issues. You were permitted to purchase and indeed required to purchase on your own behalf equipment for the school, to provide the appropriate receipts and reclaim the equivalent amount of money. You were obviously in a position of trust and by a number of different fraudulent means you effectively stole money from the school. You created fraudulent receipts by inflating figures, creating fictitious transactions and ordering lower specification equipment than was appropriate. The total value of the fraud is something in the region of £15,000 to £16,000.*

When the police got hold of the matter you admitted it pretty quickly and explained that you were in very substantial debt due to a long-standing addiction to cocaine."

The conviction was not appealed or otherwise challenged by Mr Garner.

In those circumstances, the panel accepted the memorandum of conviction as conclusive proof of the commission of the offence of fraud by false representation by Mr Garner.

The panel also took into account that Mr Garner admitted allegation 1 in his response to the Notice of Proceedings and his written representation to the panel dated 1 July 2018.

The panel accordingly found allegation 1 proven.

Findings as to conviction of a relevant offence

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

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as “the Advice”.

The panel noted that Mr Garner admitted that his conviction was for a relevant offence in his response to the Notice of Proceedings but has made its own determination.

The panel is satisfied that the conduct of Mr Garner in relation to the facts it has found proved, involved breaches of the Teachers’ Standards. We consider that by reference to Part Two, Mr Garner 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 proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel noted that Mr Garner's actions were relevant to teaching given that the fraud took place in an education setting and involved depriving pupils of funds which would otherwise have contributed to or been available for their education.

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

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

The panel has noted that Mr Garner's behaviour has ultimately led to him receiving a sentence of imprisonment albeit that it is suspended which is indicative of the seriousness of the offences committed.

This is a case involving offences of fraud or serious dishonesty and theft of resources from a school in which Mr Garner held a teaching post and held a position of trust. The Advice states that such offences are likely to be considered to be a relevant offence.

The panel has taken into account all of the information before it relating to the circumstances of the offence. The panel noted that there were 24 occasions spread over a period of at least a year which had been identified as contributing to the fraud. The panel also noted that Mr Garner went to elaborate lengths to provide the information on which the fraud was based including creating false invoices.

The panel has also taken into account Mr Garner's explanation to the Crown Court that he committed the offences to address substantial debts arising from a long standing cocaine addiction.

On balance, the panel concluded that the seriousness of the offending behaviour that led to the conviction is relevant to Mr Garner's ongoing suitability to teach, which Mr Garner admitted. The offence was also one of dishonesty by false representation and led to a term of imprisonment, albeit that this was suspended. 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.

The panel has found the seriousness of the offending behaviour and the reasons provided by Mr Garner for his behaviour which led to the conviction is relevant to the teacher's ongoing suitability to teach. The panel considers that a finding that this 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 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.

In light of the panel's findings against Mr Garner which involved sustained and calculated fraud by misrepresentation which deprived the school of resources which should have been available to educate pupils, there is a strong public interest consideration in respect of the maintenance of public confidence in the profession and the maintenance of confidence in the regulatory process. The panel considers that public confidence in the

profession could be seriously weakened if conduct such as that found against Mr Garner were not treated with the utmost seriousness when regulating the conduct of the profession.

Similarly, the panel also 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 Garner was outside that which could reasonably be tolerated.

The panel considered the public interest consideration in retaining the teacher in their profession but had limited information as to Mr Garner's abilities as an educator and as to his contribution to the profession.

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 Garner.

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 Garner. 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 of trust;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;
- sustained...deliberate behaviour that undermines pupils, the profession, the school or colleagues;
- the commission of a serious criminal offence, including those that resulted in a conviction.

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 the panel's findings and having carefully considered the evidence in this case the panel considered that aggravating features in this case included that:

- The offence was serious. Mr Garner's conduct involved serious dishonesty and fraud and amounted to a sustained and serious breach of trust. This was calculated fraud and Mr Garner's actions were deliberate.

- There was no evidence to suggest that the teacher was acting under duress, and in fact the panel found the teacher's actions to be intentional and pre-meditated.
- The panel noted that no references had been provided from any colleagues to attest to Mr Garner's abilities as a teacher.

In terms of mitigating factors, the panel considered that:

- Mr Garner pleaded guilty to the offence and was noted to have shown regret and remorse to the Crown Court.
- In his written representations dated 1 July 2018, he admitted the allegation and that it constituted a conviction for a relevant offence. Mr Garner accepted and apologised for the impact his conviction had on him and his family. However, the panel was concerned that Mr Garner had not shown sufficient insight into the damage that the behaviour that led to the conviction could have caused to the school, colleagues, children and the teaching profession.
- Mr Garner's personal circumstances appeared to have been challenging but the panel had no evidence of the treatment he had sought or received for his long-standing addiction to a class A drug, namely, cocaine.

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, 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 consequences for Mr Garner of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel decided that the public interest considerations outweigh the interests of Mr Garner. The seriousness of the conviction and the circumstances that gave rise to it were 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 it to decide to recommend that a review period of the order should be considered. The panel were 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 fraud or serious dishonesty and theft from a person or other serious cases of theft.

The panel found that Mr Garner has been responsible for committing fraud or serious dishonesty and theft of resources from a school in which he held a teaching post and a position of trust. He went to elaborate lengths to provide the information on which the fraud was based including creating false invoices to address substantial debts arising from his long standing cocaine addiction.

Mr Garner has shown limited insight and remorse into his behaviour. Whilst the panel took this into account, the panel felt the findings indicated a situation in which a review period would not be appropriate. The panel therefore concluded 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 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 allegation proven and found that the proven fact amount to a conviction of a relevant offence. The panel has made a recommendation to the Secretary of State that Mr Garner should be the subject of a prohibition order, with no review period.

In particular the panel has found that Mr Garner 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 proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

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

The findings of misconduct are particularly serious as a finding of “committing fraud or serious dishonesty and theft of resources from a school in which he held a teaching post and a position of trust.”

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 conviction of a relevant offence, 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 Garner, 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 did not consider that Mr Garner'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, “Mr Garner has shown limited insight and remorse into his behaviour.” The panel also say it was, “concerned that Mr Garner had not shown sufficient insight into the damage that the behaviour that led to the conviction could have caused to the school, colleagues, children and the teaching profession.” 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, “In light of the panel’s findings against Mr Garner which involved sustained and calculated fraud by misrepresentation which deprived the school of resources which should have been available to educate pupils, there is a strong public interest consideration in respect of the maintenance of public confidence in the profession and the maintenance of confidence in the regulatory process.”

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 of a conviction of a relevant offence, in the absence of a prohibition order, can itself be regarded by such a person as being a

proportionate response to the relevant conviction that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Garner himself. The panel comment it had “limited information as to Mr Garner's abilities as an educator and as to his contribution to the profession.”

A prohibition order would prevent Mr Garner 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 regarding the serious nature of the behaviour. The panel has said, “This was calculated fraud and Mr Garner's actions were deliberate.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Garner 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 full 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 no review period should apply to the prohibition order.

I have considered the panel's comments “ The panel found that Mr Garner has been responsible for committing fraud or serious dishonesty and theft of resources from a school in which he held a teaching post and a position of trust. He went to elaborate lengths to provide the information on which the fraud was based including creating false invoices to address substantial debts arising from his long standing cocaine addiction.”


The panel has also said, “The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include fraud or serious dishonesty and theft from a person or other serious cases of theft.”

I am in agreement with the panel and believe 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.

This means that Mr James Garner 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 allegation found proved against him, I have decided that Mr Garner 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 James Garner 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, sweeping flourish at the end.

Decision maker: Dawn Dandy

Date: 4 September 2018

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