



Teaching
Regulation
Agency

Mr Benjamin Bird: Professional conduct panel outcome

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

January 2019

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

Teacher: Mr Benjamin Bird
Teacher ref number: 0564451
Teacher date of birth: 02/03/1981
TRA reference: 16716
Date of determination: 29 January 2019
Former employer: Bridge Learning Campus, Bristol

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 29 January 2019 at Cheylesmore House, 5 Quinton Road, Coventry CV1 2WT to consider the case of Mr Benjamin Bird.

The panel members were Mr Geoffrey Penzer (lay panellist – in the chair), Professor Roger Woods (teacher panellist) and Ms Julia Bell (teacher panellist).

The legal adviser to the panel was Mr Nick Leale of Blake Morgan solicitors.

The presenting officer for the TRA was Ms Natalie Millington of Browne Jacobson solicitors.

Mr Bird was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 9 November 2018.

It was alleged that Mr Benjamin Bird was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as Pastoral Lead at Bridge Learning Campus between 1 September 2016 and 25 May 2017:

- 1. He engaged in inappropriate communication with one or more pupils and/or former pupils of Henbury School where he had previously taught until approximately August 2016, including by:**
 - a. sending and/or accepting one or more friends requests to and/or from them;**
 - b. sending message(s) to them, including words to the effect of:**
 - i. "Oi! Why won't you add me? Tart!" to Pupil D;**
 - ii. "Currently can't even think about getting out of bed let alone having a wank" to Pupil A;**
 - iii. "Morning Glory?" to Pupil A;**
 - iv. telling Pupil E "Well maybe run the real thing past me for approval first! [wink emoticon]" with reference to Pupil E's penis;**
 - v. sending an e-mail address to Pupil E and stating "if you need to send any photos of it [wink emoticon]" with reference to Pupil E's penis;**
 - vi. telling Pupil E "I've seen many examples lol" with reference to images of penises.**
- 2. His conduct as may be found proven at 1a and b above was conduct of a sexual nature and/or was sexually motivated.**

Mr Bird was not present and therefore did not indicate any admissions. He had not made any admissions in any written document before the panel. The case therefore proceeded as a fully disputed case.

C. Preliminary applications

Mr Bird was not in attendance at the hearing and was not represented.

The Presenting Officer applied for the hearing to proceed in Mr Bird's absence. The panel were informed, and shown correspondence confirming, that Mr Bird had stated on Friday 25 January 2019 that he could not attend today's hearing due to "work commitments". Mr Bird had further stated that he was "now receiving support from my employer's occupational health programme". This was Mr Bird's first correspondence with the Presenting Officer since he was informed of the hearing date by way of the Notice of Proceedings dated 9 November 2018. Mr Bird had not applied for a postponement of the hearing and had offered no further evidence of his work commitments or health issues in so far as they were relevant to the panel's consideration of the application to proceed in absence.

The panel were also shown copies of correspondence from Mr Bird relating to a previous listing of the hearing on 15 August 2018, which he had sent on 14 August 2018, and had stated that he could not attend this previously listed hearing due to work commitments but that he would wish to attend a hearing listed on a later date.

After careful consideration the panel decided to proceed with the hearing in Mr Bird's absence, having concluded that Mr Bird had voluntarily absented himself from the hearing and would not attend a later listing.

The panel were also informed that the only witness to have signed a statement in these proceedings, Individual A [redacted], was unable to attend the hearing to give evidence due to ill-health. The panel confirmed that the hearing could proceed with Individual A's evidence being taken as read and not being the subject of any further questioning.

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 36

Section 3: Teaching Regulation Agency witness statements – pages 38 to 40

Section 4: Teaching Regulation Agency documents – pages 42 to 175

There were no documents included in the bundle from Mr Bird.

In addition, the panel agreed to accept the following additional document into the bundle on the application of the Presenting Officer:

Exhibit CB1 – extract from the Henbury School Staff Code of Conduct relating to Safeguarding and Social Networking Sites.

This document was paginated as pages 40 a-c.

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

Witnesses

The panel heard no oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

We have carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

This case relates to a teacher who was Pastoral Lead at Bridge Learning Campus in Bristol. It was alleged that he had engaged in inappropriate communications with his current and former pupils on the Facebook social media platform. He had become or attempted to become friends with his pupils and ex-pupils on Facebook and proceeded to send messages to them of an inappropriate nature. The messages included reference to masturbation and a suggestion to one pupil that he send to him a photograph of his penis. It was further alleged that his conduct was of a sexual nature and sexually motivated.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for the following reasons:

- 1. You engaged in inappropriate communication with one or more pupils and/or former pupils of Henbury School where you had previously taught until approximately August 2016, including by:**
 - a. sending and/or accepting one or more friends requests to and/or from them;**
 - b. sending message(s) to them, including words to the effect of:**
 - i. "Oi! Why won't you add me? Tart!" to Pupil D;**
 - ii. "Currently can't even think about getting out of bed let alone having a wank" to Pupil A;**
 - iii. "Morning Glory?" to Pupil A;**

- iv. **telling Pupil E "Well maybe run the real thing past me for approval first! [wink emoticon]" with reference to Pupil E's penis;**
- v. **sending an e-mail address to Pupil E and stating "if you need to send any photos of it [wink emoticon]" with reference to Pupil E's penis;**
- vi. **telling Pupil E "I've seen many examples lol" with reference to images of penises.**

2. Your conduct as may be found proven at 1a and b above was conduct of a sexual nature and/or was sexually motivated.

Particular 1 a

It is clear from the evidence at pages 49 and 55 of the bundle that on two occasions Mr Bird requested that Pupil D become a friend of his on Facebook. Furthermore, it is clear from pages 42, 43 and 54 of the bundle that Mr Bird exchanged Facebook messages with Pupil A and Pupil E and so must, at some point in time, have either invited them to become or agreed to become friends with him/them on Facebook. The three relevant pupils were either current or past pupils of the school at the time the messages were sent.

Particulars 1b (i to vi)

We are satisfied that all of the messages sent as alleged in the six sub-particulars of 1b were sent through Facebook to the relevant pupils by Mr Bird. Sub-particular (i) is proved by way of page 55 of the bundle. Sub-particular (ii) is proved by page 54 of the bundle. Sub-particular (iii) is proved by way of pages 42, 53 and 57 of the bundle. Sub-particulars (iv)-(vi) are proved by way of page 43 of the bundle. In support of our findings are both the print-outs of the messages as outlined above and also Mr Bird's confirmation in his investigatory interview at Bridge Learning Campus (particularly pages 96 to 98) that he did embark on such Facebook exchanges with current and former pupils.

Preamble to particular 1

It is alleged in the pre-amble part of particular 1 that the alleged communications with pupils and former pupils were inappropriate. For completeness, we also find proved that the communications did not simply take place but were also inappropriate, notwithstanding any finding in relation to their sexual nature or the sexual motivation behind their posting. We reach this conclusion due to the words used, the nature of the messages as a whole and due to Mr Bird's professional position as the Pastoral Head of his school at the time. They were in clear breach of school policies and were aimed at current or former pupils. This made contact on social media, in such terms, with these pupils wholly inappropriate without exception.

Particular 2

We are satisfied that the communications were of a sexual nature. This must follow by way of Mr Bird's use of words such as 'wank' and 'morning glory' in the relevant messages as well as his discussion with Pupil E about penises during which he suggests to Pupil E that he sends him a photo of his penis.

We are also satisfied that Mr Bird's conduct as found proved by way of our findings in relation to particulars 1a and 1b was sexually motivated. The communications were of a sexual nature and clearly flirtatious towards the recipients of the messages. If nothing else, it is our view that the messages were frisky and playful and motivated by sexual attraction. We believe that it is more likely than not that Mr Bird sent the messages in a way that was titillating for him and they were therefore sent for the purposes of sexual gratification. However mild that gratification may have been, it amounts, in our view, to sexually motivated conduct.

We were also invited to consider whether the messages were also, or alternatively, sexually motivated on the basis that they were sent in the pursuit of a future sexual relationship with one or more of the recipients. We have seen no evidence within the messages to suggest that they were sent for this purpose even though they were, in our view, sent for the purposes of sexual gratification.

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

Having found a number of the 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 we refer to as "the Advice".

The panel is satisfied that the conduct of Mr Bird in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Bird 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;

- 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 is satisfied that the conduct of Mr Bird amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

Mr Bird sent numerous Facebook messages to his current and former pupils having linked with them as friends on this social media platform. He, on more than one occasion, tried to befriend a current pupil on Facebook. The expressions he used in the messages were repeatedly of a sexual nature and we have found proved not only that the messages were sexual in nature but also that Mr Bird sent them for the purposes of sexual gratification. He suggested that one pupil sent him a photo of his penis.

The panel notes that the allegations took place outside of the education setting. The panel are however satisfied that the messages were capable of leading to pupils (current and past) to be exposed to and influenced by his behaviour in a harmful way.

Accordingly, the panel is satisfied that Mr Bird 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.

The findings of misconduct are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception. This has to follow from our factual findings, that included the panel being satisfied that Mr Bird sent the messages through sexual motivation.

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

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of 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.

In light of the panel's findings against Mr Bird, which involved in the panel's view serious sexual misconduct, there is a strong public interest consideration in respect of the protection of pupils given the findings of inappropriate social media contact with pupils and former pupils.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Bird were not treated with the utmost gravity 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 Bird was outside that which could reasonably be tolerated.

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 Bird.

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 Bird. 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;
- misconduct seriously affecting the well-being of pupils, and particularly where there is a continuing risk;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position or trust;
- sexual misconduct, eg involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position.

The panel took particular account of Mr Bird's lack of insight into his behaviour. He did not attend the hearing and the panel have therefore had no opportunity to explore further his insight into his behaviour. The panel cannot, in such circumstances, ignore the possibility of risk of repeat, particularly considering Mr Bird's apparent deep-seated attitudinal issue towards the regulatory process of which he has been the subject.

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 has concluded that there is no evidence that the teacher's actions were not deliberate, or indeed that Mr Bird's actions were anything other than calculated and motivated.

The panel has heard and accepted that Mr Bird does have a previously good history. In addition, Mr Bird's former Head Teacher described him as having been a hard-working and dynamic teacher. However, she also suggested that he had latterly 'lost his way'. This called into question, to the panel, Mr Bird's progress as a professional and persuaded the panel that his prohibition would not be a serious loss to the profession. Given Mr Bird's failure to attend the hearing and answer questions, there also remains a question mark in relation to his previous excessive use of alcohol, to which Mr Bird made reference in his investigatory interview.

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.

In light of the above, 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 Bird. Mr Bird's lack of insight was a significant factor in forming that opinion, alongside the seriousness of the sexual misconduct involved, which the panel has reminded itself, included a request that a pupil send him a photo of the pupil's penis.

Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for them to 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. One of these behaviours is serious sexual misconduct, eg where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons.

As stated above, the panel has found that Mr Bird has been responsible for serious sexual misconduct. He has since not demonstrated insight into his behaviour.

The panel felt the nature of the findings of serious sexual misconduct and, particularly, Mr Bird's lack of insight into his behaviour, indicated a situation in which a review period would not be appropriate. The ability for Mr Bird to apply at any time for his prohibition to be set-a-side would, in the panel's view, not sufficiently protect the public interest in protecting pupils, maintaining confidence in the profession and declaring and upholding proper standards of conduct. As such, the panel decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found all of the allegations proven and found that those proven facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In this case, the panel has said, "We were also invited to consider whether the messages were also, or alternatively, sexually motivated on the basis that they were sent in the pursuit of a future sexual relationship with one or more of the recipients. We have seen no evidence within the messages to suggest that they were sent for this purpose even though they were, in our view, sent for the purposes of sexual gratification." As a result of this I have therefore put this matter entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr Bird should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Bird 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;
- 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 Bird fell significantly short of the standards expected of the profession.

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

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 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 Bird, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed, “there is a strong public interest consideration in respect of the protection of pupils given the findings of inappropriate social media contact with pupils and former pupils.” 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 insight and remorse, which the panel sets out as follows, “The panel took particular account of Mr Bird’s lack of insight into his behaviour. He did not attend the hearing and the panel have therefore had no opportunity to explore further his insight into his behaviour. “The panel has also commented that, “The panel cannot, in such circumstances, ignore the possibility of risk of repeat, particularly considering Mr Bird’s apparent deep-seated attitudinal issue towards the regulatory process of which he has been the subject.” In my judgement, the lack of insight means that there is some risk of

the repetition of this behaviour and this puts at risk future pupil safety. 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, “public confidence in the profession could be seriously weakened if conduct such as that found against Mr Bird were not treated with the utmost gravity when regulating the conduct of the profession.” I am particularly mindful of the finding of sexual misconduct 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 the public might regard a failure to impose a prohibition order 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 Bird himself. The panel heard and accepted, “that Mr Bird does have a previously good history. In addition, Mr Bird's former Head Teacher described him as having been a hard-working and dynamic teacher. However, she also suggested that he had latterly 'lost his way'.”

A prohibition order would prevent Mr Bird from teaching. 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 lack of insight or remorse. The panel has said, “He has since not demonstrated insight into his behaviour.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Bird has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended that no provision should be made for a review period.

I have considered the panel's comments "The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours is serious sexual misconduct, eg where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons.

As stated above, the panel has found that Mr Bird has been responsible for serious sexual misconduct. He has since not demonstrated insight into his behaviour."

I have considered whether a no review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, two factors mean that a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the serious nature of the misconduct found and the lack of either insight or remorse.

I consider these factors therefore mean that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mr Benjamin Bird 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 Bird 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 Benjamin Bird 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', written in a cursive style.

Decision maker: Dawn Dandy

Date: 30 January 2019

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