



Teaching
Regulation
Agency

Mr Gary Johnson: Professional conduct panel outcome

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

February 2021

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

Teacher:	Mr Gary Johnson
Teacher ref number:	8345109
Teacher date of birth:	26 July 1960
TRA reference:	19149
Date of determination:	4 February 2021
Former employer:	Kirkburton Middle School, Huddersfield

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 4 February 2021 by way of the Microsoft Teams on-line platform, to consider the case of Mr Gary Johnson.

The panel members were Dr Angela Brown (lay panellist – in the chair), Ms Shamaila Qureshi (lay panellist) and Mr Paul MacIntyre (teacher panellist).

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

In advance of the meeting, after taking into consideration the public interest and the interests of justice, the TRA agreed to a request from Mr Johnson that the allegations be considered without a hearing. Mr Johnson provided a signed Statement of Agreed Facts and admitted unacceptable professional conduct and 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 Johnson.

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

Allegations

The panel considered the allegations set out in the Notice of Meeting dated 22 January 2021.

It was alleged that Mr Johnson was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that as Head Teacher;

1. He failed to complete required DSL training every two years as required by Keeping Children Safe In Education instructions, which may have meant that he did not have up to date training and/or knowledge of Safeguarding;
2. He failed to ensure that the school had a suitably qualified DSL at all times;
3. He failed to report a disclosure by Pupil A of historic peer-on-peer abuse by Child B in autumn 2018 despite:
 - a) The disclosure detailing a serious incident of sexual assault and/or rape;
 - b) The potential for Child A to be exposed to further incidents of abuse;
 - c) The potential for Child B to himself be exposed to safeguarding issues including but not limited to the commission of further offences; and
 - d) Being required to do so by:
 - i) School policy;
 - ii) Local authority policy; and
 - iii) National guidance included but not limited to KCSIE.

By way of the Statement of Agreed Facts signed by him on 16 November 2020, Mr Johnson admitted all of the facts alleged and that those facts amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute.

Preliminary applications

There were no preliminary applications.

Summary of evidence

Documents

In advance of the meeting, the panel received a bundle of documents which included:

- Section 1: Notice of Referral and Response– pages 2 to 12
- Section 2: Statement of Agreed Facts and Presenting Officer Representations – pages 13 to 25
- Section 3: Teaching Regulation Agency document – pages 27 to 190
- Section 4: Teacher document – pages 192 to 200.

The panel members confirmed that they had read all of the documents within the bundle, in advance of the meeting.

Statement of Agreed Facts

The panel considered a Statement of Agreed Facts which was signed by Mr Johnson on 16 November 2020.

Decision and reasons

The panel announced its decision and reasons as follows:

The panel carefully considered the case and reached a decision.

In advance of the meeting, the TRA agreed to a request from Mr Johnson for the allegations to be considered without a hearing. The panel had 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 was necessary or appropriate in this case.

This case related to Mr Johnson's admitted failures to follow proper safeguarding training and referral procedures at his School, with particular reference to an incident of disclosure of historic serious sexual assault and/or rape by a child which was not referred on to other organisations as it should have been according to School, local authority and national policies and guidance.

Findings of fact

The findings of fact are as follows:

The panel found the following particulars of the allegations against you proved, for these reasons:

- 1. You failed to complete required DSL training every two years as required by Keeping Children Safe In Education instructions, which may have meant that you did not have up to date training and/or knowledge of Safeguarding;**

- 2. You failed to ensure that the school had a suitably qualified DSL at all times;**
- 3. You failed to report a disclosure by Pupil A of historic peer-on-peer abuse by Child B in autumn 2018 despite:**
 - a) The disclosure detailing a serious incident of sexual assault and/or rape;**
 - b) The potential for Child A to be exposed to further incidents of abuse;**
 - c) The potential for Child B to himself be exposed to safeguarding issues including but not limited to the commission of further offences; and**
 - d) Being required to do so by:**
 - i) School policy;**
 - ii) Local authority policy; and**
 - iii) National guidance included but not limited to KCSIE.**

Mr Johnson admitted all of the factual allegations by way of the agreed statement of facts that was signed by him on 16 November 2020 and signed by the Presenting Officer on 30 November 2020. This document appears at pages 14 to 23 of the bundle. The panel however separately considered each fact in order to satisfy themselves that the admissions were not in any way equivocal and that such admissions were supported by the evidence.

The panel was satisfied that Mr Johnson's admissions were proper unequivocal admissions which were entirely supported by the evidence provided. The panel therefore found all of the factual allegations proved.

In relation to particular 1, it was very clear from the Keeping Safe in Education document and the School's Safeguarding Policy that Mr Johnson should have taken part in safeguarding update training every two years. It is equally clear that he did not do so. As confirmed by paragraph 5 of the Statement of Agreed Facts Mr Johnson undertook DSL training in December 2010 which lapsed in December 2012. He then undertook refresher training in June 2017 and no further training thereafter. Mr Johnson accepts that this may have led to gaps in his understanding of the requirements in relation to pupil safeguarding.

In relation to particular 2, it was clear from the evidence that the DSL (Individual A) undertook DSL training in March 2013 but then failed to renew that training until October 2016 and then failed to renew and update that training between that date and her resignation in December 2019. For those reasons, during the periods in which the training lapsed, Individual A was not suitably qualified to act as the School's DSL.

In relation to the factual particulars that make up paragraph 3, it is clear that a disclosure was made by Child A to the headteacher in September 2018 [redacted]. Mr Johnson made a handwritten note of this (bundle page 166). Mr Johnson did not refer that disclosure to the Local Authority Designated Officer for safeguarding or to the police. This was a failure to follow safeguarding procedures. Mr Johnson was also aware that Child A and Child B were known to be having ongoing contact and therefore Child A was obviously at ongoing risk of further incidents of abuse. This also revealed to Mr Johnson the safeguarding support that Child B required.

As outlined by the Statement of Agreed Facts, particularly at pages 19 to 22 of the bundle, the nature of the disclosure was such that it should have been referred to the Kirklees Duty and Advice Team, children's social care and the police. School policy, local authority policy and National guidance clearly directed this but it was not done.

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

Having found a number of the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as "the Advice".

The panel was satisfied that the conduct of Mr Johnson in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Johnson was 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:
 - 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 was satisfied that the conduct of Mr Johnson fell significantly short of the standards expected of the profession.

As headteacher, Mr Johnson was responsible for safeguarding in his School. The panel noted that safeguarding responsibilities are also vested in the Governing Body and/or the

Trust. Despite this he failed to ensure that either he or his DSL were trained in accordance with relevant policies. Both his knowledge and that of his DSL had lapsed at the relevant time.

Thereafter, when a very serious peer on peer incident was reported to him (and his DSL) insignificant action was taken and the children involved were not protected.

Safeguarding is a hugely significant in any School. The execution of safeguarding actions is crucial and when they are not taken this has significant implications for children and the wider public alike. It is a responsibility that has to be taken very seriously and all guidance understood and followed at all times. In this case the failure to meet training requirements and the subsequent failure to refer on the disclosures made, and thus the failure to follow clearly laid down procedures, were significant breaches of the personal and professional conduct elements of the Teacher's Standards.

Such misconduct must be considered to be of a serious nature that falls significantly short of the standard expected of any teacher, particularly a Head Teacher.

Accordingly, the panel was satisfied that Mr Johnson was guilty of unacceptable professional conduct.

Furthermore, the panel took into account the way 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 took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct were serious and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore also found that Mr Johnson's actions constituted conduct that may bring the profession into disrepute.

Therefore, having found all of the facts proved, the panel further found that Mr Johnson's conduct amounted 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/conduct that may bring the profession into disrepute, it was 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 had to consider whether it would be an appropriate and proportionate measure, and whether it would be 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 had regard to the particular public interest considerations set out in the Advice and, having done so, found them all to be relevant in this case, namely: the protection of pupils/the protection of other members of the public/the maintenance of public confidence in the profession/declaring and upholding proper standards of conduct.

In the light of the panel's findings against Mr Johnson, which involved serious failings in his oversight of safeguarding procedures in his school and the execution of required actions in relation to serious safeguarding issues that were raised with him, there was a strong public interest consideration in respect of the protection of pupils.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Johnson were not treated with the utmost seriousness when regulating the conduct of the profession.

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

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 Johnson.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr Johnson. 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 proved. 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 education and/or well-being of pupils, and particularly where there is a continuing risk;

Even though the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

The only mitigation was Mr Johnson's good previous record through the course of a long career.

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 would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings was sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Johnson of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Johnson.

The lack of insight provided by Mr Johnson was a significant factor in the panel forming that opinion. The panel did not receive evidence of genuine and significant reflection by Mr Johnson in relation to how his failures in leading safeguarding could have impacted on the children involved. The consequences for the children involved could have been significant. The need to refer the disclosure on was, in the panel's view, clear and unequivocal.

Accordingly, the panel made 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 states 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 proved, would militate against the recommendation of a review period. None of those were present in this case. The panel decided that 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 of two years. The panel concluded that this provided sufficient time for Mr Johnson to more substantially reflect on his actions and remediate what has happened by undertaking sufficient renewed safeguarding training to ensure that the risk of such events being repeated was eradicated.

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 conduct that may bring the profession into disrepute.

The panel has made a recommendation to the Secretary of State that Mr Gary Johnson should be the subject of a prohibition order, with a review period of two years.

In particular, the panel has found that Mr Johnson 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:
 - 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 was satisfied that the conduct of Mr Johnson fell significantly short of the standards expected of the profession.

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 Johnson, 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, "As headteacher, Mr Johnson was responsible for

safeguarding in his School. The panel noted that safeguarding responsibilities are also vested in the Governing Body and/or the Trust. Despite this he failed to ensure that either he or his DSL were trained in accordance with relevant policies. Both his knowledge and that of his DSL had lapsed at the relevant time.

Thereafter, when a very serious peer on peer incident was reported to him (and his DSL) insignificant action was taken and the children involved were not protected.”

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 did not receive evidence of genuine and significant reflection by Mr Johnson in relation to how his failures in leading safeguarding could have impacted on the children involved. The consequences for the children involved could have been significant. The need to refer the disclosure on was, in the panel's view, clear and unequivocal.”

In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this puts at risk the future well being of pupils. 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 findings of misconduct were serious and the conduct displayed would be likely to have a negative impact on the individual’s status as a teacher, potentially damaging the public perception.”

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 Johnson himself. The panel comment “The only mitigation was Mr Johnson's good previous record through the course of a long career.”

A prohibition order would prevent Mr Johnson 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 concerning the lack of full insight.

I have also placed considerable weight on the comment of the panel, "The consequences for the children involved could have been significant. The need to refer the disclosure on was, in the panel's view, clear and unequivocal."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Johnson 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, in light of the circumstances in this case, that is not backed up by a more complete sense of 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 a 2 year review period.

I have considered whether a 2 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, I consider that it is.

This means that Mr Gary Johnson 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 15 February 2023, 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 Gary Johnson remains prohibited from teaching indefinitely.

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

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



Decision maker: Alan Meyrick

Date: 11 February 2021

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