



Teaching
Regulation
Agency

Mr Andrew Freethy: Professional conduct panel outcome

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

July 2021

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

Teacher: Mr Andrew Freethy
Teacher ref number: 1066060
Teacher date of birth: 9 January 1988
TRA reference: 19117
Date of determination: 19 July 2021
Former employer: Matravers School, Wiltshire

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 19 July 2021 to consider the case of Mr Andrew Freethy. The hearing took place remotely, via Microsoft Teams.

The panel members were Mr Chris Major (teacher panellist – in the chair), Ms Nicola Hartley (lay panellist) and Mr Alan Wells (former teacher panellist).

The legal adviser to the panel was Mr James Danks of Blake Morgan LLP.

The presenting officer for the TRA was Ms Sarah Vince of Browne Jacobson LLP.

Mr Freethy was not present and was not represented.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 6 May 2021.

It was alleged that Mr Andrew Freethy was guilty of having been convicted, at any time, of a relevant offence, in that on or around 11 November 2019 he was convicted at Bristol Crown Court of:

1. three offences of distributing indecent photographs or pseudo-photographs of children, on divers days between 4 April 2011 and 26 April 2018, contrary to the Protection of Children Act 1978, s.1; and
2. three offences of making an indecent photograph or pseudo-photograph of children, on divers days between 4 April 2011 and 26 April 2018, contrary to the Protection of Children Act 1978, s.1(a).

In Mr Freethy's response to the Notice of Proceedings, and in the Statement of Agreed Facts signed by him on 18 December 2020, he accepted that he had a conviction and that it was for a relevant offence, as per the allegations set out.

Preliminary applications

The panel first considered an application by the presenting officer to amend the allegation, which included an incorrect date in respect of Mr Freethy's conviction. Miss Vince explained that the date within an original version of the allegations was based on documents received prior to the Certificate of Conviction being received.

Miss Vince therefore applied for the correct date of conviction (of 11 November 2019) to replace the incorrect date (of 9 February 2019). She confirmed that the only conviction that the TRA was aware of, was that stated in the Certificate of Conviction. To not allow the amendment could create an incorrect impression that Mr Freethy had, in fact, been convicted of other offences. She also explained that, whilst Mr Freethy was unaware of this application, there was no unfairness to him as it simply reflected the factual position.

The panel allowed this application on the basis that:

- Mr Freethy had admitted that underlying facts of the conviction. The date when he pleaded guilty was not, in and of itself, relevant for the circumstances of this case;
- Mr Freethy had been served with the bundle, and the documents relied upon, and no concerns had been raised;
- It was in the interests of justice, and to Mr Freethy, that the allegations correctly reflected the evidence before the panel.

Separately, on its own volition, the panel removed the words "...by a jury sitting..." as this did not reflect Mr Freethy's guilty pleas before Bristol Crown Court, for which he was given credit at sentencing.

The panel next considered an application from the presenting officer to proceed in the absence of Mr Freethy.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of *R v Jones* [2003] 1 AC 1 (as considered and applied in subsequent cases, particularly *GMC v Adeogba*; *GMC v Visvardis* [2016] EWCA Civ 162).

The panel was satisfied that the Notice of Proceedings ("the Notice") had been sent in accordance with Rules 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Procedures") and that the requirements for service had been satisfied.

The panel went on to consider whether to proceed in Mr Freethy's absence or to adjourn, in accordance with Rule 4.29 of the Procedures.

The panel had regard to the fact that its discretion to continue in the absence of a teacher should be exercised with great caution and with close regard to the overall fairness of the proceedings. The panel has given careful consideration to the fact that Mr Freethy is not in attendance and will not be represented at this hearing, should it proceed, and the extent of the disadvantage to him as a consequence.

Mr Freethy was clearly aware of the hearing and had responded to the Notice of Proceedings, confirming that he will not be attending and that he was content for the hearing to proceed in his absence.

The panel also noted the email from Mr Freethy dated 2 July 2021, which reiterated the above position.

On balance, the panel has decided that the hearing should continue in the absence of Mr Freethy for the following reasons:

- Mr Freethy has not sought an adjournment and there is no medical evidence before the panel which indicated that he was unfit to attend the hearing due to ill-health.
- On the basis of Mr Freethy's response to the Notice of Proceedings and his email dated 2 July 2021, the panel was satisfied that his absence was voluntary and he had waived his right to attend.

- The risk of reaching the wrong conclusion and the disadvantage to Mr Freethy in not being present are mitigated by the fact that he had signed a Statement of Agreed Facts and that the allegations reflected the contents of the Certificate of Conviction
- Given Mr Freethy's non-engagement, there was no indication that he might attend at a future date such that no purpose would be served by an adjournment.
- There is a public interest in hearings taking place within a reasonable time.
- There is a burden on all professionals who are subject to a regulatory regime to engage with their regulator.

Having decided that it is appropriate to proceed, the panel strove to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mr Freethy was not present or represented.

Miss Vince also noted, to the panel, that Mr Freethy had indicated that he wished the hearing to be in private (as per his answer to question 1 in response to the Notice of Proceedings). The TRA did not consider there to be any need for the hearing to be in private.

The panel accepted legal advice on this matter and noted that Mr Freethy had provided no basis for the hearing to be in private. In the panel's view, there is a public interest in disciplinary proceedings being transparent, by being in person and, in the absence of any compelling reason why proceedings should not, the position should be that they are.

Whilst not a formal application from Mr Freethy, the panel did not consider there to be any proper reason for this matter to be held in private and determined it would proceed in public.

Summary of evidence

Documents

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

Section 1: Notice of Proceedings and response – pages 2 to 13

Section 2: Statement of Agreed Facts – pages 15 to 16

Section 3: Teaching Regulation Agency documents – pages 18 to 38

Section 4: Teacher documents – pages 40 to 41.

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

Witnesses

The panel did not hear any live evidence.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Freethy had been employed at Matravers School since September 2013 as a science teacher. He resigned on 31 August 2018.

On 11 November 2019, Mr Freethy pleaded guilty, at Bristol Crown Court, to six offences of making and / or distributing indecent photographs or pseudo-photographs of children, on divers days, between 4 April 2011 and 26 April 2018, contrary to the Protection of Children Act 1978.

On 9 December 2019, Mr Freethy was sentenced to 16 months' imprisonment, ordered to sign onto the Sexual Offences Register for 10 years and the sentencing judge referred him to the Disclosure and Barring Service to determine if he should be placed onto the Barring List.

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:

It was alleged that Mr Andrew Freethy was guilty of having been convicted, at any time, of a relevant offence, in that on or around 11 November 2019 you were convicted at Bristol Crown Court of:

- 1. three offences of distributing indecent photographs or pseudo-photographs of children, on divers days between 4 April 2011 and 26 April 2018, contrary to the Protection of Children Act 1978, s.1; and**
- 2. three offences of making an indecent photograph or pseudo-photograph of children, on divers days between 4 April 2011 and 26 April 2018, contrary to the Protection of Children Act 1978, s.1(a).**

The panel considered allegations 1 and 2 together.

Mr Freethy admitted both allegations and signed a statement of agreed facts.

The panel carefully considered all of the evidence before it relating to the circumstances of this offence. The following matters were agreed in the Statement of Agreed Facts:

- Mr Freethy was convicted of six offences, contrary to the Protection of Children Act 1978;
- Three of those offences related to distributing indecent photographs or pseudo-photographs of children, and three related to the making of indecent photographs or pseudo-photographs of children;
- The offences were committed between 4 April 2011 and 26 April 2018;
- Mr Freethy was sentenced to 16 months imprisonment, per offence, to run concurrently.

The panel was presented with a Certificate of Conviction, dated 13 November 2020, from Bristol Crown Court. This confirmed that, on 11 November 2019, Mr Freethy pleaded guilty to the offences stated in the allegations before the TRA.

The sentence received by Mr Freethy at a hearing at Bristol Crown Court on 9 December 2019 was clearly set out, specifically 16 months imprisonment per offence, he be entered onto the Sexual Offences Register for 10 years and that he be referred to the Disclosure and Barring Service to determine if he should be entered onto the Barring List.

The panel accepted the certificate of conviction as conclusive proof of the commission of the offence by Mr Freethy and the sentence received.

The panel accordingly found allegations 1 and 2 proved.

Findings as to conviction of a relevant offence

Having found the allegations proved, the panel went on to consider whether Mr Freethy's conviction was for a relevant criminal offence, which he also accepted.

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 Freethy, in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr Freethy 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
 - showing tolerance of and respect for the rights of others
- 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 Freethy's actions were relevant to teaching and working with children. Whilst there was no evidence that any of the convictions related to any pupil of Mr Freethy, each of the offences that he was convicted of, over a significant time period, was against a child. A teacher has a fundamental role to preserve and maintain the safeguarding of pupils in his care and, as such, his actions were relevant to him being a teacher. The panel noted that the behaviour involved in committing the offence could have had an impact on the safety and/or security of pupils and/or members of the public.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Freethy's behaviour in committing the offence could affect 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 Mr Freethy's behaviour ultimately led to a sentence of imprisonment, of 16 months (concurrent) per offence, which was indicative of the seriousness of the offences committed.

This was a case concerning activity 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 is likely to be considered a relevant offence.

There was no evidence before the panel as to Mr Freethy's skills as a teacher and considering the length of sentence given to him, the panel also found that the seriousness of the offending behaviour that led to the conviction was relevant to Mr Freethy's ongoing suitability to teach.

The panel considered that a finding that these convictions were for relevant offences was 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 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 a number of them 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 Freethy, which involved determining that the six offences that he had been convicted of were each relevant offences, and that these took place over a significant period of time and involved the abuse of children (albeit not the actual physical abuse by Mr Freethy), 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 Freethy was not treated with the utmost seriousness when regulating the conduct of the profession. These were relevant convictions against unknown children, over a substantial time period when he worked as a teacher, which had led to Mr Freethy being given a lengthy custodial sentence.

The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Freethy 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 Freethy.

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 Freethy.

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 were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- a deep-seated attitude that leads to harmful behaviour;
- 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;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

Even though some of 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.

There was no evidence that Mr Freethy's actions were not deliberate or that he was acting under duress.

The panel understood that Mr Freethy did have a previously good history and had made admissions, in both the criminal and regulatory context, at the earliest possible stages.

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 would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Freethy of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the significant public interest considerations outweighed the interests of Mr Freethy, who had been convicted of a significant number of offences against children, over a lengthy time-period.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend a review period of the order. 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 two years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. One of these 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 found that Mr Freethy was responsible for criminal acts, against children, over a long period of time. Whilst the panel noted that, in the criminal courts, it had been stated that Mr Freethy has indicated remorse and some insight, his repeated acts against children can only be seen in the most serious manner. Mr Freethy had not volunteered any evidence or material to explain his behaviour as an adult.

It follows that such acts means a person is fundamentally incompatible with being a teacher. The panel decided that the findings 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 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 a relevant conviction.

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

In particular, the panel has found that Mr Freethy 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

- showing tolerance of and respect for the rights of others
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The findings are particularly serious as they include a finding of a relevant criminal conviction for distributing and making indecent images of children.

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 a relevant conviction, 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 Freethy, 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, “each of the offences that he was convicted of, over a significant time period, was against a child. A teacher has a fundamental role to preserve and maintain the safeguarding of pupils in his care and, as such, his actions were relevant to him being a teacher. The panel noted that the behaviour involved in committing the offence could have had an impact on the safety and/or security of pupils and/or members of the public.”

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, “Whilst the panel noted that, in the criminal courts, it had been stated that Mr Freethy has indicated remorse and some insight, his repeated acts against children can only be seen in the most serious manner. Mr Freethy had not volunteered any evidence or material to explain his behaviour as an adult.”

In my judgement, the repeated nature of these offences 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 that it, “also took account of the way the teaching profession is viewed by others. The panel considered that Mr Freethy's behaviour in committing the offence could affect 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 a relevant conviction 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 a relevant conviction, 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 Freethy. The panel comment that it, “understood that Mr Freethy did have a previously good history and had made admissions, in both the criminal and regulatory context, at the earliest possible stages.”

A prohibition order would prevent Mr Freethy 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, “The panel noted that Mr Freethy’s behaviour ultimately led to a sentence of imprisonment, of 16 months (concurrent) per offence, which was indicative of the seriousness of the offences committed.

This was a case concerning activity 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 is likely to be considered a relevant offence.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Freethy has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the 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 comment “It follows that such acts means a person is fundamentally incompatible with being a teacher. The panel decided that the findings 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 provisions for a review period.”

I have also considered whether allowing for a no review period reflects the seriousness of the findings and is a proportionate and necessary to achieve the aim of maintaining public confidence in the profession. In this case, the factors which mean that a no review is necessary and proportionate are the persistent nature of the offending, the clear advice published by the Secretary of State and the serious nature of the offending reflected in the sentencing.

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

This means that Mr Andrew Freethy 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 Andrew Freethy 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 Andrew Freethy 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 blue ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 21 July 2021

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