

Mr Michael Stobart: Professional conduct panel outcome

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

June 2019

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

Teacher: Mr Michael Stobart

Teacher ref number: 7956924

Teacher date of birth: 26 March 1958

TRA reference: 0017351

Date of determination: 7 June 2019

Former employer: Belmont School, Lancashire

A. Introduction

A professional conduct panel ("the panel") of the Teaching Regulation Agency ("the TRA") convened on 6 and 7 June 2019 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT to consider the case of Mr Michael Stobart.

The panel members were Mr Tony Woodward (former teacher panellist – in the chair), Ms Hilary Jones (lay panellist) and Ms Fiona Tankard (teacher panellist).

The legal adviser to the panel was Mrs Charlotte Wood of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Stephen Hocking of DAC Beachcroft solicitors.

Mr Stobart 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 8 April 2019.

It was alleged that Mr Stobart was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst a teacher at Belmont School:

- 1. On 14 October 2016 he inappropriately touched a female member of staff A (incident 1).
- 2. On either 23 January 2015 or 1 July 2015 he inappropriately touched a female member of staff B (incident 2).
- 3. On an unknown date after incident 2 he inappropriately touched a female member of staff B (incident 3).
- 4. Each of the touchings alleged was unwanted and sexual in nature.

In the absence of a response from Mr Stobart, the allegations were taken to have not been admitted.

C. Preliminary applications

Application to amend allegations

The presenting officer made an application to amend allegation 1 by substituting the initials of the member of staff to "member of staff A". Similarly, the presenting officer applied to amend allegations 2 and 3 to substitute the initials of the member of staff to "member of staff B". The purpose of the proposed amendment was to grant anonymity to the individuals who raised the allegations against Mr Stobart. Whilst the names of those individuals were not specifically revealed in the allegations, the presenting officer submitted that the identity of the complainants would have been easily identifiable had the initials remained in the allegations.

A further application was made to amend the typographical error in allegation 4, to remove the apostrophe from "touchings".

After hearing submissions from the presenting officer and receiving legal advice, the panel determined that the proposed amendments to anonymise the identity of the complainants were minor in nature. The amendments did not change the scope or seriousness of the allegations. Furthermore, there was no unfairness or prejudice caused to Mr Stobart in allowing the amendments, despite his not being present at the hearing. The application to amend allegation 4 was permitted on the basis that it was purely to amend a typographical error.

Application to proceed in the absence of Mr Stobart

The presenting officer applied to proceed with the hearing in the absence of Mr Stobart. In addition, the presenting officer made an application for all or part of this application to be heard in private.

The panel heard that the Notice of Proceedings dated 8 April 2019 was sent to Mr Stobart's last known address. This letter was later returned to the TRA by DX Delivery on 18 April 2019, acknowledging that Mr Stobart no longer resided at that address. The presenting officer provided a brief summary of the history of the attempts made to contact Mr Stobart, since as early as 9 August 2018. The panel heard that the TRA attempted to make contact with Mr Stobart at three separate addresses, one of which was Mr Stobart's address when he was employed by Belmont School ("the School").

The panel was presented with a "track and trace" proof of service, which confirmed that there was a Royal Mail redirection service in place for Mr Stobart. The panel noted that the Notice of Proceedings was also sent to this address, in addition to subsequent correspondence notifying Mr Stobart of the hearing. The panel was referred to the proof of service which stated that the package was signed for by Mr Stobart at the redirected address although caution was applied when considering this as a determinative factor proving that the correspondence had been received by Mr Stobart himself. The panel heard that the TRA had subsequently made further enquiries of Mr Stobart's current address (through a trace service), which was again revealed to be the address to which the Notice of Proceedings was sent. The panel heard that the TRA had received reliable evidence which provided further clarification in respect of Mr Stobart's current address.

After hearing submissions from the presenting officer and receiving legal advice, the panel announced the decision as follows.

The panel was satisfied that the TRA had complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations"). Furthermore the panel was satisfied that the Notice of Proceedings complied with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Procedures").

The panel understood that its discretion to commence a hearing in the absence of the teacher had to be exercised with the utmost care and caution, and that its discretion was severely constrained.

The panel took into account the extent of the enquiries made by the TRA to contact Mr Stobart; in particular, it had sent 6 versions of the same letter to Mr Stobart to the various addresses. In consideration of the evidence before it, the panel was satisfied that Mr Stobart had received the correspondence notifying him of the hearing. The panel therefore considered that the teacher had waived his right to be present at the hearing.

The panel had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of continuing with the hearing. There was no indication that an adjournment might result in the teacher's attendance at the hearing and it was in the interests of justice and appropriate to proceed in his absence.

The panel also noted that there were a number of witnesses present at the hearing, who were prepared to give evidence, and that it would be inconvenient and distressing for them to return. It could not be guaranteed that the witnesses would attend again in any event, which would have compromised the case brought by the TRA.

The panel determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed in the absence of the teacher.

D. Summary of evidence

Documents

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

Section 1: Chronology and Identification key and list of roles – page 1

Section 2: Notice of Proceedings and Response – pages 2 to 27

Section 3: Teaching Regulation Agency witness statements – pages 28 to 39

Section 4: Teaching Regulation Agency documents – pages 40 to 108

Section 5: Teacher documents - none

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

Witnesses

The panel heard oral evidence from:

- Member of Staff A
- Witness C Kitchen Assistant of Belmont School

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirmed that it had read all the documents provided in the bundle in advance of the hearing.

Mr Stobart was employed as a Headteacher at the School until on or around 5 April 2017. It was alleged that on three separate occasions Mr Stobart inappropriately touched two members of staff and each of these alleged touchings was unwanted and sexual. For this reason it was alleged that the conduct of Mr Stobart amounted to unacceptable professional conduct and/or conduct which may bring the profession into disrepute.

Findings of fact

Our findings of fact were as follows:

The panel found the following particulars of the allegations proven, for these reasons:

1. On 14 October 2016 he inappropriately touched a female member of staff A (incident 1).

The panel considered the witness statement provided by member of staff A together with her oral witness testimony. The panel heard that Mr Stobart had approached member of staff A on 14 October 2016 from behind, whilst she was in the School kitchen, and proceeded to touch her, inappropriately, on her buttock(s) and then placed his hand between her legs. The panel had regard to the interview notes taken during a meeting to discuss the allegations shortly after it had occurred on 22 November 2016, the content of which was consistent with the evidence provided by member of staff A at the hearing.

The panel considered that the delay in reporting the incident was immaterial. Member of staff A believed that she could not report the incident because of Mr Stobart's senior position at the School but on reflection, due to the impact the incident had on her, she felt she had no other option but to report it.

The panel heard evidence from Witness C, who was present at the time of the incident and observed Mr Stobart touching member of staff A, inappropriately, as alleged. Witness C recalled that at the time of the incident, she was putting items away in the fridge and had a direct view of member of staff A and Mr Stobart. Mr Stobart did not acknowledge Witness C's presence. The panel considered that Witness C was an independent witness to the incident and found her account to be both credible and consistent with that of member of staff A.

Witness C was an independent witness to the incident and found her account to be both credible and consistent with that of member of staff A.

In the absence of Mr Stobart, the panel considered relevant documentary evidence, which gave Mr Stobart's account of the circumstances surrounding the incident, including the investigation meeting minutes. In short, Mr Stobart denied that the incident had taken

place. It was suggested by Mr Stobart that member of staff A had made a false allegation against him and he made a counter-allegation about member of staff A's inappropriate conduct towards others. The panel did not find Mr Stobart's account to be credible. His counter-accusation against member of staff A had not previously been reported. Furthermore there is no evidence that member of staff A and Witness C had any motive to lie about the incident.

The panel determined that both member of staff A and Witness C were credible witnesses and preferred their evidence to Mr Stobart's account.

On the balance of probabilities, the panel therefore found allegation 1 proven.

2. On either 23 January 2015 or 1 July 2015 he inappropriately touched a female member of staff B (incident 2)

The panel did not have the benefit of hearing oral witness testimony from member of staff B, who declined the opportunity to participate in these proceedings. However, the panel had the benefit of reviewing documentation including the internal investigation meeting attended by member of staff B on 1 February 2017. The panel heard that this incident took place during an awards assembly at the School. It was alleged that Mr Stobart put his arm around member of staff B and squeezed her buttock.

The panel noted that the investigation meeting minutes, which detailed the discussions in the meeting, had not been signed as an accurate record by member of staff B. Furthermore, the investigation meeting did not take place until sometime after the incident had taken place and member of staff B had not reported the allegations herself; instead she was approached as part of the investigation into allegation 1. Whilst member of staff B was of the view that Mr Stobart's contact with her in the assembly was wrong and inappropriate, she decided to ignore it and felt disinclined to report it. The panel therefore considered member of staff B's evidence with caution but nonetheless determined that member of staff B's account was comprehensive.

The panel was of the view that there was no innocent explanation and that member of staff B genuinely believed she was touched inappropriately by Mr Stobart.

The panel exercised caution when applying weight to hearsay evidence but was satisfied that the incident did, more likely than not, happen.

The panel further determined that, on the balance of probabilities, Mr Stobart had the propensity to act in a way or make comments that could be determined, by the ordinary person, to be sexually inappropriate.

On the balance of probabilities, the panel therefore found allegation 2 proven.

3. On an unknown date after incident 2 he inappropriately touched a female member of staff B (incident 3).

As with allegation 2, the panel did not have the benefit of hearing oral witness testimony from member of staff B, who declined the opportunity to give a statement as part of these proceedings and did not give an oral witness testimony. The panel had the benefit of reviewing documentation including the investigation meeting attended by member of staff B on 1 February 2017 and made the same comments as in respect of allegation 2.

This allegation related to the alleged inappropriate contact in a medical room on an unknown date, where Mr Stobart "touched [her] backside", sometime after incident 2 had occurred.

Member of staff B recounted how Mr Stobart inappropriately touched her, when she was bending over whilst in the medical room. After this incident, she tried to avoid eye contact with him. Following the incident, member of staff B asked a colleague whether there was CCTV available in the medical room which might have recorded it. This was not available at the time or subsequently.

Member of staff B felt awkward and uncomfortable about the incident but did not want to raise it as a formal grievance.

The panel exercised caution when applying weight to hearsay evidence but was satisfied that the incident did, more likely than not, happen.

The panel therefore found allegation 3 proven, on the balance of probabilities.

4. Each of the touchings alleged was unwanted and sexual in nature

The panel went on to consider whether those particulars and elements of allegations 1, 2 and 3 found proven amounted to conduct that was unwanted and sexual in nature. The panel received legal advice in relation to how to approach the issues as to whether conduct could be described as sexual, and accepted that advice.

The panel assessed in detail the circumstances in which the conduct took place to consider whether, on the balance of probabilities, the conduct was sexual in nature. The panel considered each particular found proven separately to determine whether the conduct was of a sexual nature.

In respect of allegation 1, member of staff A, after the incident occurred, told Mr Stobart that his actions amounted to "sexual harassment". The panel determined that the area touched by Mr Stobart would be deemed to be sexual. The panel further noted the impact that the incident had on member of staff A in that she suffered from anxiety following the incident and did not want to be left alone with Mr Stobart. During member of staff A's oral witness testimony, the considerable impact of the incident on her was still apparent to the panel.

In respect of allegation 2, the panel noted that member of staff B did not react in the same way as member of staff A but nonetheless found that the area touched by Mr

Stobart, on the balance of probabilities, would be deemed to be sexual. Member of staff B knew it was wrong but it did not "play on her mind". She was new in post and felt that she could not report the incident. The panel found that this contact was clearly unwanted.

In respect of allegation 3, the panel noted that the contact was made in a confined space, with no other person present. Since the incident, member of staff B tried to avoid being in close contact with Mr Stobart. She described feeling awkward and knew that Mr Stobart's actions were wrong. The panel found that this contact was also clearly unwanted and of a sexual nature.

On the balance of probabilities, the panel therefore found allegation 4 proven.

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

Having found a number of the allegations to have been proven, the panel went on to consider whether the facts of those proven 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 the panel referred to as "the Advice".

The panel was satisfied that the conduct of Mr Stobart in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considered that by reference to Part Two, Mr Stobart 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
 - showing tolerance of and respect for the rights of others.

The panel was satisfied that the conduct of Mr Stobart amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Stobart's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice.

The panel acknowledged that Mr Stobart had not been convicted of a relevant offence. However, the panel found that the behaviour involved in the offence of "sexual activity" might be relevant in the context of these allegations.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

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 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 did not have the benefit of hearing from Mr Stobart and no mitigation was provided at the hearing.

The panel found that Mr Stobart's actions constituted 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 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 turned its mind 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 other members of the public, which the panel took to include members of staff, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct and the interest of retaining the teacher in the profession.

In light of the panel's findings against Mr Stobart, which involved inappropriate, unwanted and sexual behaviour towards members of staff at the School, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Stobart were not treated with the utmost seriousness when regulating the conduct of the profession.

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

The panel found that there was a public interest consideration in retaining the teacher in the profession, since no doubt had been cast upon his abilities as an educator and he may be able to make a valuable contribution to the profession.

In view of the clear public interest considerations that were present, the panel thought carefully about whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Stobart.

In carrying out the balancing exercise, the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Stobart. 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 which were relevant were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position of trust;
- behaviour that undermines the school or colleagues; and
- sexual misconduct, e.g. involving actions that were of a sexual nature and that use or exploit the trust, knowledge or influence derived from the individual's professional position.

Even though there were behaviours that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case. The panel found that there was no evidence that the teacher's actions were not deliberate, there was no evidence to suggest that the teacher was acting under duress and as far as the panel was made aware, Mr Stobart had a previous good history. The panel noted that no references were provided from any colleagues that could attest to Mr Stobart's abilities as a teacher.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, recommending no prohibition order would not be 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 was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Stobart. The need to protect members of the public, in particular members of staff, was a significant factor in forming that opinion, as was the importance for a teacher, of being an appropriate role model. 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 for it to decide 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 proven, would militate against the recommendation of a review period. The panel found that none of these behaviours applied. The panel found that Mr Stobart was responsible for inappropriate and unwanted touchings of a sexual nature. Whilst the panel considered the allegations found proven to be of a serious nature, they were at the lower end of the possible spectrum. The panel noted that since Mr Stobart had not engaged with these proceedings, he had deprived himself of the opportunity to show remorse or insight.

The panel felt 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 2 years. A review period would allow Mr Stobart to engage with the proceedings, acknowledge his behaviour and demonstrate insight and remorse.

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 Stobart should be the subject of a prohibition order, with a review period of two years.

In particular, the panel has found that Mr Stobart 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
 - o showing tolerance of and respect for the rights of others.

The panel was satisfied that the conduct of Mr Stobart amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel has gone on to say that it, "acknowledged that Mr Stobart had not been convicted of a relevant offence. However, the panel found that the behaviour involved in the offence of "sexual activity" might be relevant in the context of these allegations."

The findings of misconduct are particularly serious as they include a finding of sexual activity on the part of a headteacher.

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 Stobart, 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 that it, "took 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."

A prohibition order would therefore prevent that 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, "since Mr Stobart had not engaged with these proceedings, he had deprived himself of the opportunity to show remorse or insight."

In my judgement, the lack of remorse or 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, "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 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 Stobart himself. The panel clearly state that, "as far as the panel was made aware, Mr Stobart had a previous good history. The panel noted that no references were provided from any colleagues that could attest to Mr Stobart's abilities as a teacher."

A prohibition order would prevent Mr Stobart 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 insight or remorse.

I have also placed considerable weight on the finding of the panel that Mr Stobart, "was responsible for inappropriate and unwanted touchings of a sexual nature."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Stobart 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 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 a 2 year review period. That period is the minimum set out in the legislation.

I have considered the panel's comments "Whilst the panel considered the allegations found proven to be of a serious nature, they were at the lower end of the possible spectrum. The panel noted that since Mr Stobart had not engaged with these proceedings, he had deprived himself of the opportunity to show remorse or insight."

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. The panel say, "A review period would allow Mr Stobart to engage with the proceedings, acknowledge his behaviour and demonstrate insight and remorse."

I consider therefore that a two year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Michael Stobart 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 June 2021, 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 Michael Stobart remains prohibited from teaching indefinitely.

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

Mr Michael Stobart 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

ALL MY

Date: 11 June 2019

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