



Teaching
Regulation
Agency

Mr Mark Portass: Professional conduct panel outcome

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

July 2022

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

Teacher: Mr Mark Portass

Teacher ref number: 0641670

Teacher date of birth: 16 October 1980

TRA reference: 18749

Date of determination: 27 July 2022

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually via Microsoft Teams on 27 July 2022, to consider the case of Mr Portass.

The panel members were Mr Paul Millett (lay panellist – in the chair), Miss Louisa Munton (teacher panellist) and Ms Jackie Hutchings (teacher panellist).

The legal adviser to the panel was Mr Delme Griffiths of Blake Morgan LLP, solicitors.

The presenting officer for the TRA was Ms Louise Ravenscroft of Capsticks LLP, solicitors.

Mr Portass was not present and was not represented.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegation set out in the notice of proceedings dated 24 March 2022.

It was alleged that Mr Portass had been convicted of a relevant offence, in that:

On 16 September 2020, at the Coventry and Warwickshire (Coventry) Magistrates' Court, he was convicted of 'being a person aged 18 or over, for the purpose of obtaining sexual gratification, intentionally attempted to communicate with Person A, a person under 16 who he did not reasonably believe to be 16 or over, the communication being sexual, namely talking about her breasts and bottom and touching her. Contrary to section 1(1) of the Criminal Attempts Act 1981.

Mr Portass had not responded to the notice. Accordingly, the allegation was treated as denied by the panel.

Preliminary application

Application to proceed in the absence of Mr Portass

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

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it.

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

Having regard to the attempts made to contact Mr Portass, the panel was also satisfied that the TRA had made reasonable efforts to bring this hearing to his attention. The TRA had engaged the services of a tracing agent. Multiple, unsuccessful attempts had been made to communicate with him both by the TRA and their instructed solicitors, including by first class post and recorded delivery. In relation to the former, the letters had not been returned.

The panel went on to consider whether to proceed in Mr Portass' absence or to adjourn, in accordance with Rule 5.45 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 caution and with close regard to the overall fairness of the proceedings. The panel gave careful consideration to the fact that Mr Portass was not in

attendance and would not be represented at this hearing, should it proceed, and the extent of the disadvantage to him as a consequence.

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

- The panel was satisfied that Mr Portass' absence was voluntary. It was more likely than not that he was aware of this hearing and had waived his right to attend. There was no indication he was unfit to attend.
- There was also no indication that Mr Portass might attend at a future date. As such, the panel concluded that no purpose would be served by an adjournment.
- There is a public interest in hearings taking place within a reasonable time.
- There is an obligation on all professionals who are subject to a regulatory regime to engage with their regulator.
- The risk of reaching the wrong conclusion as a result of not being able to hear from Mr Portass was limited in this case by the nature of the allegation. It concerned Mr Portass' conviction, the facts of which were established by the production of the relevant memorandum of conviction.

Having decided that it was appropriate to proceed, the panel would strive to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mr Portass is neither present nor represented.

Summary of evidence

Documents

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

Section 1: Chronology, anonymised pupil list and list of key people – pages 1 to 5

Section 2: Notice of proceedings and service information – pages 6 to 39

Section 3: Teaching Regulation Agency documents – pages 40 to 84

Witnesses

No witnesses were called to give oral 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.

On 20 September 2019, police officers attended a property believed to be occupied by Mr Portass to execute a warrant. The warrant was obtained on the basis of intelligence which indicated that Mr Portass had engaged in sexual communication, via the internet, with a 13 year old girl.

Evidence obtained by the police was to the effect that Mr Portass engaged in this activity on 9 May 2019, using the Lycos chat platform.

Mr Portass was arrested and interviewed whilst in police custody. A recording of his interview together with a transcript were included in evidence.

Mr Portass was subsequently prosecuted for an offence under the Criminal Attempts Act 1981 and was convicted, upon entering a guilty plea, on 16 September 2020.

Findings of fact

The findings of fact are as follows:

On 16 September 2020, at the Coventry and Warwickshire (Coventry) Magistrates' Court, you were convicted of 'being a person aged 18 or over, for the purpose of obtaining sexual gratification, intentionally attempted to communicate with Person A, a person under 16 who you did not reasonably believe to be 16 or over, the communication being sexual, namely talking about her breasts and bottom and touching her. Contrary to section 1(1) of the Criminal Attempts Act 1981.

The panel was presented with a memorandum of conviction of the Coventry and Warwickshire Magistrates' Court dated 20 October 2020.

It confirmed that, on 16 September 2020 and upon his guilty plea, Mr Portass was convicted of an offence contrary to section 1(1) of the Criminal Attempts Act 1981.

Specifically, the memorandum records that, on 9 May 2019 and for the purposes of obtaining sexual gratification, Mr Portass intentionally attempted to communicate with Person A, a person under 16 who he did not reasonably believe to be 16 or over. The communication was sexual, namely talking about her breasts and bottom and touching her.

The memorandum further confirms that Mr Portass was sentenced to:

- Committal to prison for 8 weeks, suspended for 12 months.
- Comply with a Rehabilitation Activity Requirement within a supervision period of 12 months, whereby Mr Portass was required to comply with any instructions of the responsible officer to:
 - attend appointments (with the responsible officer or someone else nominated by them); or
 - to participate in any activity as required by the responsible officer up to a maximum of 30 days.
- Pay a victim surcharge in the sum of £115.
- Register with the police in accordance with the Sexual Offences Act 2003 for 7 years.

The panel accepted the memorandum of conviction as conclusive proof of the commission of this offence by Mr Portass.

It accordingly found the allegation proved.

Findings as to conviction of a relevant offence

Having found the allegation proved, the panel went on to consider whether Mr Portass' conviction was for a relevant offence.

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 Portass, in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr Portass 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
 - 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.
 - showing tolerance of and respect for the rights of others.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach (on the basis that there was evidence

Mr Portass was contracted to a school at the time of the offence and his actions would have been contrary to the ethos of any education institution).

- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Although Mr Portass' actions did not take place in an education setting, the panel determined that they were relevant to teaching, working with children and working in an education setting.

The offence was very concerning in nature. The purported age of the child and the nature and content of the communications were such that Mr Portass' actions could be categorised as serious. The conviction was for an offence involving sexual communication with a child, which the Advice states is likely to be considered a relevant offence.

Mr Portass' behaviour in committing this offence plainly engaged public and child protection issues.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Portass' behaviour in committing this offence would undoubtedly affect public confidence in the teaching profession, particularly given the influence that teachers may have on pupils, parents and others in the community.

The panel also took account of the fact that Mr Portass' behaviour ultimately led to a sentence of imprisonment, albeit suspended, which was indicative of the seriousness of the offence committed. The public and child protection issues engaged by Mr Portass' actions were also amply demonstrated by the other aspects of the Court's sentence.

The panel did not consider there to be any relevant mitigating circumstances in relation to the commission of this offence, particularly in the absence of hearing from Mr Portass.

In conclusion and for all these reasons, the panel found that the seriousness of the offending behaviour that led to the conviction was directly relevant to Mr Portass' ongoing suitability to teach. The panel considered that a finding that this conviction was for a relevant offence 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 nature of the offence for which Mr Portass was convicted, there was a strong public interest consideration in respect of the protection of pupils and other members of the public. His actions raised obvious and significant public and child protection concerns, as was clearly recognised by the Court when imposing sentence.

The panel considered that public confidence in the profession would undoubtedly be very seriously weakened if conduct such as that found against Mr Portass was not treated with the utmost seriousness when regulating the conduct of the profession. This was conduct that was, very clearly, at the serious end of the spectrum.

For the same reasons, the panel decided that a strong public interest consideration in declaring proper standards of conduct in the profession was also present.

Whilst no doubt had been cast upon Mr Portass' abilities as an educator in the course of these proceedings, given the nature of the allegation in this case and in the absence of any evidence regarding his prior career and practice, the panel concluded there was not a strong public interest consideration in retaining him in the profession.

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 Portass.

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 Portass. 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;
- 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving pupils);
- sexual misconduct, e.g. 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;
- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE);
- violation of the rights of pupils;
- other deliberate behaviour that undermines pupils, the profession, the school or colleagues.

The Advice also refers to the fact that panels should attach appropriate weight and seriousness to online behaviours including, but not limited to, online misconduct and facilitating online abuse.

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.

In the absence of hearing from Mr Portass, the panel was not presented with any evidence in mitigation. However, the panel had in mind the following factors:

- So far as the panel was aware, Mr Portass has an otherwise unblemished record.
- The evidence available was that this was a one-off incident. There was an indication that the police did not uncover any evidence of any other concerns during the course of its investigation.
- There was a suggestion that Mr Portass had personal difficulties at the relevant time, whereby he described himself as not being "*in the best frame of mind*". However, beyond Mr Portass' assertions in his police interview, there was no evidence available to support this.

- Mr Portass' actions did not directly relate to any particular school or pupil he had worked with.
- Mr Portass pleaded guilty to the offence, which was taken into account by the Court when imposing sentence. The police transcript also recorded that he accepted wrongdoing from the outset.
- There was no evidence indicating that Mr Portass had failed to comply with the terms of his sentence. It therefore proceeded on the assumption that he had and also that there had been no repetition since his conviction.

Weighed against this, the aggravating features in this case were that:

- Mr Portass' actions were deliberate in that he initiated the exchange and the content of the communications that followed speaks for itself.
- There was very limited and untested evidence of insight, regret and remorse. In terms of his status as a regulated person and the implications of his actions upon public confidence in the profession, there was none.
- Mr Portass had not engaged in these proceedings.
- Mr Portass' actions raised obvious concerns about his understanding of and responsibility for safeguarding and keeping children safe.
- There was no evidence of remediation.
- Mr Portass' actions amounted to a clear breach of the Teachers' Standards and raised serious public and child protection concerns, even if, thankfully, no actual harm befell any child in this case.
- Mr Portass has been convicted of a serious offence, which involved a child, and was sentenced to a term of imprisonment, albeit suspended. He remains subject to a requirement to register with the police, in accordance with the Sexual Offences Act 2003, until September 2027.

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 Portass of prohibition.

Mr Portass had been convicted of a serious sexual offence involving a child. There were, accordingly, particularly strong public interest considerations in this case in terms of protecting the public, public confidence in the teaching profession and the declaring of proper standards of conduct. Mr Portass' behaviour led to him receiving a sentence of imprisonment, albeit suspended, which was indicative of the seriousness of the offence.

In all the circumstances, the panel concluded that his actions were fundamentally incompatible with Mr Portass being an educator, particularly given there was very limited and untested evidence of insight, regret or remorse. There was no evidence of any action taken by Mr Portass to remediate his conduct. As the panel was unable to explore with Mr Portass the steps, he had taken to understand the triggers that led to his actions, it was unable to conclude that there was no risk of a repetition of the same or similar conduct.

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

Accordingly, it 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. These behaviours included the following, which were applicable in this case:

- serious sexual misconduct e.g. where the act was sexually motivated; and
- any activity involving any sexual misconduct involving a child.

The panel decided that the findings indicated a situation in which a review period would not be appropriate.

The public interest considerations that Mr Portass' conviction gives rise to were such that this was necessary, appropriate and proportionate. The panel repeats that Mr Portass' actions are fundamentally incompatible with him being a teacher in circumstances where the panel could not be satisfied that there was no risk of repetition.

The panel therefore decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended without provision 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 the allegation 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 Mark Portass should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Portass 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.
 - showing tolerance of and respect for the rights of others.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach (on the basis that there was evidence Mr Portass was contracted to a school at the time of the offence and his actions would have been contrary to the ethos of any education institution).
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The findings of misconduct are particularly serious as they include a finding of attempting to communicate sexually with a person under the age of 16.

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 Portass, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and safeguard pupils. The panel has observed, "The conviction was for an offence involving sexual communication with a child, which the Advice states is likely to be considered a relevant offence." 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, "There was very limited and untested evidence of insight, regret and remorse. In terms of his status as a regulated person and the implications of his actions upon public confidence in the profession, there was none." In my judgement, the lack of evidence of insight and remorse means that there is some risk of the repetition of this behaviour, and this puts at risk the future wellbeing 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 panel considered that Mr Portass' behaviour in committing this offence would undoubtedly affect public confidence in the teaching profession, particularly given the influence that teachers may have on pupils, parents and others in the community." I am particularly mindful of the finding of a sexual element 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 Portass himself. The panel comment “So far as the panel was aware, Mr Portass has an otherwise unblemished record.”

A prohibition order would prevent Mr Portass 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, “Mr Portass had been convicted of a serious sexual offence involving a child. There were, accordingly, particularly strong public interest considerations in this case in terms of protecting the public, public confidence in the teaching profession and the declaring of proper standards of conduct. Mr Portass’ behaviour led to him receiving a sentence of imprisonment, albeit suspended, which was indicative of the seriousness of the offence.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Portass 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 evidence of full remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the 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 “In all the circumstances, the panel concluded that his actions were fundamentally incompatible with Mr Portass being an educator, particularly given there was very limited and untested evidence of insight, regret or remorse. There was no evidence of any action taken by Mr Portass to remediate his conduct. As the panel was unable to explore with Mr Portass the steps, he had taken to understand the triggers that led to his actions, it was unable to conclude that there was no risk of a repetition of the same or similar conduct.”

I have considered whether allowing for no review reflects the seriousness of the findings and is proportionate to achieve the aim of maintaining public confidence in the profession. In this case, the factors which mean that allowing for no review are the nature of the conviction and the lack of evidence of either insight or remorse.

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 Mark Portass is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegation found proved against him, I have decided that Mr Mark Portass 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 Mark Portass 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 'Alan Meyrick', followed by a vertical line.

Decision maker: Alan Meyrick

Date: 29 July 2022

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