



Teaching
Regulation
Agency

Mr James Stewart: Professional conduct panel outcome

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

April 2019

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

Teacher: Mr James Stewart

Teacher ref number: 6605721

Teacher date of birth: 26 January 1945

TRA reference: 12989

Date of determination: 23 April 2019

Former employer: Sawtry Community College, Cambridgeshire

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 23 April 2019 at Cheylesmore House, 5 Quinton Road, Coventry CV1 2WT to consider the case of Mr James Stewart.

The panel members were Mr Roger Woods (former teacher panellist – in the chair), Mr John Armstrong (lay panellist) and Ms Fiona Tankard (teacher panellist).

The legal adviser to the panel was Mr Dean Hickey of Eversheds Sutherland (International) LLP (solicitors).

The presenting officer for the TRA was Mr Luke Deal of Browne Jacobson LLP (solicitors).

The teacher was not present and was not represented.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 16 January 2019.

It was alleged that Mr James Stewart was guilty of having been convicted of a relevant offence, in that:

1. He was convicted on or around 9 September 2016 at Cambridge Crown Court of one count of wilful misconduct / wilful neglect to perform duty in a public office, a common law offence, for which he was sentenced to 12 months' imprisonment (concurrent);
2. He was convicted on or around 9 September 2016 at Cambridge Crown Court of one of more counts of fraud by abuse of position contrary to section 1(2)(C) and Section 4 Fraud Act 2006 for which he was sentenced to 4 years' imprisonment (concurrent).

C. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – page 2

Section 2: Notice of Proceedings and Response – pages 4 to 11

Section 3: Teaching Regulation Agency documents – pages 13 to 82

Section 4: Teacher document – page 84

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

Preliminary Applications

Proceeding in Absence

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

After hearing submissions from the presenting officer and receiving legal advice, the panel determined to proceed with the hearing in the absence of the teacher.

Following oral evidence from a member of TRA staff, who confirmed that she had sent the Notice of Proceedings dated 16 January 2019 to the teacher at his last known

address, the panel was satisfied that the TRA had complied with the service requirements of Regulation 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations"). The panel was also 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 determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher. 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 a severely constrained one.

In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel took account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. The panel was satisfied that the teacher was aware of the proceedings and that the notice had been sent to an address from which the teacher had previously responded. There had been no application to adjourn today's hearing. The panel therefore considered that the teacher had waived his right to participate in the hearing in the knowledge of when and where the hearing was taking place.

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 the hearing's taking place. There was no indication that an adjournment might result in the teacher's participating in the hearing.

The panel had regard to the extent of the disadvantage to the teacher in not being able to give his account of events, and gave further regard to the nature of the evidence against the teacher. The panel was also able to exercise vigilance in making its decision, taking into account the degree of risk of its reaching the wrong decision as a result of not having heard the teacher's account. Moreover, the panel was mindful that in this case, only the certificate of conviction stood as conclusive proof to establish the relevant facts, and that it would not need to re-examine the facts of the case.

The panel had regard to the seriousness of this case, and the potential consequences for the teacher and accepted that fairness to the teacher was of prime importance. However, it considered that teacher had waived his right to appear. By taking such measures referred to above, the panel was satisfied that it would be able to address any unfairness. These are serious allegations and the panel determined that there was a clear public interest in proceeding with the hearing without further delay. The panel was conscious of the considerable length of time which had elapsed since the facts of the allegation and determined that it was also in the teacher's interest for matters to be resolved.

D. Decision and reasons

The panel announced its decision and reasons as follows:

The panel carefully considered the case and reached a decision.

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

This was a case in which it was alleged that Mr Stewart had been convicted of relevant offences by way of the common law offence of misconduct in a public office and sections 1(2)(C) and 4 of the Fraud Act 2006 for actions carried out whilst in post initially as headteacher and latterly as Executive Principal of the College.

Findings of fact

The findings of fact were as follows:

The panel found the following particulars of the allegation against you proven, for these reasons:

You have been convicted, at any time, of the following relevant criminal offences:

- 1. You were convicted on or around 9 September 2016 at Cambridge Crown Court of one count of wilful Misconduct / wilful neglect to perform duty in a Public Office, a common law offence. For which you were sentenced to 12 months imprisonment (concurrent)**
- 2. You were convicted on or around 9 September 2016 at Cambridge Crown Court of one of more counts of Fraud by abuse of position contrary to section 1(2)(C) and Section 4 Fraud Act 2006 for which you were sentenced to 4 years imprisonment (concurrent).**

The panel was satisfied by the Certificate of Conviction dated 6 October 2017, included in the bundle, that the facts of particulars 1 and 2 of the allegation were proven.

Findings as to conviction of a relevant offence

The panel was satisfied that the conduct of Mr Stewart in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part Two, Mr Stewart 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...;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards... and
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel considered that Mr Stewart's behaviour in committing the offences for which he was convicted and imprisoned would seriously affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community. The panel has noted that Mr Stewart's behaviour ultimately led

to his receiving a sentence of 4 years' imprisonment, which is indicative of the seriousness of the offences.

This is a case involving misconduct in a public office and serious, systematic fraud which the panel considers to be relevant offences. The panel found the seriousness of the offending behaviour that led to the conviction is relevant to the teacher's ongoing suitability to teach. The panel considered that a finding that this conviction is a relevant offence is clearly 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 is necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel has considered the particular public interest considerations set out in the Advice and, having done so, has found a number of them to be relevant in this case, namely the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Stewart, which involved findings of conviction of the relevant offences of misconduct in a public office and fraud, there is clearly a strong public interest consideration in ensuring that trust in the profession is maintained and that those within the profession maintain high standards of ethics and behaviour.

The panel considers that public confidence in the profession would undoubtedly be seriously weakened if conduct such as that found against Mr Stewart were not treated with the utmost seriousness when regulating the conduct of the profession.

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

Notwithstanding the clear public interest considerations that were present, the panel gave careful thought to whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Stewart.

In carrying out the balancing exercise, the panel has had regard to the public interest considerations both in favour of and against prohibition as well as the interests of Mr Stewart. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure[s] 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;
- abuse of position of trust...;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up;
- 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 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.

Whilst Mr Stewart previously had a good record, the panel found no evidence that the teacher's actions were not deliberate, nor was he acting under duress. In fact, the panel found the teacher's actions to be calculated, motivated and sustained for a number of years.

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 is of the view that, applying the standard of the ordinary intelligent citizen, recommending no prohibition order is not a proportionate and appropriate response. Recommending that the publication of adverse findings would be sufficient in this case would unacceptably compromise the public interest considerations, despite the severity of consequences for the teacher of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Stewart. The panel were particularly mindful of the seriousness of the fraud carried out by Mr Stewart over a significant length of time. Further, the panel took into account the significant detrimental impact on the financial position of the College and the more lasting

damage to the education of its pupils during this period, together with the longer term reputational damage as a result of Mr Stewart's actions. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate 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. These behaviours include fraud or serious dishonesty. The panel found that Mr Stewart has been responsible for serious and systematic fraud over a prolonged period of time for which he was subsequently convicted and received a custodial sentence.

The panel felt 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 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 all of the factual 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 Stewart should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Stewart 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...;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards... and
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel also set out that it considered that, “Mr Stewart’s behaviour in committing the offences for which he was convicted and imprisoned would seriously affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.”

The findings of misconduct are particularly serious as they include a conviction for fraud by abuse of position by 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 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 Stewart, 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, “ the more lasting damage to the education of its pupils during this period.” A prohibition order would therefore prevent such a risk from being present in the future. The panel do not indicate that they have heard from Mr Stewart in terms of either insight or remorse. However, the panel are clear that the advice that is published indicates that , “there are behaviours that, if proven, would militate against the recommendation of a review period. These behaviours include fraud or serious dishonesty. The panel found that Mr Stewart has been responsible for serious and systematic fraud over a prolonged period of time for which he was subsequently convicted and received a custodial sentence.”

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’s findings against Mr Stewart, which involved findings of conviction of the relevant offences of misconduct in a public office and fraud, there is clearly a strong public interest consideration in ensuring that trust in the profession is maintained and that those within the profession maintain high standards of ethics and behaviour.”

I am particularly mindful of the serious nature of 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 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 Stewart himself. The panel comment “ Whilst Mr Stewart previously had a good record, the panel found no evidence that the teacher’s actions were not deliberate, nor was he acting under duress. In fact, the panel found the teacher’s actions to be calculated, motivated and sustained for a number of years.”

A prohibition order would prevent Mr Stewart 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 serious nature of the conviction, “ Mr Stewart has been responsible for serious and systematic fraud over a prolonged period of time for which he was subsequently convicted and received a custodial sentence.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Stewart 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 comments and the advice published by the Secretary of State.

I have considered whether allowing for a no review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, three factors mean that allowing for a no review period is necessary to achieve the aim of maintaining public confidence in the profession. These elements are the serious conviction, the impact on pupils and the sustained nature of the misconduct.

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 James Stewart 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 James Stewart 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 James Stewart 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: 26 April 2019

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