



Teaching
Regulation
Agency

Ms Danielle Auerbach-Byrne: Professional conduct panel outcome

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

October 2022

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

Teacher: Ms Danielle Auerbach-Byrne

Teacher ref number: 9455255

Teacher date of birth: 25 September 1969

TRA reference: 19896

Date of determination: 17 October 2022

Former employer: North Liverpool Academy, Liverpool

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually by Microsoft Teams on 17 October 2022, to consider the case of Ms Danielle Auerbach-Byrne.

The panel members were Ms Juliet Berry (lay panellist – in the chair), Ms Rosemary Joyce (teacher panellist) Dr Zubair Hanslot (lay panellist).

The legal adviser to the panel was Ms Anna Marjoram of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Michael O’Donohoe of Browne Jacobson LLP solicitors.

Ms Auerbach-Byrne was present at the commencement of the hearing 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 hearing dated 21 July 2022.

It was alleged that Ms Auerbach-Byrne was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute and/or having been convicted of a relevant offence at any time, in that:

1. on 23 December 2020, she was convicted of retaining wrongful credit contrary to s24a of the Theft Act 1968;
2. her conduct as set out at allegation 1 was dishonest.

Ms Auerbach-Byrne admitted the allegations. Ms Auerbach-Byrne admitted that she was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute and/or conviction of a relevant offence.

Preliminary applications

There were no preliminary applications.

Summary of evidence

Documents

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

Section 1: Notice of hearing and response – pages 4 to 7

Section 2: Teaching Regulation Agency documents – pages 9 to 116

Section 3: Teacher documents – page 118

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

During the course of the hearing, the presenting officer made an application to admit the bundle on the basis that it had become apparent it had not been served in accordance with paragraph 5.36 of the Procedures. The panel considered representations from the presenting officer. The panel noted that Ms Auerbach-Byrne had had sight of the documents in advance of the hearing and did not raise any objections in relation to them, including during the part of the hearing which she had attended. The panel considered it fair to admit the bundle and that the documents contained therein may reasonably be considered relevant to the case.

Witnesses

No witnesses were called by either party.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Ms Auerbach-Byrne was employed as a teacher of science at Rainhill High School from November 2016 to August 2017, during which time she was paid by St Helen's Local Authority.

Ms Auerbach-Byrne was then employed as a teacher of science at Range High School from September 2017 to July 2018, and as a teacher of science at Harrop Fold School from September 2018 to December 2018. Ms Auerbach-Byrne was employed as a supply teacher at North Liverpool Academy from January 2019, and then as a permanent teacher from May 2019 until she tendered her resignation on 12 March 2021.

On/around 18 January 2019, Ms Auerbach-Byrne was contacted by St Helen's Council regarding overpayments made to her following the termination of her employment at Rainhill High School.

On 1 December 2019, Ms Auerbach-Byrne attended a police interview to investigate overpayments made to her which she had not repaid. On 23 December 2020, Ms Auerbach-Byrne was found guilty of retaining wrongful credit.

Findings of fact

The findings of fact are as follows:

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

- 1. On 23 December 2020, you were convicted of retaining wrongful credit contrary to s24a of the Theft Act 1968.**

The panel were presented with the Certificates of Sentence which confirmed that Ms Auerbach-Byrne was convicted of retaining wrongful credit. Ms Auerbach-Byrne also admitted the allegation. The panel therefore found this allegation proven.

- 2. Your conduct as set out in allegation 1 was dishonest.**

The panel noted that the offence of which Ms Auerbach-Byrne was convicted required dishonesty to be proven as part of the test for that offence. Presented with evidence of

the conviction in the form of the Certificates of Sentence, together with Ms Auerbach-Byrne's admission to this allegation, the panel found this allegation proved.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute and/or conviction of a relevant offence

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

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

The panel was satisfied that the conduct of Ms Auerbach-Byrne in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Ms Auerbach-Byrne 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 in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Ms Auerbach-Byrne fell significantly short of the standard of behaviour expected of a teacher.

The panel also considered whether Ms Auerbach-Byrne's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice. The panel found that the offences of fraud or serious dishonesty and/or theft from a person or other serious theft were relevant.

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 noted that the allegations took place outside the education setting. The panel acknowledged that teachers are expected to follow and implement policies, and deal with issues with pupils, which involve the principle of honesty. The panel considered it would be difficult for a school to have confidence that a teacher could assist pupils to make the right judgements in respect of their conduct, and to fulfil aspects of their teaching role which require determinations of honesty, where a teacher's own conduct had been shown to be seriously dishonest.

Accordingly, the panel was satisfied that Ms Auerbach-Byrne was guilty of unacceptable professional conduct.

Turning to the issue of conduct that may bring the profession into disrepute, the panel took into account the way the teaching profession is viewed by others, the responsibilities and duties of teachers in relation to the safeguarding and welfare of pupils and considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way that they behave.

The panel also considered whether Ms Auerbach-Byrne's conduct displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice. The panel again found that the offences of fraud or serious dishonesty and/or theft from a person or other serious theft were relevant.

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 conduct that may bring the profession into disrepute. The panel noted that the advice is not intended to be exhaustive and there may be other behaviours that panels consider to be "conduct that may bring the profession into disrepute".

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

The panel considered that Ms Auerbach-Byrne's conduct could potentially damage the public's perception of a teacher.

Having found the facts of particulars 1 and 2 proved, the panel further found that Ms Auerbach-Byrne's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

In considering whether Ms Auerbach-Byrne's conviction at allegation 1 amounted to a relevant offence, the panel first had regard to the Teachers' Standards. As set out above, the panel was satisfied that the conduct of Ms Auerbach-Byrne in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Ms Auerbach-Byrne 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 in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel noted that Ms Auerbach-Byrne's actions were relevant to teaching, working with children and/or working in an education setting for the reasons set out above.

However, the panel did not consider that Ms Auerbach-Byrne's actions had a potential impact on the safety or security of pupils or members of the public.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Ms Auerbach-Byrne's behaviour in committing the offence would be likely to affect public confidence in the teaching profession, if she was allowed to continue teaching.

The panel noted that Ms Auerbach-Byrne's behaviour ultimately led to a sentence of imprisonment, (albeit that it was suspended), which was indicative of the seriousness of the offences committed, and which the Advice states is likely to be considered "a relevant offence".

This was also a case concerning an offence involving fraud or serious dishonesty and/or theft from a person or other serious theft. The Advice indicates that a conviction for any offence that relates to or involves such offences is likely to be considered "a relevant offence".

The panel was presented with no evidence of any mitigating circumstances.

Further to the above, the panel found that the seriousness of the offending behaviour that led to the conviction was relevant to Ms Auerbach-Byrne's fitness to be a teacher. 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 unacceptable professional conduct, conduct that may bring the profession into disrepute and 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 is appropriate, the panel had to consider the public interest, the seriousness of the behaviour and any mitigation offered by Ms Auerbach-Byrne and whether a prohibition order is necessary and proportionate. 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

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 the light of the panel's findings against Ms Auerbach-Byrne, which involved a conviction of retaining wrongful credit – a conviction related to serious dishonesty and theft, there was a strong public interest consideration in maintaining public confidence in the profession. The panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Auerbach-Byrne was not treated with the utmost seriousness when regulating the conduct of the profession.

Similarly, 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 Ms Auerbach-Byrne was outside that which could reasonably be tolerated.

Whilst the panel had regard to the public interest consideration in retaining the teacher in the profession, the panel considered that the adverse public interest considerations above outweigh any interest in retaining Ms Auerbach-Byrne in the profession, since her behaviour fundamentally breached the standard of conduct expected of a teacher.

The panel considered carefully the seriousness of the behaviour, noting that the Advice states that the expectation of both the public and pupils is that members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times.

The panel took further account of the Advice, which suggests that a panel will likely consider a teacher's behaviour to be incompatible with being a teacher if there is evidence of one or more of the factors that begin on page 15. In the list of such factors, 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 disclosure; and
- dishonesty or a lack of integrity, including the deliberate concealment of their actions or purposeful destruction of evidence, especially where these behaviours have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests.

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, taking account of the public interest and the seriousness of the behaviour and the likely harm to the public interest were the teacher be allowed to continue to teach, the panel went on to consider whether there were mitigating circumstances.

The panel was provided with limited information in respect of mitigation. There was no evidence that Ms Auerbach-Byrne's actions were not deliberate, and there was no evidence to suggest that Ms Auerbach-Byrne was acting under extreme duress.

The panel was concerned that Ms Auerbach-Byrne showed very little insight into her conduct and the circumstances surrounding her conviction, and that little remorse was demonstrated. There was no evidence within the bundle that Ms Auerbach-Byrne had reflected on the incidents or taken steps to address her behaviour. The panel acknowledged Ms Auerbach-Byrne's submission that she had a tendency to "bury her head" and that this appeared to be a pattern in her behaviour, and as such the panel was not reassured that there was no risk of repetition.

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 Ms Auerbach-Byrne 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 Ms Auerbach-Byrne. The seriousness of the dishonesty demonstrated, and the lack of insight or remorse shown, were significant factors in forming that opinion. 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 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 2 years.

The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of a longer period before a review is considered appropriate. These cases include fraud or serious dishonesty and theft from a person or other serious cases of theft. The panel found that Ms Auerbach-Byrne committed an offence which involved serious dishonesty in retaining monies incorrectly retained from her former employer, which Ms Auerbach-Byrne had had opportunities to address but failed to do so.

As the panel concluded there were no mitigating circumstances and that Ms Auerbach-Byrne showed little insight or remorse, the panel concluded that a longer period was

warranted to enable Ms Auerbach-Byrne to reflect on her actions and take steps to ensure her actions would not be repeated.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a review period, such period being 4 years.

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 and a relevant conviction.

The panel has made a recommendation to the Secretary of State that Ms Auerbach-Byrne should be the subject of a prohibition order, with a review period of 4 years.

In particular, the panel has found that Ms Auerbach-Byrne is in breach of the following standards:

- 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 disclosure; and
- dishonesty or a lack of integrity, including the deliberate concealment of their actions or purposeful destruction of evidence, especially where these behaviours have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests.

The panel finds that the conduct of Ms Danielle Auerbach-Byrne fell significantly short of the standards expected of the profession.

The findings of misconduct are serious as they include a finding which involved a conviction of retaining wrongful credit, serious dishonesty and theft.

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 Ms Auerbach-Byrne, 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/or safeguard pupils. The panel has observed, “the panel did not consider that Ms Auerbach-Byrne’s actions had a potential impact on the safety or security of pupils or members of the public.”

I have also taken into account the panel’s comments on insight and remorse, which the panel sets out as follows, “The panel was concerned that Ms Auerbach-Byrne showed very little insight into her conduct and the circumstances surrounding her conviction, and that little remorse was demonstrated. There was no evidence within the bundle that Ms Auerbach-Byrne had reflected on the incidents or taken steps to address her behaviour. The panel acknowledged Ms Auerbach-Byrne’s submission that she had a tendency to “bury her head” and that this appeared to be a pattern in her behaviour, and as such the panel was not reassured that there was no risk of repetition.” In my judgement, the lack of insight and remorse 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 seriousness of the offending behaviour that led to the conviction was relevant to Ms Auerbach-Byrne’s fitness to be a teacher. 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”. I am particularly mindful of the finding of dishonesty 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 Ms Auerbach-Byrne herself and the panel comment “The panel was provided with limited information in respect of mitigation. There was no evidence that Ms Auerbach-Byrne’s actions were not deliberate, and there was no evidence to suggest that Ms Auerbach-Byrne was acting under extreme duress.”

Although the panel did not provide comment on Ms Auerbach-Byrne’s experience as a teacher, a prohibition order would prevent Ms Auerbach-Byrne from teaching. A prohibition order would also clearly deprive the public of her 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 considered carefully the seriousness of the behaviour, noting that the Advice states that the expectation of both the public and pupils is that members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times.”

I have also placed considerable weight on the finding of the panel that “In the light of the panel’s findings against Ms Auerbach-Byrne, which involved a conviction of retaining wrongful credit – a conviction related to serious dishonesty and theft, there was a strong public interest consideration in maintaining public confidence in the profession. The panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Auerbach-Byrne was not treated with the utmost seriousness when regulating the conduct of the profession.”

I have given less weight in my consideration of sanction therefore, to the contribution that Ms Auerbach-Byrne may have 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 4 year review period.

I have considered the panel’s comments “As the panel concluded there were no mitigating circumstances and that Ms Auerbach-Byrne showed little insight or remorse, the panel concluded that a longer period was warranted to enable Ms Auerbach-Byrne to reflect on her actions and take steps to ensure her actions would not be repeated.”

In this case, factors mean that allowing a lesser review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the lack of mitigation and lack of insight or remorse.

I consider therefore that a 4 year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Ms Danielle Auerbach-Byrne is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the prohibition order to be set aside, but not until 22 October 2026, 4 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Auerbach-Byrne remains prohibited from teaching indefinitely.

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

Ms Auerbach-Byrne has a right of appeal to the King's Bench Division of the High Court within 28 days from the date she is given notice of this order.

A handwritten signature in black ink, appearing to read 'S Buxcey', with a horizontal line underneath.

Decision maker: Sarah Buxcey

Date: 19 October 2022

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