



Teaching
Regulation
Agency

Mr Mark Robert Chester: Professional conduct panel outcome

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

December 2019

Contents

A. Introduction	3
B. Allegations	4
C. Preliminary applications	4
D. Summary of evidence	5
Documents	5
Witnesses	6
E. Decision and reasons	6
Findings of fact	6
Findings as to conviction of a relevant offence	6
Panel's recommendation to the Secretary of State	7
Decision and reasons on behalf of the Secretary of State	9

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

Teacher: Mr Mark Robert Chester

Teacher ref number: 263074

Teacher date of birth: 23 January 1967

TRA reference: 17872

Date of determination: 2 December 2019

Former Employer: Yorkshire and Humber

A. Introduction

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

The panel members were Mr Tony James (former teacher panellist – in the chair), Ms Hilary Jones (lay panellist) and Mr Paul Hawkins (teacher panellist).

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

The presenting officer for the TRA was Ms Naomh Gibson of Browne Jacobson LLP solicitors.

Mr Chester was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation set out in the Notice of Proceedings dated 1 October 2019.

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

- a. He was convicted on 8 April 2018 at York Crown Court of doing such acts tending and intended to pervert the course of public justice for which he was sentenced on 4 May 2018 to 2 months imprisonment.

The teacher admitted the fact of his conviction, although he did not admit this was a relevant offence.

C. Preliminary applications

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

The panel was satisfied that the TRA complied with the service requirements of paragraph 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 must be exercised with the utmost care and caution, and that its discretion is 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 noted that the notice was sent to an address the teacher previously responded to and the teacher responded and indicated he would not attend. The panel therefore considered that the teacher waived his right to be present at the hearing in the knowledge of when and where the hearing was taking place. The panel was further provided with additional evidence in the form of a letter to the teacher from the presenting officer, together with confirmation that the letter was signed for at the teacher's address (documents A and B).

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 taking place. There was no indication that an adjournment might result in the teacher attending 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, taking into account the nature of the evidence against him. The panel had the benefit of representations made by the teacher and was able to ascertain the lines of defence. The panel had the teacher's evidence addressing mitigation and would be able to take this into account at the relevant stage. The panel did not identify any significant gaps in the documentary evidence provided to it. The panel noted that should such gaps arise during the course of the hearing, it could take these gaps into consideration when deciding whether the hearing should be adjourned for such documents to become available. Further, the panel noted it could consider these gaps when deciding whether the presenting officer had discharged the burden of proof. The panel was also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel had regard to the seriousness of this case, and the potential consequences for the teacher and accepted that fairness to the teacher is of prime importance. However, it considered that in light of the teacher's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as is possible, that on balance, these are serious allegations and the public interest was in favour of this hearing continuing today.

D. Summary of evidence

Documents

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

Section 1: Chronology – page 2

Section 2: Notice of Proceedings and Response – pages 4 to 6

Section 3: Teaching Regulation Agency witness statements – pages 11 to 12

Section 4: Teaching Regulation Agency documents – pages 14 to 115

Section 5: Teacher documents – pages 117 to 127

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

Witnesses

The panel did not hear any oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Chester was employed as a supply teacher from 3 July 2015, working in a number of different schools. On 6 April 2018, Mr Chester was convicted on indictment at York Crown Court of doing acts tending and intended to pervert the course of public justice.

Findings of fact

Our findings of fact are as follows:

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

- a. You were convicted on 6 April 2018 at York Crown Court of doing acts tending and intended to pervert the course of public justice for which you were sentenced on 4 May 2018 to 2 months imprisonment**

The panel had regard to the certificate of conviction dated 19 July 2019 which stated that Mr Chester was convicted upon his own confession of, *“doing acts tending and intending to pervert the course of public justice”*.

The panel found this allegation proven.

Findings as to conviction of a relevant offence

The panel is satisfied that the conduct of Mr Chester in relation to the facts it has found proved, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Chester 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
 - not undermining fundamental British values, including the rule of law

The panel noted that the individual’s actions were relevant to teaching and working in an education setting as the behaviour displayed in his conviction for, *“tending and intended to pervert the course of public justice”* did not uphold the teachers’ standards.

The panel noted that the behaviour involved in committing the offence could have had an impact on the safety of members of the public, through attempting to avoid sanction for a

driving offence. The panel has not considered the specifics of the driving offence in drawing its conclusions in respect of this conviction.

The panel has also taken account of how the teaching profession is viewed by others. The panel considered that Mr Chester's behaviour in committing the offence could 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 Chester's behaviour has ultimately led to him receiving a sentence of imprisonment which is indicative of the seriousness of the offence committed.

The panel has taken into account the remarks of the sentencing Judge that Mr Chester, *"had never been in trouble before... had an excellent work record, doing useful work... have done charity work in the past."*

Although the panel finds the evidence of the teacher's teaching proficiency to be of note, the panel has found the seriousness of the offending behaviour that led to the conviction is relevant to the teacher's ongoing suitability to teach. The panel considers that a finding that his conviction is a relevant offence is 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.

The panel's findings against Mr Chester involved his conviction for, *"doing acts tending and intended to pervert the course of justice"*. The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Chester were not treated with the utmost seriousness when regulating the conduct of the profession.

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

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

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Chester. 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 from the personal and professional conduct elements of the Teachers' Standards;
- actions or behaviours that undermine fundamental British values including the rule of law

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

There was no evidence to suggest that the teacher was acting under duress, and in fact the panel found the teacher's actions to be deliberate.

The teacher did have a previously good history and the panel accepts that Mr Chester had not had any previous convictions. To that extent, the panel accepts that this incident was out of character, albeit his behaviour persisted for a period of months.

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 is 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 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 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 Chester. 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 for them to decide to recommend that a review period of the order should be considered. The panel were mindful that the Advice advises 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 a review period being recommended. These behaviours include fraud or serious dishonesty.

The panel found that Mr Chester demonstrated limited insight into the effect of his, “*doing acts tending or intended to pervert the course of public justice*”, despite having a number of opportunities to provide the panel with written evidence in this respect. The panel noted his correspondence for the purpose of this hearing and considered that it demonstrated continued lack of understanding and acceptance of the significance of his conviction.

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 provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found the allegations proven and found that those proven facts amount to a relevant conviction.

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

In particular, the panel has found that Mr Chester 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
 - not undermining fundamental British values, including the rule of law

The panel also noted that “the individual’s actions were relevant to teaching and working in an education setting as the behaviour displayed in his conviction for, “*tending and intended to pervert the course of public justice*” did not uphold the teachers’ standards.”

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 Chester, 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 behaviour involved in committing the offence could have had an impact on the safety of members of the public, through attempting to avoid sanction for a driving offence.” A prohibition order would therefore prevent such a risk from being present in the future. Children are clearly included in a definition of 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 found that Mr Chester demonstrated limited insight into the effect of his, *“doing acts tending or intended to pervert the course of public justice”*, despite having a number of opportunities to provide the panel with written evidence in this respect. The panel noted his correspondence for the purpose of this hearing and considered that it demonstrated continued lack of understanding and acceptance of the significance of his conviction.”

In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this puts the public at risk. 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 it, “has also taken account of how the teaching profession is viewed by others. The panel considered that Mr Chester’s behaviour in committing the offence could affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.”

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 facts that have been found proven in this case.

I have also considered the impact of a prohibition order on Mr Chester himself. The panel comment, “ The teacher did have a previously good history and the panel accepts that Mr Chester had not had any previous convictions. To that extent, the panel accepts that this incident was out of character, albeit his behaviour persisted for a period of months.”

A prohibition order would prevent Mr Chester from teaching and would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel’s comments, “The panel has decided that the public interest considerations outweigh the interests of Mr Chester. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.”

I have also placed considerable weight on the comments of the panel, “The panel has noted that Mr Chester’s behaviour has ultimately led to him receiving a sentence of imprisonment which is indicative of the seriousness of the offence committed.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Chester 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 that no provision should be made for a review period.

I have considered the panel’s comments “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 provisions for a review period.”

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, I disagree with the panel. I have given greater weight to the remarks of the judge in this case who said, “that Mr Chester, *“had never been in trouble before... had an excellent work record, doing useful work... have done charity work in the past.”*

I consider therefore that a two year review period better reflects the public interest in this case and is proportionate in all the circumstances.

This means that Mr Mark Robert Chester 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 6 December 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 Mark Robert Chester remains prohibited from teaching indefinitely.

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

Mr Mark Chester 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', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 06 December 2019

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