



Teaching
Regulation
Agency

Mr Mark David Attwood: Professional conduct panel meeting outcome

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

August 2019

Contents

A. Introduction	3
B. Allegations	4
C. Summary of evidence	4
Documents	4
Statement of agreed facts	5
D. Decision and reasons	5
Findings of fact	5
Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute	6
Panel's recommendation to the Secretary of State	8
Decision and reasons on behalf of the Secretary of State	111

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

Teacher: Mr Mark David Attwood

Teacher ref number: 462516

Teacher date of birth: 11 May 1982

TRA reference: 17146

Date of determination: 16 August 2019

Former employer: Nottingham Academy School, Nottingham

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 16 August 2019 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Mr Mark David Attwood.

The panel members were Mr Ian Hughes (lay panellist – in the chair), Cllr Gail Goodman (teacher panellist) and Ms Karen McArthur (lay panellist).

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

In advance of the meeting, after taking into consideration the public interest and the interests of justice, the TRA agreed to a request from Mr Mark David Attwood that the allegation(s) be considered without a hearing. Mr Mark David Attwood provided a signed statement of agreed facts and admitted unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The panel considered the case at a meeting without the attendance of the presenting officer, Mr Mark David Attwood or his representative.

The meeting took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Meeting dated 14 August 2019.

It was alleged that Mr Attwood was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher at Nottingham Academy School he:

1. Distributed an indecent photograph or pseudo-photographs of children on 25 July 2017; and
2. In relation to his conduct at allegation 1 received a caution from Nottinghamshire Police contrary to Section 1 of the Protection of Children Act 1978 on 19 February 2018.

The panel noted that Mr Attwood had admitted the above allegations in his response to the Notice of Referral Form dated 26 January 2019. The panel further noted that Mr Attwood admitted that those facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

C. Summary of evidence

Documents

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

Section 1: Notice of Meeting and Statement of Agreed Facts – pages 2 to 10

Section 2: Teaching Regulation Agency Documents – pages 11 to 100

Section 3: Teacher documents – pages 101 to 102

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

The panel received in addition an email exchange between the TRA and Mr Attwood of 13 August 2019, an amended Statement of Agreed Facts signed by Mr Attwood on 13 August 2019 and an amended Notice of Meeting dated 14 August 2019.

The panel noted that the amended Notice of Meeting dated 14 August 2019 referred erroneously to the meeting convening on 9 August 2019. The panel was however, satisfied that Mr Attwood had consented to the meeting taking place, regardless of when it was to be held.

Statement of agreed facts

The panel considered an amended statement of agreed facts which was signed by Mr Mark David Attwood on 13 August 2019.

The panel acknowledged that Mr Attwood admitted to all of the factual allegations (as set out in the Notice of the Meeting) and that he admitted his behaviour in distributing indecent photographs or pseudo-photographs of children on 25 July 2017 was both inappropriate and unprofessional.

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 of the documents provided in the bundle in advance of the meeting.

In advance of the meeting, the TRA agreed to a request from Mr Attwood for the allegations to be considered without a hearing. The panel had the ability to direct that the case be considered at a hearing if required in the interests of justice or in the public interest. The panel did not determine that such a direction was necessary or appropriate in this case.

Mr Attwood was employed at the school as Head of Performing Arts, ICT and Business from 1 September 2005.

On 29 November 2017, Mr Attwood was arrested on suspicion of making and/or possessing indecent images of children.

Mr Attwood was suspended on 30 November 2017 pending the outcome of the school's internal disciplinary investigation as well as external police and safeguarding investigations. On 19 March 2018, the school confirmed its intention to conduct a disciplinary meeting. Mr Attwood attended a disciplinary meeting on 27 March 2018, and he was summarily dismissed. The panel turned its own independent minds to determine its findings of fact and were uninfluenced by the outcome of the school's disciplinary process.

Findings of fact

The findings of fact were as follows:

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

1. You distributed an indecent photograph or pseudo-photograph of one or more children on 25 July 2017;

The panel noted that Mr Attwood admitted to this allegation in his response to the Notice of Referral Form dated 26 January 2019 as well as in the agreed statement of facts signed by Mr Attwood on 13 August 2019.

The panel also noted that Mr Attwood had admitted this allegation to the police as part of their investigation, in accepting the caution and during the disciplinary meeting with the school.

The panel considered the caution issued on 19 February 2018 and noted the caution itself stated that “Mr Attwood admitted re-tweeting images of girls aged between 16-20 most images were borderline category C images. There was one image of three girls that were around 8 years”.

The panel noted that Mr Attwood was a teacher at the time of this allegation.

The panel therefore found this allegation proven.

2. In relation to your conduct at allegation 1, you received a caution from Nottinghamshire Police contrary to Section 1 of the Protection of Children Act 1978 on 19 February 2018

The panel noted that Mr Attwood admitted to this allegation in his response to the Notice of Referral Form dated 26 January 2019 as well as in the agreed statement of facts signed by Mr Attwood on 13 August 2019. The panel also noted that Mr Attwood admitted this allegation during the disciplinary meeting with the school.

The panel acknowledged the caution issued on 19 February 2018. The panel noted that although the caution itself made no reference to the specific legislation that had been contravened, the PNC document referred to the offence as being contrary to Protection of Children Act 1978, s1.

The panel therefore found this allegation proven.

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

Having found all of the allegations admitted and proven, the panel went on to consider whether the facts of those proven allegations amounts 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 Mr Attwood in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considered that by reference to Part Two, Mr Attwood 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
 - not undermining fundamental British values, including ... the rule of law...;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach;
- 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 Mr Attwood fell significantly short of the standards expected of the profession.

The panel also considered whether Mr Attwood's conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found that the offence of distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, was relevant in considering Mr Attwood's conduct.

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 of the education setting. However, the conduct in question raises safeguarding issues and has the potential to place children at risk.

Accordingly, the panel was satisfied that Mr Attwood was guilty of unacceptable professional conduct.

The panel took into account the way the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel 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 they behave.

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

The panel therefore found that Mr Attwood's actions constituted conduct that may bring the profession into disrepute.

Having found the facts of particulars 1 and 2 proven, the panel further found that Mr Attwood's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

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

The panel 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; and declaring and upholding proper standards of conduct.

In the light of the panel's findings against Mr Attwood, which involved distributing an indecent photograph of a child there was a strong public interest consideration in respect of the protection of pupils and the public in general. Although the children depicted were not pupils of the school, his interest in such a picture could indicate a risk to other children. This is reflected by his having been placed on the Sex Offenders' register for a period of two years.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Attwood was not treated with the utmost seriousness when regulating the conduct of the profession.

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

Notwithstanding 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 Attwood.

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 Attwood. 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 of ... the rule of law...;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one-off incidents;
- 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 some of the behaviour found proven 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 light of the panel's findings, the teacher had a previously good record.

There was no evidence that the teacher's actions were not deliberate. Mr Attwood re-tweeted the image and there could have been no mistaking the girls for being adults given their age having been approximated at eight years' old.

There was no evidence to suggest that the teacher was acting under duress, although the teacher has described that he acted in this way during a period of [REDACTED]

The panel noted that at the school's disciplinary hearing, it was acknowledged that Mr Attwood had taken on additional work that was important and had had a positive impact on the school. He had been promoted as recognition of the efforts made. No recent references have been received by the panel, but the panel has taken note of a positive reference of a personal tutor at the time of Mr Attwood's PGCE in 2005 albeit attached little weight to it, given its age. Mr Attwood has expressed remorse and admitted the offence at the earliest opportunity. He has referred to being addicted to adult pornography at the time. Although at the disciplinary hearing he described having barred his own access from certain platforms and having had counselling sessions, the panel has seen no independent evidence to verify this.

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, a recommendation of no prohibition order would not be a proportionate and appropriate response. Recommending that the publication of adverse findings was sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for the teacher of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Attwood. The safeguarding of children was a significant factor 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 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. One of these behaviours includes any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. The panel found that Mr Attwood was responsible for distributing one image of three girls of approximately eight years' old. However, the panel considered that it was appropriate to depart from the Advice in this case, given that the caution related to only one image, that the image was at the less serious end of the scale, that Mr Attwood will be on the Sex Offenders' register for a period of two years, that this conduct occurred during a period of stress and that Mr Attwood has said that he has recognised the issues that led to this conduct. Given his achievements at the school prior to this misconduct, Mr Attwood may be able to make a positive contribution if he could demonstrate his suitability to re-enter the profession at a future date.

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 after five 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.

The panel has made a recommendation to the Secretary of State that Mr Attwood should be the subject of a prohibition order, with a review period of five years.

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

The panel was also satisfied that “the conduct of Mr Attwood fell significantly short of the standards expected of the profession.”

The panel also considered whether Mr Attwood’s conduct displayed behaviours associated with any of the offences listed on pages 10 and 11 of the Advice. The panel found, “that the offence of distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, was relevant in considering Mr Attwood’s conduct.”

The findings of misconduct are particularly serious as they include a finding which involves distributing an indecent photograph of one or more children and a caution for the same.

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 Attwood, 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 conduct in question raises safeguarding issues and has the potential to place children at risk.” 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, “Mr Attwood has expressed remorse and admitted the offence at the earliest opportunity.”

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 decided that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Attwood was outside that which could reasonably be tolerated.”

I am particularly mindful of the finding of distributing indecent images 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 Attwood himself. The panel say that, “at the school’s disciplinary hearing, it was acknowledged that Mr Attwood had taken on additional work that was important and had had a positive impact on the school. He had been promoted as recognition of the efforts made. No recent references have been received by the panel, but the panel has taken note of a positive reference of a personal tutor at the time of Mr Attwood’s PGCE in 2005 albeit attached little weight to it, given its age.”

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

This misconduct is serious and I have given less weight in my consideration of sanction to the contribution that Mr Attwood 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 does not meet the requirement for 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 5 year review period.

I have considered the panel's comments and set them out in full here, "The Advice indicates that there are behaviours that, if proven, would militate against the recommendation of a review period. One of these behaviours includes any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. The panel found that Mr Attwood was responsible for distributing one image of three girls of approximately eight years' old. However, the panel considered that it was appropriate to depart from the Advice in this case, given that the caution related to only one image, that the image was at the less serious end of the scale, that Mr Attwood will be on the Sex Offenders' register for a period of two years, that this conduct occurred during a period of stress and that Mr Attwood has said that he has recognised the issues that led to this conduct. Given his achievements at the school prior to this misconduct, Mr Attwood may be able to make a positive contribution if he could demonstrate his suitability to re-enter the profession at a future date."

I have considered whether a 5 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, I am not agreeing with the panel. I consider that this is a case where no review period is necessary to achieve the aim of maintaining public confidence in the profession. My reasons for disagreeing with the panel are as follows.

The advice published by the Secretary of State is very clear that even a single incident involving an indecent image of a child should be considered for a no review prohibition. Although this was a single image the panel say that, "Mr Attwood re-tweeted the image and there could have been no mistaking the girls for being adults given their age having been approximated at eight years' old."

So Mr Attwood did not just have the image, he proactively distributed it. In addition, the image was of three girls, approximately eight years of age. As the panel indicate there was no mistaking these girls for being adults. Distribution of the image makes this incident particularly serious.

In my view, despite the remorse shown, the misconduct found proven is so serious that a prohibition order with no review is necessary to maintain public confidence in the profession. This is fully in line with the advice published by the Secretary of State.

In summary therefore I consider that allowing for a no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mr Mark Attwood 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 proven against him, I have decided that Mr Mark Attwood 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 Attwood 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 grey ink, appearing to read 'Alan Meyrick', followed by a vertical line.

Decision maker: Alan Meyrick

Date: 21 August 2019

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