



Teaching
Regulation
Agency

Mr Mazhar Hussain: Professional conduct panel outcome

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

December 2021

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

Teacher:	Mr Mazhar Hussain
Teacher ref number:	0344070
Teacher date of birth:	23 March 1982
TRA reference:	17629
Date of determination:	14 December 2021
Former employer:	Hamd House School, Birmingham

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 14 December 2021, to consider the case of Mr Hussain.

The panel members were Mr Peter Ward (lay panellist – in the chair), Ms Kathleen O'Hare (lay panellist) and Ms Jo Palmer-Tweed (teacher panellist).

The legal adviser to the panel was Mr Ben Schofield of Blake Morgan LLP.

The presenting officer for the TRA was Ms Matilda Heselton of Browne Jacobson LLP.

Mr Hussain was not present and was not represented.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegation set out in the Notice of Proceedings dated 18 October 2021.

It was alleged that Mr Hussain was convicted of a relevant offence, namely:

- 1) Four counts of sexual activity with a female child under 16, contrary to Section 9 of the Sexual Offences Act 2003.

Preliminary applications

Proceeding in the absence of the teacher

The panel considered an application from the Presenting Officer to proceed in the absence of Mr Hussain.

As part of that application, the panel also considered which version of the Disciplinary Procedures should be used in these proceedings and a further application by the Presenting Officer to introduce further evidence in support of the application, which related to a letter to Mr Hussain advising of a change in panel members.

The panel considered paragraph 1.6 of the 2020 Disciplinary Procedures and noted that the referral pre-dated the 2020 Procedures and that the 2018 Procedures would be the relevant Procedures in force at the time of the referral. The panel was satisfied that there were no public interest or interests of justice grounds present to suggest the 2020 Procedures should be used instead. The panel has therefore decided to use the 2018 Procedures in this case.

The panel then went on to make a decision on whether to admit the letter sent to Mr Hussain regarding the change in panel members. The panel was satisfied that the letter was relevant to issue in this application, as the panel had raised a concern that Mr Hussain may not have been aware of the change and this may have an impact on the decision to proceed in his absence. The panel was also satisfied that it was fair to admit the letter, as it was a document that had been sent to Mr Hussain and he would have had the opportunity to make representations on the issue, if he had wished, but had not taken the opportunity. The panel has therefore decided to admit the document into these proceedings and has assigned them as pages 214 to 215 in the bundle.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of R v Jones (as considered and applied in subsequent cases, particularly GMC v Adeogba).

The panel was satisfied that the Notice of Proceedings ("the Notice") had been sent in accordance with Rules 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures 2018 for the Teaching Profession ("the Procedures") and that the requirements for service had been satisfied.

Mr Hussain was clearly aware of the hearing and had responded to the Notice, through the Prison Offender Manager, stating that:

"... the hearing can go ahead without me, ive decided not to attend its not a profession im going to pursue in future..."

The panel went on to consider whether to proceed in Mr Hussain's absence or to adjourn, in accordance with Rule 4.29 of the Procedures.

The panel had regard to the fact that its discretion to continue in the absence of a teacher should be exercised with great caution and with close regard to the overall fairness of the proceedings. The panel gave careful consideration to the fact that Mr Hussain is not in attendance and will not be represented at this hearing, should it proceed, and the extent of the disadvantage to him as a consequence.

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

Given the express confirmation from Mr Hussain that he was not going to attend, the panel concluded that the hearing should proceed. The panel was satisfied that Mr Hussain's absence was voluntary and he had waived his right to attend. There was no indication that Mr Hussain might attend at a future date such that no purpose would be served by an adjournment.

The panel also took account of the fact that there is a public interest in hearings taking place within a reasonable time.

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

Amending the allegations

The Presenting Officer made an application to amend the allegation in this case. In essence, the application was to change "*you are guilty of a conviction...*" to "*you have been convicted...*" and to change "*...Section 9(a)...*" to "*...Section 9...*".

The panel was satisfied these changes did not materially change the nature of the allegation against Mr Hussain and were in effect grammatical corrections. As such, Mr Hussain would not be prejudiced by this amendment and it is in the public interest for allegations to be formulated accurately.

The panel was also satisfied that the admission of the letter to Mr Hussain regarding the amendment was directly relevant to the issue and also fair to admit. The panel has assigned them as pages 216 to 218 in the bundle.

Admission of further documents

The Presenting Officer made an application to admit an 'anonymised pupil list'. The panel was satisfied that the document was relevant to the proceedings and fair to admit the document, as it only contained one name, Mr Hussain would not be prejudiced by its

admission and it was in the interests of justice to admit the document to protect the identity of the child involved in this case. The panel has assigned this document as page 219 in the bundle.

Summary of evidence

Documents

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

Section 1: Correspondence/Notice of proceedings and response – pages 1 to 21

Section 2: Teaching Regulation Agency documents – pages 22 to 204

Section 3: Teacher Documents – pages 205 to 213

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

Witnesses

There was no oral evidence heard at this hearing.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Hussain had been employed at Hamd House School since September 2017 as a science teacher. On 19 May 2018, Mr Hussain was arrested by West Midlands Police, following a disclosure from a [REDACTED] pupil ("Pupil A") that Mr Hussain had provided her with a phone in order to communicate together covertly. Messages found on the phone revealed the communications were of a sexual nature. The pupil also disclosed that Mr Hussain had undertaken a fake 'marriage' ceremony with her over the phone.

Following his arrest, Mr Hussain did not return to the school. Following a referral to the TRA, an Interim Prohibition Order preventing Mr Hussain from teaching was imposed on 28 January 2019 whilst the criminal investigation continued.

Findings of fact

The findings of fact are as follows:

You have been convicted of four counts of sexual activity with a female child under 16 contrary to Section 9 of the Sexual Offences Act 2003

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

The panel considered the certificate of conviction within the bundle. The panel noted the certificate was signed by an Officer of the Court and was endorsed with the Court's seal.

The certificate detailed: Mr Hussain's name, date of birth and information, that he had been convicted by the Crown Court sitting at Birmingham on 7 January 2021 of four offences of sexual activity with a child and sentenced to a total of three years and three months imprisonment on 22 March 2021.

The panel also noted that the additional material in the bundle was consistent with this certificate.

As a result of this, the panel was satisfied that on the balance of probabilities this allegation was proved.

Findings as to conviction of a relevant offence

The panel had regard to the document Teacher Misconduct: The Prohibition of Teachers, which is referred to as "the Advice".

Mr Hussain was convicted and imprisoned for a number of serious sexual offences against a vulnerable pupil, [REDACTED], whom he had personally taught.

The panel was satisfied that the conduct of Mr Hussain in relation to the facts behind the conviction involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr Hussain was in breach of the following standards:

"Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by

- *treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position*
- *having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions*

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."

Mr Hussain's conduct has significantly departed from these standards. This was a premeditated course of conduct that took advantage of his position of trust over Pupil A and also demonstrated a complete disregard for her well-being for his own sexual gratification. There was clear evidence of ongoing harm not only to Pupil A, but also to her family.

The panel noted that Mr Hussain's behaviour ultimately led to a sentence of imprisonment, which was indicative of the seriousness of the offences committed. This was a case concerning an offence involving sexual activity, which the Advice states is likely to be considered a relevant offence.

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

The panel was satisfied that the only natural conclusion could be that this conviction was 'relevant' for the purposes of teacher misconduct proceedings.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of a conviction of a relevant offence, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

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

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely:

"the protection of pupils;

the 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 Hussain, which involved the commission of sexual offences against a pupil, there was a strong public interest consideration in respect of the protection of pupils.

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

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 Mr Hussain was far outside that which could reasonably be tolerated under any circumstances.

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 Hussain.

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 Hussain. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were:

"serious departure from the personal and professional conduct elements of the Teachers' Standards;

misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;

abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;

sexual misconduct, for example, involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

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 proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

There was no evidence that Mr Hussain's actions were not deliberate. There was no evidence to suggest that Mr Hussain was acting under duress, and, in fact, the panel found Mr Hussain's actions to be calculated and pre-motivated.

Mr Hussain did not provide the panel with any material in mitigation, there was no indication of any remorse or self-awareness of the seriousness of his misconduct, despite

there being evidence of his training in safeguarding. The only information that Mr Hussain provided to these proceedings was that he did not have any intention of returning to teaching. Beyond this, Mr Hussain has not engaged in these proceedings, which would be a reasonable expectation of a teacher. The panel did note that the certificate of conviction indicated that Mr Hussain had pleaded guilty to the offence, which would have spared Pupil A, and possibly her family members from giving evidence.

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 Mr Hussain of prohibition and despite the loss of an Advanced Skills Teacher to the profession.

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 Hussain. The serious nature of the offences 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 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 behaviours that, if proved, would militate against the recommendation of a review period. These behaviours includes serious sexual misconduct, such as where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used his professional position to influence or exploit a person.

Of particular concern to the panel was Mr Hussain's attempts to seek employment elsewhere as a teacher whilst under investigation for these offences.

The panel decided that 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 allegation proven and found that those proven facts amount to a relevant conviction.

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

In particular, the panel has found that Mr Hussain is in breach of the following standards:

"Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by

- *treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position*
- *having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions*

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."

The findings of misconduct are particularly serious as they include a finding of four offences of sexual activity with a child and sentencing of a total of three years and three months imprisonment.

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 Hussain, 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, "This was a premeditated course of conduct that took advantage of his position of trust over Pupil A and also demonstrated a complete disregard for her well-being for his own sexual gratification. There was clear evidence of ongoing harm not only to Pupil A, but also to her family."

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 Hussain did not provide the panel with any material in mitigation, there was no indication of any remorse or self-awareness of the seriousness of his misconduct, despite there being evidence of his training in safeguarding." In my judgement, the lack of insight means that there is some risk of the repetition of this behaviour and this puts at risk the future well being of pupils. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Hussain's behaviour in committing the offences would affect public confidence in the teaching profession, given the influence that teachers may have on pupils, parents and others in the community."

I am particularly mindful of the finding of a sexual conviction 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 Hussain himself. The panel comment "The only information that Mr Hussain provided to these proceedings was that he did not have any intention of returning to teaching. Beyond this, Mr Hussain has not engaged in these proceedings, which would be a reasonable expectation of a teacher."

A prohibition order would prevent Mr Hussain 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, "This was a premeditated course of conduct that took advantage of his position of trust over Pupil A and also demonstrated a complete disregard for her well-being for his own sexual gratification."

I have also placed considerable weight on the finding of the panel that, "Of particular concern to the panel was Mr Hussain's attempts to seek employment elsewhere as a teacher whilst under investigation for these offences."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Hussain 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 "Mr Hussain was convicted and imprisoned for a number of serious sexual offences against a vulnerable pupil, [REDACTED], whom he had personally taught." I consider this to be very serious.

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

I consider therefore 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 Mazhar Hussain 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 Mazhar Hussain 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 Mazhar Hussain 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.

Alan Meyrick

Decision maker: Alan Meyrick

Date: 15 December 2021

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