



Teaching
Regulation
Agency

Mr Michael Shepherd: Professional conduct panel outcome

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

June 2021

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

Teacher:	Mr Michael Shepherd
Teacher ref number:	2290198
Teacher date of birth:	29 October 1963
TRA reference:	17518
Date of determination:	1 June 2021
Former employer:	Dixons Cottingley Academy (formerly Samuel Lister Academy), Bradford

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 1 June 2021 by way of a virtual hearing, to consider the case of Mr Michael Shepherd.

The panel members were Mr Roger Woods (former teacher panellist – in the chair), Ms Oluremi Alabi (lay panellist) and Ms Kulvinder Sandal (teacher panellist).

The legal adviser to the panel was Ms Josie Beal of Birketts LLP solicitors.

The presenting officer for the TRA was Ms Grace Hansen of Capsticks LLP solicitors.

Mr Michael Shepherd was not present and was not represented.

The hearing took place in public by way of a virtual hearing and was recorded.

Allegation

The panel considered the allegation set out in the notice of proceedings dated 10 March 2021, as amended during the course of the hearing (as set out below).

It was alleged that Mr Shepherd was guilty of a relevant offence in that, on 30 October 2019, at the East Yorkshire Magistrates' Court, he was convicted of the following offences:

1. On 1 June 2018, voyeurism – one count of recording a person doing a private act, contrary to section 67(3) of the Sexual Offences Act 2003;
2. On 13 September 2018, nine counts of making indecent photographs or pseudo-photographs of children, contrary to section 1(a) of the Protection of Children Act 1978.

Preliminary applications

Application to proceed in the absence of the teacher

Mr Shepherd was not present at the hearing, nor was he represented. The presenting officer made an application to proceed in the absence of Mr Shepherd.

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 [2003] 1 AC 1* (as considered and applied in subsequent cases, particularly *GMC v Adeogba [2016] EWCA Civ 162*).

The panel was satisfied that the notice of proceedings had been sent to Mr Shepherd in accordance with the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession 2018 ("the Procedures").

The panel was satisfied that Mr Shepherd was aware of the hearing and had engaged in a telephone conversation with the presenting officer during which he confirmed that he did not intend to attend the hearing or engage with the TRA process. The panel concluded that Mr Shepherd's absence was voluntary and that he was aware that the matter would proceed in his absence.

The panel noted that Mr Shepherd had not sought an adjournment to the hearing, and it did not consider that an adjournment would procure his attendance at a hearing. There was no medical evidence before the panel that Mr Shepherd was unfit to attend the hearing. The panel considered that it was in the public interest for the hearing to take place.

Having decided that it was appropriate to proceed, the panel agreed to strive to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mr Shepherd was neither present nor represented.

Application to amend the allegation

The presenting officer made an application to amend the allegation as follows:

“You are guilty of a relevant offence in that, on 30 October 2019, at the East Yorkshire Magistrates’ Court, you were convicted of the following offences...”

The allegation previously read:

“You are guilty of a relevant offence in that, on 30 October 2019, at the Kingston-upon-Hull Crown Court, you were convicted of the following offences...”

The proposed change was therefore to correct the name of the court referred to in the allegation.

The panel noted that Mr Shepherd had been informed of the proposed change to the allegation in advance of the hearing in a letter dated 26 May 2021. The panel was advised that Mr Shepherd had not responded to this letter.

The panel was advised that it had the power to amend allegations in accordance with paragraph 4.56 of the Procedures. The panel was satisfied that the amendment did not change the nature, scope or seriousness of the allegation and that there was no unfairness or prejudice caused by the amendment to the allegation. Accordingly, the panel granted this application and considered the amended allegation, which is set out above.

During the course of the hearing, the presenting officer made a second application to amend the allegation to correct the typographical error of “*relevant office*” to “*relevant offence*”. Mr Shepherd had not been informed of this proposed amendment. However, the panel noted that it was a minor change to an obvious typographical error. The panel granted this application for the same reasons set out above.

Application to admit additional documents

The panel considered a preliminary application from the presenting officer to admit an additional document.

The document was a copy of the police and national computer record concerning Mr Shepherd’s conviction.

The document subject to the application had not been served in accordance with the requirements of paragraph 4.20 of the Procedures. Therefore, the panel was required to

decide whether the documents should be admitted under paragraph 4.25 of the Procedures.

The panel heard representations from the presenting officer.

The panel considered the additional document was relevant and would assist the panel in determining the issues in the hearing. Accordingly, the document was added to the bundle.

Summary of evidence

Documents

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

- Section 1: chronology and list of key people – pages 3 to 6
- Section 2: notice of referral, notice of proceedings and responses – pages 7 to 33
- Section 3: Teaching Regulation Agency documents – pages 34 to 105.

In addition, the panel agreed to accept the following: a copy of the police and national computer record concerning Mr Shepherd's conviction at pages 106 to 110 of the bundle.

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing and the additional document that the panel decided to admit.

Witnesses

No witnesses were called to give oral evidence.

Decision and reasons

The panel announced its decision and reasons as follows:

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

In summary, Mr Shepherd was employed as a teacher of Mathematics, at Dixons Cottingley Academy ("the School"), from 17 July 2017.

Mr Shepherd made a voluntary disclosure to Latimer Congregational Church, which was referred to the Local Authority Designated Officer ("LADO") on 6 September 2018.

Mr Shepherd was arrested on 13 September 2018 and admitted to viewing indecent images of children. The School referred the matter to [redacted] and the TRA on 14

September 2018. A referral was also made to the TRA from Humberside Police on 8 October 2018.

On 30 October 2019, Mr Shepherd was convicted of nine counts of making an indecent photograph/pseudo photograph of a child and one count of voyeurism. On 20 November 2019, Mr Shepherd was sentenced to 12 months' imprisonment suspended for 24 months, to complete 40 days' rehabilitation activity requirement and to sign the sex offender register for a period of 10 years.

Following a determination meeting on 11 February 2020, the allegation was referred to a professional conduct panel hearing of the TRA. The notice of referral was sent to Mr Shepherd on 8 October 2020 and 17 November 2020. The notice of proceedings was sent to Mr Shepherd on 10 March 2021.

Mr Shepherd did not respond to the notice of proceedings, nor did he otherwise engage with the TRA process or formally admit the allegation against him.

However, the panel was provided with an attendance note (prepared by Capsticks LLP) of a telephone call between Capsticks LLP and Mr Shepherd. The attendance note indicated that Mr Shepherd had questioned the necessity for the professional conduct panel hearing and that he had told Capsticks LLP that he had been convicted of offences, was no longer working as a teacher [redacted]. Furthermore, the attendance note stated that Mr Shepherd had confirmed that he did not intend to engage with the TRA process or make any case for himself as he considered that it was inevitable that the TRA would impose a prohibition order.

Findings of fact

The findings of fact are as follows:

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

You are guilty of a relevant offence, in that on 30 October 2019, at the East Yorkshire Magistrates' Court, you were convicted of the following offences:

- 1. On 1 June 2018, voyeurism – one count of recording a person doing a private act, contrary to section 67(3) of the Sexual Offences Act 2003;**
- 2. On 13 September 2018, nine counts of making indecent photographs or pseudo-photographs of children, contrary to section 1(a) of the Protection of Children Act 1978.**

The panel was provided with a copy of the certificate of conviction which confirmed Mr Shepherd's convictions in respect of the above offences.

In addition, the panel also noted page 8 of the Teacher Misconduct: The Prohibition of Teachers (“the Advice”) which states that where there has been a conviction, at any time, of a criminal offence, the hearing will not re-examine the facts of the case and the panel will accept the conviction as conclusive proof that establishes the relevant facts.

On examination of the documents before the panel and on consideration of the wider documentary evidence, the panel was satisfied that the facts of the allegation were proved.

Findings as to conviction of a relevant offence

The panel was satisfied that the conduct of Mr Shepherd, in relation to the facts it found proved, involved breaches of the Teachers’ Standards. The panel considered that by reference to Part 2, Mr Shepherd 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
 - 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.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was of the view that Mr Shepherd’s actions were relevant to teaching, working with children and working in an education setting.

The panel noted that Mr Shepherd’s conduct, in committing the offences, could have had an impact on the safety and/or security of pupils and/or members of the public.

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

The panel noted that Mr Shepherd’s behaviours ultimately led to a sentence of imprisonment, (albeit that it was suspended), which was indicative of the seriousness of the offences committed.

This was a case concerning offences involving (a) sexual activity and/or (b) 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 any such

activity, including one-off incidents, which the Advice states is more likely to be considered a relevant offence.

Accordingly, the panel was satisfied that Mr Shepherd's convictions amount to a conviction, at any time, of a relevant offence.

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 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 Shepherd, there was a strong public interest consideration in respect of the protection of pupils, given the seriousness of the allegations, and in particular the allegation of making indecent photographs or pseudo-photographs involving children.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Shepherd 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 Shepherd 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 Shepherd.

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 Shepherd. 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;
- 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;
- 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 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.

In the light of the panel's findings there was evidence that Mr Shepherd's actions were deliberate and there was no evidence to suggest that he was acting under duress.

The panel was not presented with any substantive evidence in respect of Mr Shepherd's ability as a teacher or his previous history as a teacher, although it did appear that Mr Shepherd had previous good history as a teacher.

The panel was not presented with any documentation relevant to mitigation and it was therefore unable to consider any mitigating circumstances that may have been present. The panel was provided with[redacted]. The panel was of the view that it would have been helpful for Mr Shepherd to have provided documents relating to mitigation, which may have included [redacted]. However, the panel was satisfied that Mr Shepherd had been given the opportunity to engage with the TRA process and to provide any documentation upon which he wished to rely, but that he had chosen not to.

As Mr Shepherd had not engaged with the TRA process, the panel was unable to assess his insight into his conduct and/or any remorse. However, the panel noted the following extracts from [redacted]:

[redacted]

[redacted]

[redacted]

The panel was also mindful that Mr Shepherd had voluntarily disclosed his actions and that he pleaded guilty at the first opportunity.

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 Shepherd 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 Shepherd. The serious nature of Mr Shepherd's offences and the fact that they involved 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 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. The panel considered that the following were relevant in respect of Mr Shepherd:

- 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 or persons;
- 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 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 all of the allegations proven and found that those proven facts amount to relevant convictions.

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

In particular, the panel has found that Mr Shepherd 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
 - 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.
- 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, "of the view that Mr Shepherd's actions were relevant to teaching, working with children and working in an education setting."

The findings of misconduct are particularly serious as they include a finding of, "nine counts of making indecent photographs or pseudo-photographs of children, contrary to section 1(a) of the Protection of Children Act 1978."

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 Shepherd, 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, “Mr Shepherd’s conduct, in committing the offences, could have had an impact on the safety and/or security of pupils and/or members of the public.” 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, “As Mr Shepherd had not engaged with the TRA process, the panel was unable to assess his insight into his conduct and/or any remorse. However, the panel noted the following extracts from [redacted]:

[redacted]

[redacted]

[redacted]

The panel was also mindful that Mr Shepherd had voluntarily disclosed his actions and that he pleaded guilty at the first opportunity.”

In my judgement, the lack of expressed insight at this hearing means that there may be some risk of the repetition of this behaviour, and this puts at risk the future well-being of pupils. Nonetheless I have noted the [redacted]

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe that it, “considered that Mr Shepherd’s behaviours in committing the offences could 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 possession of 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 Shepherd himself.

The panel, “was not presented with any substantive evidence in respect of Mr Shepherd’s ability as a teacher or his previous history as a teacher, although it did appear that Mr Shepherd had previous good history as a teacher.

The panel was not presented with any documentation relevant to mitigation and it was therefore unable to consider any mitigating circumstances that may have been present.”

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

I have placed considerable weight on the finding of the panel that, “the public interest considerations outweighed the interests of Mr Shepherd. The serious nature of Mr Shepherd’s offences and the fact that they involved children was a significant factor in forming that opinion.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Shepherd 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 a full declaration of 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 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.”


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 advice published by the Secretary of State is very clear that cases involving indecent images are likely to lead to no review. I have considered that advice carefully in this case and consider it to be very relevant. There are not in my view other factors present that mean that a review period is in the public interest.

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

This means that Mr Michael Shepherd 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 Michael Shepherd 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 Michael Shepherd 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: 7 June 2021

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