



Teaching
Regulation
Agency

Mr Austin Gacheru: Professional conduct panel outcome

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

March 2023

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

Teacher:	Mr Austin Gacheru
Teacher ref number:	1337436
Teacher date of birth:	1 October 1987
TRA reference:	15060
Date of determination:	30 March 2023
Former employer:	Ricards Lodge High School, Wimbledon

Introduction

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 30 March 2023 by way of a virtual hearing, to consider the case of Mr Austin Gacheru.

The panel members were Mr Clive Sentance (teacher panellist – in the chair), Mrs Valerie Purnell-Simpson (lay panellist) and Mr Clive Ruddle (lay panellist).

The legal adviser to the panel was Ms Abigail Hubert of Birketts LLP solicitors.

The presenting officer for the TRA was Ms Leah Redden of Browne Jacobson LLP solicitors.

Mr Gacheru was not present and was not represented.

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

Allegations

The panel considered the allegations set out in the notice of proceedings dated 16 January 2023.

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

1. On or around 16 March 2017 he was convicted at Inner London Crown Court of the offences of:
 - a) 'Concerned in production of a controlled drug – Class B – cannabis' pursuant to Section 4(2)(b) Misuse of Drugs Act 1971; and
 - b) 'Enter arrangement to facilitate acquisition, retention, use or control of criminal property' pursuant to Section 328(1) Proceeds of Crime Act 2002;
2. On or around 30 August 2019, he was convicted at South West London Magistrates Court of the offence of 'Possessing Controlled Drug – Class A – MDMA' pursuant to Section 5(2) of Misuse of Drugs Act 1971;
3. On or around 10 December 2021, he was convicted at Kingston-upon-Thames Crown Court of the offence of 'rape of female aged 16 years or over' pursuant to Section 1 Sexual Offences Act 2003.

Mr Gacheru made no admission of fact.

Preliminary applications

Application to proceed in the absence of the teacher

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

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*).

The panel was satisfied that the notice of proceedings had been sent to Mr Gacheru in accordance with the Teacher misconduct: Disciplinary procedures for the teaching profession April 2018 (the 'Procedures').

The panel noted that Mr Gacheru was currently in prison but was satisfied that the notice of proceedings had been sent to the prison in which Mr Gacheru is residing. The panel

considered that the TRA had taken all reasonable steps to ensure that Mr Gacheru was aware that the matter would proceed in his absence including ensuring that the correspondence was sent to Mr Gacheru's most recent address by using the Find a Prisoner Service.

A letter enclosing a hearing bundle, which referred to the date of the hearing, was also sent to the prison in which Mr Gacheru was residing and proof of delivery was provided. The letter was signed for at the prison address albeit that the panel noted this would have been completed by administration staff for the prison and would have still had to be handed to Mr Gacheru.

The panel noted that Mr Gacheru had not sought an adjournment to the hearing and the panel did not consider that an adjournment would procure his attendance at a hearing.

The panel noted the risk of reaching the wrong conclusion as a result of not being able to hear from Mr Gacheru, but considered that there was a strong public interest for the hearing to take place particularly given the serious nature of the allegations. The panel considered that it would not be reasonable to wait for Mr Gacheru to be released from prison, nor did they consider that this would guarantee his attendance at a hearing.

There was no medical evidence before the panel that Mr Gacheru was unfit to attend the hearing. The panel also noted that there were no witnesses that would be affected by any delay.

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

The panel noted that since the date of the referral to the TRA in this case, new 'Teacher misconduct: Disciplinary procedures for the teaching profession' were published in May 2020 (the 'May 2020 Procedures'). The panel understands that the earlier provisions contained within the Procedures apply to this case, given that those provisions applied when the referral was made. Although the panel has the power to direct that the May 2020 Procedures should apply in the interests of justice or the public interest, the panel had received no representations that this should be the case. For the avoidance of doubt, therefore, the panel confirms that it has applied the April 2018 Procedures in this case.

Summary of evidence

Documents

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

- Section 1: Notice of hearing and response – pages 4 to 15

- Section 2: TRA documents – pages 17 to 95

In addition, the panel agreed to accept the following:

- A letter to Mr Gacheru from the TRA confirming a change of panellist.
- Supplementary bundle relevant to preliminary matters – pages 2 to 52
- Proceeding in absence application from the TRA

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

Witnesses

No witnesses were called to provide evidence at the 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 Gacheru commenced employment at Ricards Lodge High School ('the School') on 30 June 2014.

On 25 February 2016, the School received a notification letter from common law police disclosure, which stated that Mr Gacheru had been arrested for production of class B drugs at his home address and abstracting electricity. On 26 February 2016, the School suspended Mr Gacheru from his role pending the outcome of a disciplinary investigation, which was ongoing at the time of the referral.

Mr Gacheru was convicted on 16 March 2017 at Inner London Crown Court of the offences of: 1) 'Concerned in production of a controlled drug – Class B – cannabis' pursuant to Section 4(2)(b) Misuse of Drugs Act 1971; and 2) 'Enter arrangement to facilitate acquisition, retention, use or control of criminal property' pursuant to Section 328(1) Proceeds of Crime Act 2002.

In addition, Mr Gacheru was also later convicted of two further offences. On or around 30 August 2019, he was convicted at South West London Magistrates Court of the offence of 'Possessing Controlled Drug – Class A – MDMA' pursuant to Section 5(2) of Misuse of Drugs Act 1971 and on or around 10 December 2021, he was convicted at Kingston-upon-Thames Crown Court of the offence of 'rape of female aged 16 years or over' pursuant to Section 1 Sexual Offences Act 2003.

Findings of fact

The findings of fact are as follows:

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

- 1. On or around 16 March 2017 you were convicted at Inner London Crown Court of the offences of:**
 - a) ‘Concerned in production of a controlled drug – Class B – cannabis’ pursuant to Section 4(2)(b) Misuse of Drugs Act 1971; and**
 - b) ‘Enter arrangement to facilitate acquisition, retention, use or control of criminal property’ pursuant to Section 328(1) Proceeds of Crime Act 2002;**
- 2. On or around 30 August 2019, you were convicted at South West London Magistrates Court of the offence of ‘Possessing Controlled Drug – Class A – MDMA’ pursuant to Section 5(2) of Misuse of Drugs Act 1971;**
- 3. On or around 10 December 2021, you were convicted at Kingston-upon-Thames Crown Court of the offence of ‘rape of female aged 16 years or over’ pursuant to Section 1 Sexual Offences Act 2003.**

The panel 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 panel will accept the certificate of conviction as conclusive proof of both the conviction and the facts necessarily implied by the conviction, unless exceptional circumstances apply. The panel did not find that any exceptional circumstances applied in this case.

The panel had been provided with a copy of a memorandum of conviction or the certificate of conviction for each offence, from South West London Magistrates Court, Inner London Crown Court and Kingston upon Thomas Crown Court, which detailed that Mr Gacheru had been convicted of: 1) concerned in production of a controlled drug – Class B – cannabis; 2) enter arrangement to facilitate acquisition, retention, use or control of criminal property; 3) possessing Controlled Drug – Class A – MDMA; and 4) rape of female aged 16 years or over.

In respect of allegation 1, Mr Gacheru was sentenced to 8 months imprisonment, wholly suspended for 18 months. In addition, Mr Gacheru was ordered to complete an unpaid work requirement of 150 hours; forfeiture and destruction; and to pay a victim surcharge of £100. In respect of allegation 2, Mr Gacheru was ordered to pay a fine of £150; costs of £85; a victim surcharge of £30; and forfeiture and destruction. Lastly, in respect of

allegation 3, Mr Gacheru was sentenced to 7 years imprisonment and was ordered to pay a victim surcharge of £170 and placed on the sex offenders register for life.

On examination of the documents before the panel, the panel was satisfied that the facts of allegations 1, 2 and 3 were proven.

Findings as to conviction of a relevant offence

Having found the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to conviction of a relevant offence.

In doing so, the panel had regard to the Advice.

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

The panel noted that the Mr Gacheru's actions took place outside the education setting, however the panel was satisfied that his actions were relevant to teaching, working with children and/or working in an education setting. The panel noted the nature and gravity of the offences that Mr Gacheru had committed and the potential impact on pupils' lives if they were to be involved in taking, producing or supplying any illegal substances and took very seriously that Mr Gacheru had been convicted of such offences.

The panel considered that safeguarding is not just about protecting those pupils in a particular teacher's school but about pupils more generally. The panel further considered that being a teacher, and in an influential position, means that you need to be aware of the potential impact that your behaviour could have on pupils.

The panel noted that the behaviour involved 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 considered that Mr Gacheru should have been aware of the requirements of KCSIE and the serious and negative consequences for the School, and the safety of pupils, that arise out of the production, sale and use of illegal substances.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Gacheru's behaviour in committing these offences could

undoubtedly affect public confidence in the teaching profession, particularly given the influence that teachers may have on pupils, parents and others in the community. The panel noted that no parent would want someone that is not only teaching their children but also supposed to act as a role model being involved in such offences. The panel also noted that Mr Gacheru is going to remain on the sex offenders register for life.

The panel noted that Mr Gacheru's behaviour ultimately led to a sentence of imprisonment in respect of allegations 1, 2 and 3, (albeit the imprisonment was suspended in respect of allegations 1 and 2), which was indicative of the seriousness of the offences committed.

This was a case concerning offences involving possession of class A drugs, supplying of illegal substances of any classification and sexual activity, which the Advice states is more likely to be considered a relevant offence.

The panel also found that the seriousness of the offending behaviour that led to the convictions was relevant to Mr Gacheru's ongoing suitability to teach. The panel considered that a finding that these convictions were for relevant offences was necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of 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.

The panel were aware that 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 safeguarding and wellbeing of pupils and the protection of other members of the public; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct ;and that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In light of the nature of the offences for which Mr Gacheru was convicted, there was an extremely strong public interest consideration in respect of the protection of pupils and

other members of the public. His actions raised obvious and significant public protection concerns, as was clearly recognised by the court when imposing sentence.

The panel again noted the importance of safeguarding pupils and the impact that the production, sale and use of illegal substances can have within schools, on pupils and the public's confidence in the profession, if an individual was allowed to continue teaching with such convictions.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Gacheru was not treated with the utmost seriousness when regulating the conduct of the profession particularly given that Mr Gacheru had been added to the sex offenders register for life.

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 Gacheru 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 Gacheru. The panel was mindful of the need to strike the right balance between the rights of the teacher and the public interest.

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

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 in the bundle that Mr Gacheru's actions were not deliberate nor was there any evidence provided to suggest that Mr Gacheru was acting under extreme duress.

The panel noted the positive reference given by Mr Gacheru's PGCE Tutor in January 2014 however, this was relevant to Mr Gacheru's application for employment at the School. No other evidence was submitted to attest to Mr Gacheru's history or ability as a teacher. Nor was any evidence submitted which demonstrated exceptionally high standards in both personal and professional conduct or that he contributed significantly to the education sector.

The panel noted the comments made by the Judge at the Inner London Crown Court during sentencing however, no mitigation evidence was submitted on behalf of Mr Gacheru and the panel were unable to assess the level of insight or remorse Mr Gacheru had for his actions.

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 given the serious nature of the convictions. 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 Gacheru 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 Gacheru. The lack of insight and remorse 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 include serious sexual misconduct. The panel found that Mr Gacheru was responsible for such behaviour having been convicted of rape.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. These behaviours include possession (including for personal use) of any Class A drug; possession with intent to supply another person, and supply (selling, dealing or sharing) and production of any class A, B, C or unclassified drugs. The panel found that Mr Gacheru was responsible for having been convicted of two drug offences, including possession of a class A drug and production of a class B drug.

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 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 Austin Gacheru should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Gacheru 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; and
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The findings of relevant convictions are particularly serious as they include findings of drug related offences and sexual offences.

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 relevant convictions, 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 Gacheru, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and safeguard pupils. The panel has, “noted the nature and gravity of the offences that Mr Gacheru had committed and the potential impact on pupils’ lives if they were to be involved in taking, producing or supplying any illegal substances and took very seriously that Mr Gacheru had been convicted of such offences.”

The panel also, “considered that safeguarding is not just about protecting those pupils in a particular teacher’s school but about pupils more generally. The panel further considered that being a teacher, and in an influential position, means that you need to be aware of the potential impact that your behaviour could have on pupils.”

Finally, the panel, “noted that the behaviour involved 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, “The panel noted the comments made by the Judge at the Inner London Crown Court during sentencing however, no mitigation evidence was submitted on behalf of Mr Gacheru and the panel were unable to assess the level of insight or remorse Mr Gacheru had for his actions.” In my judgement, the lack of evidence of insight means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing 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 considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Gacheru was not treated with the utmost seriousness when regulating the conduct of the profession particularly given that Mr Gacheru had been added to the sex offenders register for life.” I am particularly mindful of the findings of both drug related and sexual convictions 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 relevant convictions, 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 Gacheru himself. The panel comment that it, “noted the positive reference given by Mr Gacheru’s PGCE Tutor in January 2014 however, this was relevant to Mr Gacheru’s application for employment at the School. No other evidence was submitted to attest to Mr Gacheru’s history or ability as a teacher. Nor was any evidence submitted which demonstrated exceptionally high standards in both personal and professional conduct or that he contributed significantly to the education sector.”

A prohibition order would prevent Mr Gacheru 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 concerning the lack of evidence of insight or remorse.

I have also placed considerable weight on the finding of the panel, “that Mr Gacheru had been added to the sex offenders register for life.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Gacheru 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 full remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended a that no provision should be made for a review period.

I have considered the published and the panel’s comments “The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct. The panel found that Mr Gacheru was responsible for such behaviour having been convicted of rape.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. These behaviours include possession (including for personal use) of any Class A drug; possession with intent to

supply another person, and supply (selling, dealing or sharing) and production of any class A, B, C or unclassified drugs. The panel found that Mr Gacheru was responsible for having been convicted of two drug offences, including possession of a class A drug and production of a class B drug.”

I have considered whether not allowing for a 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 that allowing for no review period is necessary are the nature of the relevant convictions and the lack of either insight or remorse.

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 Austin Gacheru 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 Austin Gacheru 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 Austin Gacheru has a right of appeal to the King’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', followed by a vertical line.

Decision maker: Alan Meyrick

Date: 31 March 2023

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