



Teaching
Regulation
Agency

Mr Michael Fogg: Professional conduct panel meeting outcome

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

May 2023

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

Teacher:	Mr Michael Fogg
Teacher ref number:	1671029
Teacher date of birth:	20 May 1991
TRA reference:	20849
Date of determination:	22 May 2023
Former employer:	Deneholm Primary School, Essex

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 22 May 2023, to consider the case of Mr Michael Fogg (“Mr Fogg”).

The panel members were Mr Adrian Meadows (teacher panellist – in the chair), Mr Stephen Chappell (lay panellist) and Ms Victoria Jackson (teacher panellist).

The legal adviser to the panel was Ms Carly Hagedorn 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 Fogg that the allegations be considered without a hearing. Mr Fogg provided a signed statement of agreed facts and admitted conviction of a relevant offence. The panel considered the case at a meeting without the attendance of the presenting officer Ms Laura Vignoles of Kingsley Napley LLP or Mr Fogg.

The meeting took place in private.

Allegations

The panel considered the allegations set out in the notice of meeting dated 21 February 2023.

It was alleged that Mr Fogg was convicted of a relevant offence, in that:

1. On 23 February 2022, at Chelmsford Crown Court, he was convicted of the following offences:
 - a. Distributing an indecent photograph or pseudo-photograph of a child, contrary to s.1(b) of the Protection of Children Act 1978 [1 Category B image];
 - b. Distributing an indecent photograph or pseudo-photograph of a child, contrary to s.1(b) of the Protection of Children Act 1978 [1 Category C image];
 - c. Making an indecent photograph or pseudo-photograph of a child, contrary to s.1(a) of the Protection of Children Act 1978 [5 Category A images];
 - d. Making an indecent photograph or pseudo-photograph of a child, contrary to s.1(a) of the Protection of Children Act 1978 [5 Category B images and 1 video];
 - e. Making an indecent photograph or pseudo-photograph of a child, contrary to s.1(a) of the Protection of Children Act 1978 [19 Category C images]; and/or
 - f. One offence of possessing extreme pornographic images, contrary to s.64 Criminal Justice and Immigration Act 2008 [bestiality].

Mr Fogg admitted to the facts of the above allegations and that they amounted to a conviction of a relevant offence.

Preliminary applications

There were no preliminary applications.

Summary of evidence

Documents

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

Section 1: Chronology and a list of key people – pages 3 to 4

Section 2: Initial letter to the teacher, Notice of Referral, Response and Notice of Meeting – pages 5 to 21

Section 3: Statement of Agreed Facts and Presenting Officer Representations – pages 22 to 25

Section 4: Teaching Regulation Agency documents – pages 26 to 27

Section 5: Teacher documents – page 36

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

Statement of agreed facts

The panel considered a statement of agreed facts which was signed by Mr Fogg on 25 January 2023. The panel noted that the Notice of Meeting dated 21 February 2023, contained the same allegations as set out in the statement of agreed facts.

Decision and reasons

The panel carefully considered the case and reached a decision.

In advance of the meeting, the TRA agreed to a request from Mr Fogg 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.

In May 2020, Essex police were advised that the internet connection at Mr Fogg's address was responsible for the upload of indecent images of children to an internet chat room. On 7 July 2020, Mr Fogg was arrested on suspicion of making, possessing and distributing indecent images of children. Mr Fogg was employed at Deneholm Primary School as a PE teacher at the time of his arrest and had given his notice to leave the school to commence employment at a secondary school.

On 23 February 2022, Mr Fogg was convicted of making and distributing indecent images of children and possessing an extreme photographic image. On 26 May 2022, Mr Fogg was sentenced to six months imprisonment which was suspended for 18 months, a 30 day Rehabilitation Activity Requirement, 150 hours unpaid work and a 7 year Sexual Harm Prevention Order.

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 23 February 2022, at Chelmsford Crown Court, you were convicted of the following offences:**

a. Distributing an indecent photograph or pseudo-photograph of a child, contrary to s.1(b) of the Protection of Children Act 1978 [1 Category B image];

Mr Fogg admitted this allegation in the statement of agreed facts.

The panel had sight of the certificate of conviction which stated that Mr Fogg who on 23 February 2022 *“was upon his own confession convicted on indictment of distributing an indecent photograph / pseudo photograph of a child.”*

The panel noted that as there had been a conviction of a criminal offence, the panel were required to 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 also reviewed the Transcript of Proceedings, where the Judge stated that *“distribution involved one category B...”*

The panel found allegation 1(a) proved.

b. Distributing an indecent photograph or pseudo-photograph of a child, contrary to s.1(b) of the Protection of Children Act 1978 [1 Category C image];

Mr Fogg admitted this allegation in the statement of agreed facts.

The panel had sight of the certificate of conviction which stated that Mr Fogg who on 23 February 2022 *“was upon his own confession convicted on indictment of distributing an indecent photograph / pseudo photograph of a child.”*

The panel noted that as there had been a conviction of a criminal offence, the panel were required to 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 also reviewed the Transcript of Proceedings, where the Judge stated that *“distribution involved one category B, one category C..”*

The panel found allegation 1(b) proved.

c. Making an indecent photograph or pseudo-photograph of a child, contrary to s.1(a) of the Protection of Children Act 1978 [5 Category A images];

Mr Fogg admitted this allegation in the statement of agreed facts.

The panel had sight of the certificate of conviction which stated that Mr Fogg who on 23 February 2022 *“was upon his own confession convicted on indictment of making indecent photograph / pseudo photograph of a child.”*

The panel noted that as there had been a conviction of a criminal offence, the panel were required to 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 also reviewed the Transcript of Proceedings, where the Judge stated that *“making involved five category A...”*

The panel found allegation 1(c) proved.

d. Making an indecent photograph or pseudo-photograph of a child, contrary to s.1(a) of the Protection of Children Act 1978 [5 Category B images and 1 video];

Mr Fogg admitted this allegation in the statement of agreed facts.

The panel had sight of the certificate of conviction which stated that Mr Fogg who on 23 February 2022 *“was upon his own confession convicted on indictment of making indecent photograph / pseudo photograph of a child.”*

The panel noted that as there had been a conviction of a criminal offence, the panel were required to 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 also reviewed the Transcript of Proceedings, where the Judge stated that *“making involved five category A, five category B and one video...”*

The panel found allegation 1(d) proved.

e. Making an indecent photograph or pseudo-photograph of a child, contrary to s.1(a) of the Protection of Children Act 1978 [19 Category C images]; and/or

Mr Fogg admitted this allegation in the statement of agreed facts.

The panel had sight of the certificate of conviction which stated that Mr Fogg who on 23 February 2022 *“was upon his own confession convicted on indictment of making indecent photograph / pseudo photograph of a child.”*

The panel noted that as there had been a conviction of a criminal offence, the panel were required to 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 also reviewed the Transcript of Proceedings, where the Judge stated that *“making involved five category A, five category B and one video and 19 category C’s.”*

The panel found allegation 1(e) proved.

f. One offence of possessing extreme pornographic images, contrary to s.64 Criminal Justice and Immigration Act 2008 [bestiality].

Mr Fogg admitted this allegation in the statement of agreed facts.

The panel had sight of the certificate of conviction which stated that Mr Fogg who on 23 February 2022 *“was upon his own confession convicted on indictment of possessing extreme pornographic images.”*

The panel noted that as there had been a conviction of a criminal offence, the panel were required to 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 found allegation 1(f) proved.

Findings as to conviction of a relevant offence

The panel was satisfied that the conduct of Mr Fogg, in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr Fogg was in breach of the following standard:

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

The panel noted that the behaviour involved in committing the offence would have been likely to 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 Fogg's behaviour in committing these serious offences would be likely to affect public confidence in the teaching profession, if Mr Fogg was allowed to continue teaching.

The panel noted that Mr Fogg's behaviour ultimately led to a sentence of imprisonment, (albeit that it was suspended), which was indicative of the seriousness of the offences committed, and which the Advice states is likely to be considered “a relevant offence”.

This was a case concerning offences involving distributing, making and possessing indecent photographs or images or indecent pseudo photographs or images of a child.

The Advice indicates that a conviction for any offence that relates to or involves such offences is likely to be considered “a relevant offence”.

The panel noted the gravity of the offences which resulted in Mr Fogg receiving a suspended prison sentence and the requirement for him to sign the sex offender notification register to run for seven years.

The panel took into consideration Mr Fogg's letter dated 25 November 2022 where he expressed remorse and regret, however, the panel noted the fact that there was no evidence to attest to Mr Fogg's ability as a teacher.

The transcript of proceedings dated 26 May 2022 refers to references from Mr Fogg's friends, mother and sister. The panel did not have sight of these references.

The panel found that the seriousness of the offending behaviour that led to the conviction was relevant to Mr Fogg's fitness to be a teacher. The panel considered that a finding that this conviction was for a relevant offence 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 is appropriate, the panel had to consider the public interest, the seriousness of the behaviour and any mitigation offered by Mr Fogg and whether a prohibition order is necessary and proportionate. 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 and declaring and upholding proper standards of conduct.

In the light of the panel's findings against Mr Fogg, which involved a finding for a conviction of a relevant offence for distributing and making incident photographs or pseudo photographs of a child and possessing an extreme pornographic image [bestiality], there was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the nature of the conviction.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Fogg 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 Fogg was significantly outside that which could reasonably be tolerated.

The panel considered carefully the seriousness of the behaviour, noting that the Advice states that the expectation of both the public and pupils, is that members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times.

The panel took further account of the Advice, which suggests that a panel will likely consider a teacher's behaviour to be incompatible with being a teacher if there is evidence of one or more of the factors that begin on page 15. In the list of such factors, those that were relevant in this case were:

- 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 disclosure;
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, or permitting such activity, including one-off incidents;

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, taking account of the public interest and the seriousness of the behaviour and the likely harm to the public interest were the teacher be allowed to continue to teach, the panel went on to consider whether there were mitigating circumstances.

There was no evidence that Mr Fogg's actions were not deliberate. Mr Fogg acknowledged in his letter dated 25 November 2022 that his crimes were "*disgusting*".

There was no evidence to suggest that Mr Fogg was acting under extreme duress, and, in fact, the panel found Mr Fogg's actions to be calculated and motivated.

The panel did not have sight of any evidence to attest to his ability as a teacher or previous history in respect of his personal and professional conduct.

The panel noted that Mr Fogg pleaded guilty to the offences and he admitted all of the allegations put to him in respect of this TRA case. The panel noted his personal reflections in his letter dated 25 November 2022, where Mr Fogg stated "*Just to say sorry does not come close to explaining the feeling of remorse and regret I feel and I would do anything to rewind time and take everything back.*"

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 Fogg 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 Fogg. The nature and seriousness of his conviction was a significant factor in forming that

opinion. The panel also noted the comments of the Judge stating that it was “*not a victimless crime.*” 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 cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period. One of these cases include any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one off incidents. Mr Fogg was convicted for distributing and making indecent photographs or pseudo photographs of a child and possessing an extreme pornographic image, which directly links to the above offence listed in the advice for not offering a review period. The panel noted the comments from the Judge, who said “*you found sexually enticing images of children aged, it seems, between about seven to 15.*”

The panel noted Mr Fogg’s remorse, but this did not demonstrate how Mr Fogg has sought to address his behaviour. The panel placed considerable weight on the comments from the Judge in the transcript of proceedings, who stated that Mr Fogg “*developed an addiction of some kind to indecent images of children.*” The panel noted the nature and seriousness of the offences for which he received a suspended prison sentence. The panel considered the risk to the reputation of the profession if Mr Fogg were allowed to teach again.

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 a relevant conviction.

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

In particular, the panel has found that Mr Fogg is in breach of the following standard:

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

The panel finds that the conduct of Mr Fogg fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding of a conviction of a relevant offence for distributing and making incident photographs or pseudo photographs of a child and possessing an extreme pornographic image [bestiality].

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 Fogg, 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/safeguard pupils. The panel has observed that "...the behaviour involved in committing the offence would have been likely to 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 that Mr Fogg pleaded guilty to the offences and he admitted all of the allegations put to him in respect of this TRA case. The panel also noted his personal reflections in his letter dated 25 November 2022, where Mr Fogg stated *"Just to say sorry does not come close to explaining the feeling of remorse and regret I feel and I would do anything to rewind time and take everything back."* The panel also notes that Mr Fogg acknowledged in his letter dated 25 November 2022 that his crimes were *"disgusting"*.

However, the panel also states that "There was no evidence to suggest that Mr Fogg was acting under extreme duress, and, in fact, the panel found Mr Fogg's actions to be calculated and motivated." The panel also records that it "...noted Mr Fogg's remorse,

but this did not demonstrate how Mr Fogg has sought to address his behaviour. The panel placed considerable weight on the comments from the Judge in the transcript of proceedings, who stated that Mr Fogg “*developed an addiction of some kind to indecent images of children.*” In my judgement, the lack of full insight and remorse 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, “...that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Fogg were not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the seriousness of the panel’s findings of offences involving distributing, making and possessing indecent photographs or images or indecent pseudo photographs or images of a child in this case and the impact that such findings have 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 a relevant conviction, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Fogg himself and the panel’s comment “The panel did not have sight of any evidence to attest to his ability as a teacher or previous history in respect of his personal and professional conduct.”

A prohibition order would prevent Mr Fogg from teaching. A prohibition order 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 full insight or remorse. I refer again to the fact that in the panel’s words it “...noted Mr Fogg’s remorse, but this did not demonstrate how Mr Fogg has sought to address his behaviour. The panel placed considerable weight on the comments from the Judge in the transcript of proceedings, who stated that Mr Fogg “*developed an addiction of some kind to indecent images of children.*”

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

I have considered the panel's comments "The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period. One of these cases include any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one off incidents. Mr Fogg was convicted for distributing and making indecent photographs or pseudo photographs of a child and possessing an extreme pornographic image, which directly links to the above offence listed in the advice for not offering a review period. The panel noted the comments from the Judge, who said *"you found sexually enticing images of children aged, it seems, between about seven to 15."*

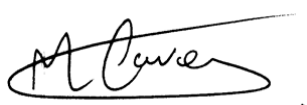
In this case, factors mean that allowing a review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the seriousness of the findings, involving making indecent photographs or pseudo photographs of a child and possessing an extreme pornographic image, and the lack of full insight and 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 Michael Fogg 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 Fogg 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 Fogg 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.



Decision maker: Marc Cavey

Date: 24 May 2023

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