



Teaching
Regulation
Agency

Mr Lee Startup: Professional conduct panel 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 Lee Startup

Teacher ref number: 9958547

Teacher date of birth: 5 January 1973

TRA reference: 19885

Date of determination: 17 May 2023

Former employer: Ursuline College, Kent

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 17 May 2023 remotely via Microsoft Teams, to consider the case of Mr Startup.

The panel members were Mrs Sharon Bhogal (teacher panellist – in the chair), Mr Diarmuid Bunting (lay panellist), and Mrs Valerie Purnell-Simpson (lay panellist).

The legal adviser to the panel was Miss Sarah Price of Blake Morgan solicitors LLP.

The presenting officer for the TRA was Mr Charles McCombe, Counsel instructed by Kingsley Napley LLP.

Mr Startup 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 hearing dated 20 February 2023.

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

1. On 9 September 2021, he was convicted of engaging in sexual communication with a child, contrary to Section 15A of the Sexual Offences Act 2003.

Mr Startup has not formally responded to the allegation, so the case was dealt with as a disputed case.

Preliminary applications

The panel considered an application from the presenting officer to proceed in the absence of Mr Startup.

The panel accepted the legal advice provided in relation to this application and took account of the factors referred to it, as derived from guidance set down in R v Jones [2003] 1 AC 1 (as considered and applied in subsequent cases, including GMC v Adeogba).

The panel was satisfied that the notice of hearing had been sent to Mr Startup in accordance with the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession (2020).

The panel concluded that Mr Startup's absence was voluntary and he was aware that the matter would proceed in his absence. The panel noted that Mr Startup had not sought an adjournment and the panel did not consider that an adjournment would secure his attendance at a future date. There was no evidence to suggest Mr Startup was unfit to attend the hearing. The panel considered that it was in the public interest for the hearing to take place.

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 4

Section 2: Notice of hearing – pages 5 to 8

Section 3: Teaching Regulation Agency documents – pages 9 to 157

Section 4: Teacher documents – pages 158 to 162

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

Witnesses

The panel did not hear any oral evidence.

Decision and reasons

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

Mr Startup had been employed as curriculum leader for geography at Ursuline College ("the School") since 11 April 2016. On 28 August 2020, Mr Startup was arrested by Kent Police. On 9 September 2021, Mr Startup was convicted of engaging in sexual communication with a child. On 20 January 2022, Mr Startup was sentenced to 12 months imprisonment (suspended for 24 months), made subject to a sexual harm prevention order for 10 years and required to sign the sex offenders register for 10 years.

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 have been convicted of a relevant offence at any time in that:

1. On 9 September 2021, you were convicted of engaging in sexual communication with a child, contrary to Section 15A of the Sexual Offences Act 2003

The panel was provided with a certificate of conviction as proof of the commission of the offences concerned. The allegation was supported by evidence presented to the panel.

The allegation was therefore, found proved.

Findings as to conviction of a relevant offence

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

In doing so, the panel had regard to the document *Teacher Misconduct: The Prohibition of Teachers*, which is referred to as “the Advice”.

The panel was satisfied that the conduct of Mr Startup in relation to the facts it found proved, involved breaches of the Teachers’ Standards. The panel considered that by reference to Part 2, Mr Startup 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.
- 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 behaviour involved in committing the offence could have had an impact on the safety and security of pupils and members of the public.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Startup's behaviour in committing the offence 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 Startup's behaviour ultimately led to a sentence of imprisonment, (albeit that it was suspended), which was indicative of the seriousness of the offence committed.

This was a case concerning an offence involving sexual communication with a child which the Advice states is likely to be considered a relevant offence.

The panel considered whether there was any evidence of mitigating circumstances. The panel noted that there was evidence from Mr Startup that the effect of alcohol misuse may have impacted his behaviour, but there was limited information about this.

The panel found that the seriousness of the offending behaviour that led to the conviction was relevant to Mr Startup's ongoing suitability to teach. 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 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 a 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 protection of other members of the public; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

There was a strong public interest consideration in respect of the protection of pupils, given the conviction for engaging in sexual communication with a child.

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

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 Startup. The panel took further account of the Advice, which states that the level of trust and responsibility that members of the teaching profession hold means that the expectation, of both the public and pupils, is that all members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times.

The Advice 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 well-being of pupils, and particularly where there is a continuing risk;
- sexual misconduct, e.g. 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;
- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE);
- a deep-seated attitude that leads to harmful behaviour.

Even though the behaviour found proved in this case indicated that a prohibition order would likely 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.

The panel found that Mr Startup's actions were deliberate. There was no evidence to suggest that Mr Startup was acting under duress.

The panel had no evidence that Mr Startup was previously subject to disciplinary proceedings or warnings. The panel was not provided with any testimonial evidence speaking of Mr Startup's character. The panel inferred from the evidence in the hearing bundle that Mr Startup was a good teacher, but there was no evidence that he was an exceptional teacher or has made a significant contribution to the teaching profession.

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 Startup 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 Startup. The seriousness of the criminal offence which involved sexual communication

with a real child was a significant factor in forming that opinion. The panel noted that in the sentencing remarks, the Judge stated that *"Posing as someone under half of your chronological age, you actively engaged in sexualised communication with a real child..."*. 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. One of these behaviours includes any sexual misconduct involving a child. The panel found that Mr Startup was responsible for sexual communication with a real child.

The panel was not provided with evidence that Mr Startup had clearly demonstrated insight or remorse into his behaviour. The panel had sight of the Judge's sentencing remarks, which stated *"The messages were explicit, I'm afraid, and provide a clear indication of you having sexual interest in children of her age. And I'm afraid your protestations to the contrary somewhat dilute your expressions of remorse"*.

There is no evidence before the panel to demonstrate that Mr Startup has proactively taken meaningful steps to minimise the risk of repetition of his behaviour. The panel did note that in the sentencing remarks, the Judge stated *"It also seems to me that because you have already started with efforts to try to understand what led to your offending of this nature, I have just about been convinced that I can avoid sending you to prison today"*.

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

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

The finding of misconduct is particularly serious as it concerns a conviction for a relevant offence involving sexual communication with a child.

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 Startup, 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, "the behaviour involved in committing the offence could have had an impact on the safety and security of pupils and 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 was not provided with evidence that Mr Startup had

clearly demonstrated insight or remorse into his behaviour. The panel had sight of the Judge's sentencing remarks, which stated "*The messages were explicit, I'm afraid, and provide a clear indication of you having sexual interest in children of her age. And I'm afraid your protestations to the contrary somewhat dilute your expressions of remorse*".

The panel also states that "There is no evidence before the panel to demonstrate that Mr Startup has proactively taken meaningful steps to minimise the risk of repetition of his behaviour. The panel did note that in the sentencing remarks, the Judge stated "*It also seems to me that because you have already started with efforts to try to understand what led to your offending of this nature, I have just about been convinced that I can avoid sending you to prison today*". "

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 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 Startup were not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding of conviction of an offence involving sexual communication with a child 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 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 Startup himself and the panel's comment that "The panel had no evidence that Mr Startup was previously subject to disciplinary proceedings or warnings. The panel was not provided with any testimonial evidence speaking of Mr Startup's character. The panel inferred from the evidence in the hearing bundle that Mr Startup was a good teacher, but there was no evidence that he was an exceptional teacher or has made a significant contribution to the teaching profession."

A prohibition order would prevent Mr Startup 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 insight or remorse. I refer again to the panel's comment that words that "The panel was not provided with evidence that Mr Startup had clearly demonstrated insight or remorse into his behaviour. The panel had sight of the Judge's sentencing remarks, which stated "*The messages were explicit, I'm afraid, and provide a clear indication of you having sexual interest in children of her age. And I'm afraid your protestations to the contrary somewhat dilute your expressions of remorse*"."

I have also placed considerable weight on the finding of the panel that public interest considerations outweighed the interests of Mr Startup, and that the seriousness of the criminal offence which involved sexual communication with a real child was a significant factor in forming its view that prohibition was both proportionate and appropriate.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Startup 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 that "The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. One of these behaviours includes any sexual misconduct involving a child. The panel found that Mr Startup was responsible for sexual communication with a real child."

I have considered whether not allowing a review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, factors mean that allowing a review period is not sufficient to achieve the aim of maintaining public confidence in the profession. This element is the seriousness of the finding of conviction for a criminal offence which involved sexual communication with a real child and the lack of either 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 Lee Startup 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 allegation found proved against him, I have decided that Mr Startup 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 Startup 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 'D Oatley', with a large, sweeping flourish at the end.

Decision maker: David Oatley

Date: 26 May 2023

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