



Teaching  
Regulation  
Agency

# **Mr James Ndungu Professional conduct panel meeting outcome**

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

**June 2023**

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

**Teacher:** Mr James Ndungu

**Teacher ref number:** 0442985

**Teacher date of birth:** 17 September 1975

**TRA reference:** 19836

**Date of determination:** 12 June 2023

**Former employer:** Blessed Edward Oldcorne Catholic School, Worcester.

### **Introduction**

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened by virtual means, to consider the case of Mr James Ndungu.

The panel members were Mr Martyn Stephens (lay panellist – in the chair), Ms Jackie Hutchings (teacher panellist) and Mr Adrian Meadows (teacher panellist).

The legal adviser to the panel was Mrs Luisa Gibbons 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 Ndungu that the allegations be considered without a hearing. Mr Ndungu 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 Louise Murphy-King of Kingsley Napley LLP or Mr Ndungu.

The meeting took place in private.

## **Allegations**

The panel considered the allegations set out in the notice of meeting dated 8 March 2023

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

1. On 17 August 2021, he was convicted of two counts of attempting to engage in sexual communication with a child contrary to the Sexual Offences Act 2003 s 15A (1);
2. On 17 August 2021, he was convicted of arranging/facilitating the commission of a child sex offence contrary to the Sexual Offences Act 2003 s14.

Mr Ndungu admitted both the facts alleged and that he was guilty of having been convicted 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 list of key people - pages 1 to 2

Section 2: Notice of referral, response and notice of meeting pages 3 to 9

Section 3: Statement of agreed facts and presenting officer representations – pages 10 to 14

Section 4: Teaching Regulation Agency documents – pages 15 to 105

Section 5: Teacher documents – pages 106 to 107

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 Ndungu on 10 August 2022 by adding his typed name to the document. The panel has seen an email from Mr Ndungu to the presenting officer returning the “signed” statement of agreed facts on the same date.

## Decision and reasons

The panel announced its decision and reasons as follows:

The panel carefully considered the case and reached a decision.

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

Mr Ndungu was employed as a teacher of religious education at Blessed Edward Oldcorne Catholic College ("the College") from 1 September 2005. Mr Ndungu was arrested on 11 October 2020. He was suspended from his role on 21 October 2020 and resigned on 22 February 2021.

## 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 17 August 2021, you were convicted of two counts of attempting to engage in sexual communication with a child contrary to the Sexual Offences Act 2003 s 15A (1);**
- 2. On 17 August 2021, you were convicted of arranging/facilitating the commission of a child sex offence contrary to the Sexual Offences Act 2003 s14.**

In response to the notice of referral form dated 23 April 2022, Mr Ndungu confirmed that he admitted the allegations against him. In the statement of agreed facts Mr Ndungu also admitted the above allegations. In the statement of agreed facts, Mr Ndungu confirmed that he had set up a profile "blackteacheruk" on a chat site, and began communicating with someone on 5 October 2020 who told him that she was 14. Mr Ndungu admitted that he responded "am okay with ur age". He admitted that he exchanged messages with the person stating "Are u horny" and "Are u feeling sexual". He admitted that he also communicated with the person using WhatsApp. He admitted that other messages were sent to the person asking about her sexual arousal and suggesting that he wanted to touch her nipples. In response to the person stating that nobody knew that she was chatting with him, Mr Ndungu admitted that he responded "It is our secret" and when asked why, he replied "Ur under 16 and am older".

In the statement of agreed facts, Mr Ndungu admitted that he asked the person to attend his house and stay the night.

The panel has seen the certificate of conviction confirming that Mr Ndungu was convicted on 17 August 2021 of the offences as alleged. The panel accepted the certificate of conviction as conclusive proof of both the convictions and the facts necessarily implied by the convictions.

The panel also saw the police national computer print out which confirmed that for the offence of arranging/ facilitating the commission of a child sex offence, Mr Ndungu was sentenced to 15 months imprisonment, suspended for 24 months, ordered to be placed on the barring list, a rehabilitation activity requirement of 25 days, an unpaid work requirement of 200 hours, a sexual harm prevention order of 10 years, a sex offenders notice of 10 years, costs of £300 and a victim surcharge of £156. For each of the two offences of attempting to engage in sexual communications with a child, Mr Ndungu received a 10 month sentence of imprisonment, suspended for 24 months, to be served concurrently.

## **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 having been convicted 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 Ndungu in relation to the facts it found proved, involved breaches of the Teachers’ Standards. The panel considered that by reference to Part 2, Mr Ndungu 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 individual's actions were relevant to teaching, working with children and working in an education setting, since they indicated that Mr Ndungu had a sexual interest in children.

The panel noted that, had the person that Mr Ndungu communicated with been of the age that Mr Ndungu believed (the person was actually a decoy posing as a child), the behaviour involved in committing the offence would have been likely to have had an impact on the safety of that person.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Ndungu's behaviour in committing the offence would be likely to affect public confidence in the teaching profession, if Mr Ndungu was allowed to continue teaching.

The panel noted that Mr Ndungu'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 an offence involving sexual communication with 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 regarded Mr Ndungu's offences to be serious. He not only engaged in sexual communication with a person he believed to be a child but went on to seek to meet with her. This would have placed a child at significant risk of harm.

The panel took into account that Mr Ndungu had taught at the School for 15 years without any previous issues during his employment. Although the panel found that the duration of Mr Ndungu's teaching experience was of note, the panel also found that the seriousness of the offending behaviour that led to the conviction was relevant to Mr Ndungu's fitness to be a teacher. 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 is appropriate, the panel had to consider the public interest, the seriousness of the behaviour and any mitigation offered by Mr Ndungu 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; the maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct.

There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the serious findings of attempting to engage in sexual communication with a child and arranging/facilitating the commission of a child sexual offence.

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

There is evidence that Mr Ndungu had ability as an educator since there were no previous issues during his 15 years of employment with the College. However, the panel considered that the adverse public interest considerations outweighed any interest in retaining Mr Ndungu in the profession, since his behaviour fundamentally breached the standard of conduct expected of a teacher, and he sought to exploit his position of trust. His profile clearly identified him as a teacher.

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 noted that a teacher's behaviour that seeks to exploit their position of trust should be viewed very seriously in terms of its potential influence on pupils and be seen as a possible threat to the public interest.

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:

- 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 disclosure;



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

abuse of position or trust (particularly involving vulnerable pupils)

an abuse of any trust, knowledge, or influence gained through their professional position in order to advance a romantic or sexual relationship with a pupil or former pupil;

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;

a deep-seated attitude that leads to harmful behaviour;

dishonesty or a lack of integrity, including the deliberate concealment of their actions or purposeful destruction of evidence, especially where these behaviours have been repeated or had serious consequences, or involved the coercion of another person to act in a way contrary to their own interests.

In this case, Mr Ndungu attempted to abuse his position by referencing and evidencing his position as a teacher to engender the trust of the person with whom he was communicating. The panel considered that he had a deep seated attitude as over the course of a number of days, he communicated with the person to groom them to agree to attend his house, whilst his wife was in work and his children asleep. The panel noted that Mr Ndungu encouraged the person to keep their communications secret. He also refused to provide the police with his pin number for his phone to seek to frustrate the examination of his phone.

The Advice states that panels should attach appropriate weight and seriousness to online behaviours. In this case, the panel viewed Mr Ndungu's online behaviours particularly seriously since his actions were preparatory to attempting to commit physical sexual abuse.

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 the mitigation offered by the teacher; and whether there were mitigating circumstances.

Mr Ndungu's actions were deliberate. Over a course of a number of days, he cultivated his relationship with the person with whom he was communicating with a view to grooming that person for physical sexual abuse.

There was no evidence to suggest that Mr Ndungu was acting under extreme duress, e.g. a physical threat or significant intimidation and, in fact, the panel found Mr Ndungu's actions to be calculated and motivated.

The panel has seen no evidence to call into question Mr Ndungu's performance as a teacher, but there was no evidence of him having demonstrated exceptionally high standards in both his personal and professional conduct and having contributed significantly to the education sector.

Mr Ndungu did not adduce any character statements for the purpose of this hearing attesting to his character or proficiency as a teacher. The panel noted that, at the time of Mr Ndungu's application to the College, references were sought. A reference from a priest that tutored Mr Ndungu during theological training stated that Mr Ndungu had a strong background of philosophy and theology, that he could work well without supervision, collaborate with an employer and was ready to work with people of different ideologies. Another reference from Mr Ndungu's tutor during the PGCE course referred to Mr Ndungu having made fine progress, having good subject knowledge, developed sound classroom skills, his willingness to learn and his readiness to respond to advice. The reference confirmed that no reason was known why Mr Ndungu should not be given responsibility for young people.

The panel noted that Mr Ndungu's letter of resignation dated 22 February 2021 to the College stated that he had decided to try and clear his name. Neither the certificate of conviction, nor the PNC record confirm whether Mr Ndungu pleaded guilty. Nevertheless, he has made admissions for the current proceedings, enabling a decision to be made without necessitating the cost of a contested hearing.

Mr Ndungu provided representations on 5 August 2022 stating that he was incredibly sorry for the actions that led to his conviction. He stated that he recognised that he made a big mistake that led to his conviction and that he regretted it every day. He has expressed that he feels ashamed, that he recognises the pain that he has caused to his family and the shame he has brought to the teaching profession. He stated that since his conviction, he has taken a lot of time to reflect on what led to the offence and provided an assurance that he has not re-offended again. He stated that he is working very hard to rebuild his life and to be a good citizen who respects the rule of law. He has referred to his love of teaching and his sadness that he has lost that as a result of his offences and conviction. He has expressed remorse to the students he taught or interacted with, the local community for letting them down and undermining the respect they have for teachers. He expressed gratitude towards the presenting officer and the panel for the time they have taken. The panel saw that Mr Ndungu had regretted his actions, and that there was some genuine reflection. However, the panel did not see any insight as to the effect his actions would have had on a child, had the person been of the age that he had believed at the time. Mr Ndungu has provided no independent evidence of the impact of his rehabilitation activity requirement or evidence of family or friends that might have afforded comfort regarding the possibility of his reoffending.

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 Ndungu 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 Ndungu. The safeguarding risk that Mr Ndungu posed 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 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. These cases include serious sexual misconduct, e.g. 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; and any sexual misconduct involving a child.

There was no independent evidence that Mr Ndungu now poses a lesser risk than at the time of his original offending.

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

In particular, the panel has found that Mr Ndungu 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 panel finds that the conduct of Mr Ndungu fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding concerning an offence involving sexual communications 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 Ndungu, 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 observed, "There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the serious findings of attempting to engage in sexual communication with a child and arranging/facilitating the commission of a child sexual offence." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "Mr Ndungu provided representations on 5 August 2022 stating that he was incredibly sorry for the actions that led to his conviction. He stated that he recognised that he made a big mistake that led to his conviction and that he regretted it every day. He has expressed that he feels ashamed, that he recognises the pain that he has caused to his family and the shame he has brought to the teaching profession. He stated that since his conviction, he has taken a lot of time to reflect on what led to the offence and provided an assurance that he has not re-offended again. He stated that he is working very hard to rebuild his life and to be a good citizen who respects the rule of law. He has referred to his love of teaching and his sadness that he has lost that as a result of his offences and conviction. He has expressed remorse to the students he taught or interacted with, the local community for letting them down and undermining the respect they have for teachers." I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Ndungu's behaviour in committing the offence would be likely to affect public confidence in the teaching profession, if Mr Ndungu was allowed to continue teaching." I am particularly mindful of the finding of a conviction 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 Ndungu himself and the panel comment "The panel has seen no evidence to call into question Mr Ndungu's performance as a teacher, but there was no evidence of him having demonstrated exceptionally high standards in both his personal and professional conduct and having contributed significantly to the education sector."

A prohibition order would prevent Mr Ndungu 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. The panel has said, "The panel saw that Mr Ndungu had regretted his

actions, and that there was some genuine reflection. However, the panel did not see any insight as to the effect his actions would have had on a child, had the person been of the age that he had believed at the time. Mr Ndungu has provided no independent evidence of the impact of his rehabilitation activity requirement or evidence of family or friends that might have afforded comfort regarding the possibility of his reoffending.”

I have also placed considerable weight on the finding of the panel that “Mr Ndungu’s actions were deliberate. Over a course of a number of days, he cultivated his relationship with the person with whom he was communicating with a view to grooming that person for physical sexual abuse.”

In addition I have given weight to the following finding from the panel “In this case, Mr Ndungu attempted to abuse his position by referencing and evidencing his position as a teacher to engender the trust of the person with whom he was communicating. The panel considered that he had a deep seated attitude as over the course of a number of days, he communicated with the person to groom them to agree to attend his house, whilst his wife was in work and his children asleep. The panel noted that Mr Ndungu encouraged the person to keep their communications secret. He also refused to provide the police with his pin number for his phone to seek to frustrate the examination of his phone.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Ndungu 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 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. These cases include serious sexual misconduct, e.g. 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; and any sexual misconduct involving a child.” The panel has also said “there was no independent evidence that Mr Ndungu now poses a lesser risk than at the time of his original offending.”

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 sexual communication with a child and the lack of full insight.

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 James Ndungu 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 Ndungu 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 James Ndungu 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 'S Buxcey', with a stylized, cursive script.

**Decision maker: Sarah Buxcey**

**Date: 14 June 2023**

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