



Teaching
Regulation
Agency

Ms Grainne Smyth: Professional conduct panel outcome

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

September 2023

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

Teacher: Ms Grainne Smyth
Teacher ref number: 9556391
Date of determination: 05 September 2023
Former employer: Leytonstone School, London

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 04 and 05 September 2023 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT, to consider the case of Ms Grainne Smyth.

The panel members were Mr Paul Millett (lay panellist - Chair), Ms Diana Barry (teacher panellist) and Mr Nicholas Catterall (lay panellist – attending virtually).

The legal adviser to the panel was Miss Shanie Probert of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Tom Sherrington of Browne Jacobson solicitors.

Ms Smyth was present and was represented by Ms Peta-Louise Bagott of Doughty Street Chambers instructed by Mr Mark Soames of Simons Muirhead Burton solicitors.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegation set out in the notice of proceedings dated 21 June 2023.

It was alleged that Ms Smyth was guilty of having been convicted of a relevant offence, in that on 05 November 2021, she was convicted at Snaresbrook Crown Court of 2 counts of Fraud contrary to S.1 of the Fraud Act 2006.

The panel noted that Ms Smyth had admitted the allegation and had further admitted that she was convicted of a relevant offence.

Preliminary applications

Excluding the public

The panel considered whether to exercise its discretion under paragraph 11 of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and paragraph 4.57 of the Teacher Misconduct: Disciplinary procedures for the teaching profession, April 2018 (the "Procedures") to exclude the public from all or part of the hearing. This followed a request by the teacher that the hearing should be in private.

The panel determined to exercise its discretion under paragraph 11(3)(b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures that the public should be excluded from the hearing.

The panel had taken into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. On this occasion, however, the panel considered that the request for the hearing to be heard in private was a reasonable one given concerns about confidential matters relating to the teacher's health being placed in the public domain.

In this case, the panel also considered that matters relating to the teacher's health could be dealt with separately from other non-health-related factual matters, and therefore it would be appropriate and practicable to exclude the public from parts of the hearing only.

The panel had regard to whether the teacher's request ran contrary to the public interest. The panel noted that it would be required to announce its decisions in public as to whether the facts have been proven and whether those facts amount to a conviction of a relevant offence. The panel also noted that in the event that the case continued, any decision of the Secretary of State would also be in public. The panel considered that in the circumstances of this case the public interest would be satisfied by those public

announcements. Those public announcements would ensure that public confidence in these proceedings and in the standards of the profession are maintained.

The panel agreed that the public could be excluded for the hearing in part insofar as those parts dealt with confidential matters relating to the teacher's health only, and that the remainder of the hearing (that did not deal with confidential matters relating to the teacher's health) would be heard in public.

Admissibility of a late document

The teacher applied to admit one additional document. The document was not served in accordance with the requirements of paragraph 4.20 of the Procedures, and as such the panel was required to decide whether those documents should be admitted under paragraph 4.25 of the Procedures at the discretion of the panel.

Under paragraph 4.18 of the Procedures, the panel may admit any evidence where it is fair to do so and which may reasonably be considered to be relevant to the case.

The panel noted that the presenting officer did not have any objections to the document being admitted.

The panel was satisfied that the document was relevant to the case, as it was the Witness Statement of Witness A, who was attending the hearing to give testimonial evidence by video link and could be questioned on her evidence.

By reason of the above, the panel decided to admit the document.

Witness attendance by video-link

The panel was asked to consider whether both Witness A and Witness B should be permitted to give evidence via video link.

The panel considered whether both Witness A and Witness B fell within the category of vulnerable witnesses which is defined in paragraph 4.71 of the Procedures as being a person whose "quality of evidence is likely to be adversely affected at a hearing". The panel noted the examples of witnesses that require special consideration and considered that the circumstances of both Witness A and Witness B were not akin to those examples, and the panel considered that those circumstances would not be relevant in this instance.

Whilst both Witness A and Witness B did not fall within the list of examples of a vulnerable witness, the panel concluded that in this instance, special consideration should be given in light of Witness A's reasons for being unable to attend and Witness B's residency [REDACTED].

The panel carefully considered whether both Witness A and Witness B should be permitted to give evidence via video link if they so desired. The panel considered its obligation to ensure that the teacher was not put at an unfair disadvantage, balanced against its duty in the public interest to investigate the allegations in so far as it is possible to do so consistent with fairness to Ms Smyth. The panel took into account that there may be subtleties of tone or body language that may be lost via the medium of video link, but was satisfied that such factors could be taken into account by the panel when assessing the weight it attributed to such evidence.

The panel also noted that in this instance the evidence of Witness A and Witness B was solely character evidence provided for the purpose of mitigation, rather than as evidence of fact.

The panel also considered paragraph 4.49 of the Procedures which states that the procedure at the panel will be determined by the chair, who will direct the parties to adopt an investigative rather than an adversarial approach.

The panel was satisfied that its duty to investigate the allegations was such that it directed that Witness A was able to give evidence by video link, if she wished to do so.

In respect of Witness B, the panel also had to consider the specific issue of whether she should be permitted to provide evidence orally at the hearing in light of her residency [REDACTED].

The panel took into account the starting position set out in the Upper Tribunal decision in the case of *Agbabiaka* [2021] UKUT 286 (IAC), which determined the procedure that is to be followed when a party to a case wishes to rely upon oral evidence given by video or telephone by a person who is abroad. For this purpose, abroad is taken to mean in the territory of a Nation State other than the United Kingdom. The panel noted that in accordance with this decision, specific permission should usually be sought from the Foreign and Commonwealth Development Office's Taking of Evidence Unit, which takes into account whether the particular Nation State has any objection to evidence being given orally from within its territory.

The panel also took into account recent guidance issued by the UK Government on 1 August 2023, in respect of the taking and giving of evidence by video link from abroad. In particular, the panel noted that the Guidance states that citizens or residents in [REDACTED] can voluntarily give evidence in [REDACTED] by video link in UK tribunals.

The issue also arose as to whether or not the hearing was a "UK tribunal" for the purposes of the procedure set out in *Agbabiaka* and the updated Guidance. The panel noted that whilst there is no definition of "tribunal" for these purposes, both the presenting officer and the teacher's representatives had agreed that the hearing was considered to be a tribunal. Further, the panel noted that it would undermine the objective that the *Agbabiaka* case was initially trying to achieve if it could be avoided by the interpretation of the word "tribunal".

The panel was therefore satisfied that Witness B was also able to give evidence by video link from [REDACTED].

Summary of evidence

Documents

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

Section 1: Chronology – page 6

Section 2: Notice of proceedings and response – pages 8 to 15

Section 3: Statement of Agreed and Disputed Facts – pages 17 to 18

Section 4: Teaching Regulation Agency documents – pages 20 to 187

Section 5: Teacher’s Documents – pages 190 to 239

In addition, the panel agreed to accept the Witness Statement of Witness A dated 6 January 2022 as a late document.

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

Witnesses

The panel heard oral evidence from Ms Smyth during the hearing.

The panel also heard oral evidence from the following witnesses, who were both called by the teacher: Witness A and Witness B.

Decision and reasons

The panel announced its decision and reasons as follows:

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

Ms Smyth was employed at Leytonstone School (“the School”) as a Headteacher on 01 September 2014.

From February 2018, Ms Smyth had started to take time off work due to illness. Ms Smyth had informed the School that this was due to [REDACTED]. On 28 June 2018, Ms Smyth informed the School that due to her ill health a decision had been taken to appoint an alternative individual as Acting Headteacher for the remainder of the academic year. Ms Smyth returned to work at the end of the summer holidays.

In July 2018, Waltham Forest London Borough Council, the local authority for the School, received a whistleblowing complaint alleging that Ms Smyth was absent from the School for longer than 99 days and therefore should not have been receiving full pay.

On 28 August 2018, the Senior Investigator for the Waltham Forest Borough Council's Audit and Anti-Fraud Team attended the School to view the staff personnel files and met with Ms Smyth. Ms Smyth was asked to provide sick certificates relating to her period of sick leave.

On 6 September 2018, Ms Smyth provided an undated consultant letter, purporting to be from a named doctor. On 13 September 2018, Ms Smyth provided 4 sickness certificates dated: 25 March 2018, 28 April 2018, 01 May 2018 and 22 June 2018. Investigations carried out by the Local Authority's Anti-Fraud Team revealed that all of these documents were falsified.

Ms Smyth's employment at the School was terminated with immediate effect on 25 April 2019. On 16 October 2019, the School referred Ms Smyth to the TRA.

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, at any time, of a relevant offence in that on 5 November 2021, you were convicted at Snaresbrook Crown Court of two counts of Fraud contrary to S.1 of the Fraud Act 2006.

The allegation was admitted by Ms Smyth in the statement of agreed and disputed facts that she signed on 10 September 2022.

The panel noted that in the statement, Ms Smyth accepted that she had tendered the consultant letter from the named doctor and the 4 sickness certificates, knowing that they were falsified.

On 05 November 2021, Ms Smyth was convicted on her own guilty plea of dishonestly making false representations to make gain for self/another or cause loss to other/expose another to risk. On 11 January 2022, Ms Smyth was sentenced at Snaresbrook Crown Court to an 18-month community order with a rehabilitation activity requirement for a maximum of 30 days, and a requirement to carry out unpaid work for 120 hours to be completed before 11 January 2023. The panel has seen the certificate of conviction and accepted it as conclusive proof of the conviction and the facts necessarily implied by the conviction.

The panel found this allegation proven.

Findings as to a 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 a conviction of a relevant offence.

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

Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach ...

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 not relevant to teaching, or working with children. However, the panel noted that Ms Smyth's actions were relevant to working in an education setting, on the basis that she held a high position at the School as a head teacher, and therefore was in a position of trust and responsibility.

The panel did not consider that Ms Smyth's actions had a potential impact on the safety or security of pupils or members of the public.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Ms Smyth's behaviour in committing the offence would be likely to affect public confidence in the teaching profession.

The panel noted that Ms Smyth's behaviour did not lead to a sentence of imprisonment, which was indicative that the offence was at the less serious end of the possible spectrum.

This was a case concerning an offence involving fraud or serious dishonesty. 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 considered that the offence was a serious one, given Ms Smyth's high position at the School during the time that the offence was committed.

The panel took into account the written evidence that was adduced during the criminal prosecution of Ms Smyth, attaining to Ms Smyth's exemplary record as a teacher. The panel also took into consideration Ms Smyth's own reflective statement in which she provided an account of the [REDACTED] at the relevant time. In particular, the panel noted that Ms Smyth had committed the offence [REDACTED] having experienced a number of challenges in her personal and professional life. The panel noted that Ms Smyth had described the steps that she was now undertaking, [REDACTED], to develop strategies to help her cope with challenges in her personal and professional life.

Although the panel found that the evidence of Ms Smyth's teaching proficiency was of note, the panel also found that the seriousness of the offending behaviour that led to the conviction was relevant to Ms Smyth'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 Ms Smyth 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 maintenance of public confidence in the profession, declaring and upholding proper standards of conduct, together with the interest of retaining the teacher in the profession.

In the light of the panel's findings against Ms Smyth, in that Ms Smyth was convicted of a relevant offence, the panel considered that public confidence in the profession could be weakened if conduct such as that found against Ms Smyth was not treated with the utmost seriousness when regulating the conduct of the profession. The panel was also 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 Ms Smyth was outside that which could reasonably be tolerated.

However, the panel also decided that there was a strong public interest consideration in retaining the teacher in the profession, since no doubt had been cast upon her abilities as an educator and her abilities to make a valuable contribution to the profession. In this instance, the panel considered that the public interest considerations in favour of retaining the teacher outweigh the adverse public interest considerations against it.

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:

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; and

dishonesty or a lack of integrity.

Taking into account the public interest considerations in favour of retaining the teacher, the panel went on to consider the mitigation offered by the teacher and whether there were mitigating circumstances.

The teacher's actions were deliberate. There was no evidence to suggest that Ms Smyth was acting under extreme duress, e.g. a physical threat or significant intimidation. Whilst the panel found that Ms Smyth's actions were calculated and motivated, the panel did also find that Ms Smyth's actions were an extreme response to a period of [REDACTED] in her personal and professional life.

Ms Smyth did have a previously good history, having demonstrated exceptionally high standards in both her personal and professional conduct and having contributed significantly to the education sector. The panel accepted that the incident was out of character.

The panel took into account the representations offered by Ms Smyth, in which Ms Smyth explained that at the time of the offending behaviour, she was at a difficult period in her life, [REDACTED]. The panel accepted that Ms Smyth had found it difficult to discuss and seek help for her problems. [REDACTED].

The panel accepted that in August 2018, upon Ms Smyth learning of the whistleblowing report that had been made to the Local Authority, that she was at the height of her [REDACTED]. The panel accepted that Ms Smyth's actions in committing the offence were in order to conceal her [REDACTED] problems, and to ensure that she could remain in the profession, rather than in order to obtain a financial gain. The panel considered that the fraud committed by Ms Smyth occurred twice over a two-week period in September 2018. Whilst the panel considered the fraud to be serious, it was not prolonged.

The panel also accepted that Ms Smyth has insight into her behaviour, in that she has accepted that her actions were wrong. The panel took into account Ms Smyth's previous admissions of guilt to the School, her guilty plea in the criminal proceedings, together with her admissions throughout the hearing. The panel considered that Ms Smyth was

very remorseful and was passionate about a possible return to the profession. The panel considered that the risk of Ms Smyth committing a further offence of fraud was remote.

The panel took into account Ms Smyth's representations that she had been receiving the support that she needed and that she was developing coping strategies for dealing with her [REDACTED] problems. The panel also noted that Ms Smyth did not intend to work in another leadership or safeguarding role which would serve to potentially trigger any previous difficulties.

The panel took into account the oral evidence of Witness A. The panel considered that Witness A was a prominent figure in the teaching profession and noted her comments that it would be a loss to the profession if Ms Smyth was prohibited from teaching in the future. The panel took into account Witness A's comments that Ms Smyth was responsible for turning around the School. The panel also took into account the oral evidence of Witness B, [REDACTED]. The panel was of the view that given her role, Witness B would know enough about the profession to recognise whether or not Ms Smyth would be a danger to the profession if she continues to teach. The panel noted that Witness B also believed that Ms Smyth was a valuable addition to the profession, and that it would be a loss to the profession if Ms Smyth was prohibited from teaching in the future. The panel noted that Witness B did not consider Ms Smyth to be a danger to the profession.

The panel also 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, the recommendation of a no prohibition order would be both a proportionate and an appropriate response. Given that the nature and severity of the behaviour were at the less serious end of the possible spectrum and, having considered the mitigating factors that were present, the panel determined that a recommendation for a prohibition order would not be appropriate in this case. The panel considered that the publication of the adverse findings it had made, together with the conviction of a criminal offence, were sufficient to send an appropriate message to the teacher as to the standards of behaviour that are not acceptable, and the publication would meet the public interest requirement of declaring proper standards of the profession.

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 sanction.

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 recommended that the findings of a relevant conviction should be published and that such an action is proportionate and in the public interest.

In particular, the panel has found that Ms Grainne Smyth is in breach of the following standards:

Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach ...

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 serious as it concerns a conviction for two counts of Fraud involving dishonesty.

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 Msr Smyth, 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 panel did not consider that Ms Smyth's actions had a potential impact on the safety or security of pupils or members of the public."

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "The panel also accepted that Ms Smyth has insight into her behaviour, in that she has accepted that her actions were wrong. The panel took into account Ms Smyth's previous admissions of guilt to the School, her guilty plea in the criminal proceedings, together with her admissions throughout the hearing. The panel considered that Ms Smyth was very remorseful and was passionate about a possible return to the profession. The panel considered that the risk of Ms Smyth committing a further offence of fraud was remote." 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, "The panel considered that Ms

Smyth's behaviour in committing the offence would be likely to affect public confidence in the teaching profession." However, the panel go on to record that, "The panel noted that Ms Smyth's behaviour did not lead to a sentence of imprisonment, which was indicative that the offence was at the less serious end of the possible spectrum." I have, therefore, given this element less weight in reaching my decision.

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 Ms Smyth herself and the panel's comment that, "Ms Smyth did have a previously good history, having demonstrated exceptionally high standards in both her personal and professional conduct and having contributed significantly to the education sector. The panel accepted that the incident was out of character." I have also noted the evidence provided by the witnesses attesting to Ms Smyth's contribution to the teaching profession.

A prohibition order would prevent Ms Smyth from teaching. A prohibition order would also clearly deprive the public of her contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the degree of insight and remorse that Ms Smyth has demonstrated, the evidence regarding her contribution to the teaching profession and the fact that no evidence has been provided to suggest she poses a risk to the safety and wellbeing of pupils. I have also noted the evidence provided concerning the [REDACTED] problems that Ms Smyth was experiencing when she committed the offences and that she has sought support to help her manage these issues should they reoccur in the future.

For these reasons, I have concluded that a prohibition order is not proportionate or in the public interest. I consider that the publication of the findings made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession.

A handwritten signature in black ink, appearing to read 'Marc Cavey', enclosed in a thin black rectangular border.

Decision maker: Marc Cavey

Date: 8 September 2023

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