



Teaching
Regulation
Agency

Mr Aaron Gardner: Professional conduct panel meeting 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:	Mr Aaron Gardner
Teacher ref number:	1050645
Teacher date of birth:	4 April 1989
TRA reference:	18594
Date of determination:	13 September 2023
Former employer:	Hurstpierpoint College, West Sussex

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually via Microsoft Teams on 13 September 2023 to consider the case of Mr Aaron Gardner.

The panel members were Ms Charlotte Kelly (lay panellist – in the chair), Ms Mona Sood (lay panellist) and Mr Ian Hylan (teacher panellist).

The legal adviser to the panel was Mr Delme Griffiths of Blake Morgan 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 Gardner that the allegation be considered without a hearing.

Mr Gardner 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, Mr Gardner or any representative appointed on his behalf.

The meeting took place in private.

Allegations

The panel considered the allegation set out in the notice of meeting dated 8 August 2023.

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

1. On or around 17 September 2021, he pleaded guilty to, and was sentenced at Lewes Crown Court to two offences of causing or inciting sexual activity with a female 13 to 17 offender 18 or over abuse of position of trust on 14/09/2012 to 22/06/2014 contrary to the Sexual Offences Act 2003, s. 17.

Mr Gardner admitted the facts of the allegations and that the offences amounted to a conviction for 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: Notice of referral and response – pages 4 to 17

Section 2: Statement of agreed facts and presenting officer representations – pages 19 to 23

Section 3: Teaching Regulation Agency documents – pages 25 to 54

Section 4: Teacher documents – pages 56 to 59

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 Gardner on 12 July 2023.

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 Gardner for the allegation 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.

The panel proceeded to consider the case carefully, having read all of the documents, and reached a decision. It accepted the legal advice provided.

Mr Gardner was previously employed as a year 4 primary school teacher at Hurstpierpoint College ("the College").

Following his departure from the College, allegations were made against Mr Gardner by a former pupil, namely that they had engaged in a sexual relationship. The pupil is referred to as Person A.

By the time the allegations came to light, Mr Gardner was employed at Bedales Prep School.

On 24 July 2019, Mr Gardner was referred to the TRA.

In October 2019, the matter was reported to the police and Mr Gardner was subsequently charged with six offences pursuant to sections 16 and 17 of the Sexual Offences Act 2003.

On 23 June 2021, Mr Gardner was convicted of two offences contrary to the Sexual Offences Act 2003 in the Crawley Magistrates Court. On 17 September 2021, he was sentenced in the Crown Court at Lewes.

Findings of fact

The findings of fact are as follows:

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

- 1. On or around 17 September 2021, you pleaded guilty to, and were sentenced at Lewes Crown Court to two offences of causing or inciting sexual activity with a female 13 to 17 offender 18 or over abuse of position of trust on 14/09/2012 to 22/06/2014 contrary to the Sexual Offences Act 2003, s. 17.**

The panel was presented with a statement of agreed facts, signed by Mr Gardner, in which this allegation was admitted.

The panel was also presented with a certificate of conviction from Lewes Crown Court, confirming that Mr Gardner was convicted, on 23 June 2021, of the offences particularised in allegation 1.

He was sentenced to:

- a. A term of imprisonment for 2 years;
- b. A restraining order
- c. A sexual harm prevention order for 10 years;
- d. [REDACTED]
- e. Registration under section 92 of the Sexual Offences Act 2003 for 10 years; and
- f. Pay a victim surcharge.

The panel was presented with the sentencing remarks of the presiding judge sitting at Court on 17 September 2021, summarising the offences and the reasons for the sentence imposed.

The panel accepted the certificate of conviction as conclusive proof of the commission of these offences by Mr Gardner.

In light of this and Mr Gardner's admission, it found allegation 1 proved.

Findings as to conviction of a relevant offence

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

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 Gardner involved breaches of the Teachers’ Standards. The panel considered that, by reference to Part 2, he 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 ...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Further and in addition, the panel noted that, pursuant to the Advice, it is likely that:

- A conviction for any offence that led to a term of imprisonment will be considered a relevant offence.
- A conviction for any offence that relates to sexual activity will be considered a relevant offence.

Over and above these matters, the panel determined that Mr Gardner's actions were clearly and directly relevant to teaching, working with children and working in an education setting. The conviction is serious in nature and directly involved a child who was a pupil and, it followed, an abuse of a position of trust.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Gardner's behaviour in committing these offences would undoubtedly affect public confidence in the teaching profession, particularly given the influence that teachers may have on pupils, parents and others in the community. His conduct ran counter to what should be at the very core of the practice of a teacher with a duty of care towards children. As the Court recognised when imposing sentence, these offences involved "*an appalling breach of the relationship of trust that exists between a pupil and teacher*".

Mr Gardner's behaviour ultimately led to a term of imprisonment, which demonstrated the public and child protection issues engaged by his actions together with the other aspects of the sentence imposed.

The panel did not consider there to be any relevant mitigating circumstances in relation to the commission of these offences.

In conclusion and for all these reasons, the panel found that the seriousness of the offending behaviour that led to the conviction was directly relevant to Mr Gardner's ongoing suitability to teach. The panel considered that a finding that this conviction was for relevant offences was necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of a conviction of a relevant offence, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. 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 protection of pupils and 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 nature of the offences for which Mr Gardner was convicted and having regard to the specific context, with particular reference to the sentencing remarks, there was a very strong public interest consideration in respect of the protection of pupils and other members of the public. Mr Gardner's actions raised obvious public and child protection concerns.

The panel considered that public confidence in the profession would be very seriously weakened if conduct such as that found against Mr Gardner was not treated with the utmost seriousness when regulating the profession. This was conduct that was very serious and involved an egregious breach of trust.

For the same reasons, the panel decided that a strong public interest consideration in declaring proper standards of conduct in the profession was also present.

Whilst no doubt had been cast upon Mr Gardner's abilities as an educator in terms of his performance in the classroom, given the nature of the allegations in this case the panel concluded there was not a strong public interest consideration in retaining him in the profession. There was no evidence to suggest Mr Gardner could be regarded as someone who had made an exceptional contribution to education.

Notwithstanding 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 Gardner.

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

Gardner. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved.

In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of the Police Act 1997 and criminal record disclosures;
- misconduct seriously affecting the education and/or safeguarding and well-being of pupils ...;
- abuse of position or trust (particularly involving 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, 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);
- collusion or concealment including:
 - concealing inappropriate actions;
 - lying to prevent the identification of wrongdoing.

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

The panel considered that the following mitigating factors are present in this case:

- Mr Gardner appeared to have had an otherwise good record. There was evidence of good character prior to his conviction.
- Although the panel was not presented with positive references or testimonials regarding his practice as a teacher, Mr Gardner's abilities as an educator had not been challenged.

- Mr Gardner had fully engaged with the TRA and made full admissions. The panel was presented with a written submission from Mr Gardner in these proceedings, which it carefully considered and in which he purported to apologise for his behaviour.
- Mr Gardner pleaded guilty in the criminal proceedings.
- At the time of the events that gave rise to his conviction, Mr Gardner was a recently qualified teacher.

Weighed against this, the aggravating features in this case included that:

- Mr Gardner's actions were deliberate and sustained, spanning a two-year period in terms of the offences in question.
- Whilst Mr Gardner had shown some insight, this was at best emerging and was certainly far from complete. The panel similarly concluded that the level of regret and remorse shown by Mr Gardner was not where it could and should be. In particular, within Mr Gardner's written submission to the TRA, he alluded to a lack of understanding of his professional obligations with reference to the age of consent and related issues. The panel considered this was at odds with the wider evidence before it regarding the circumstances of the offences and his behaviour both at the time and subsequently. For example, Mr Gardner described his actions as "*foolish*", which the panel considered was not an appropriate categorisation and trivialised his conduct.
- In certain respects, the panel considered that Mr Gardner's written submission focussed upon the effect of events on himself and, in the panel's view, insufficiently addressed the impact of his actions on Person A.
- His actions amounted to a clear breach of the Teachers' Standards and raised serious public and child protection concerns.
- Mr Gardner has been convicted of and sentenced for serious offences involving a child, for which he received a custodial sentence, was subject to a sexual harm prevention order, [REDACTED] and registered under section 92 of the Sexual Offences Act 2003.
- Mr Gardner engaged in a sexual relationship with a pupil which involved multiple sexual acts committed both on school premises and at his home.
- Mr Gardner was in a position of trust and responsibility. He was also a role model. He had fallen very far short of the standards expected of him in that regard.

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 was sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr Gardner of prohibition.

Mr Gardner's actions were fundamentally incompatible with his being a teacher. The nature and gravity of these offences was a matter of significant concern. There were, accordingly, particularly strong public interest considerations in this case in terms of protecting the public, public confidence in the teaching profession and the declaring of proper standards of conduct in this case.

Mr Gardner's behaviour led to him receiving a custodial sentence, which is indicative of the seriousness of the offences. The panel noted, in particular, the following remarks of the sentencing judge:

- *"Those offences involved an appalling breach of the relationship of trust that exists between a pupil and teacher. Parents are entitled to know their children are safe when at school and children and adolescents are entitled to learn in a safe environment. Your behaviour undermined both of those assumptions."*
- Mr Gardner had *"a sexual interest in [Person A] when she was around 15"* and came *"close to committing some form of criminal act with her when she was that age but never did so"*.
- Mr Gardner *"embarked upon a sexual relationship with [Person A] within a very short period of time of her arriving at college and then it carried on for two years"*. It involved *"multiple sexual acts committed both on school premises and at [his] home"*.
- The judge stated:

"... one particularly unpleasant aspect of your behaviour was that you chose to touch her in the presence of other students but in a way that meant that they did not see what you were doing. I regard this as being clear evidence that you were gaining pleasure from the illicit nature of relationship and I treat this as an aggravating feature."

In addition, the panel had concerns regarding the genuineness and level of the insight, regret and remorse demonstrated by Mr Gardner for the reasons set out above.

The panel was therefore of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Gardner.

Accordingly, it 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 to recommend that a review period of the order should be considered.

The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances, in any given case, that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period.

These behaviours include:

- serious sexual misconduct 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 their professional position to influence or exploit a person or persons; and
- any sexual misconduct involving a child.

These were both directly applicable in this case, in circumstances where this was sustained behaviour over a prolonged period and critical aspects of Mr Gardner's unlawful actions occurred in a school setting.

In light of this and the panel's comments, above, regarding the seriousness of these offences and the limited insight shown by Mr Gardner, the panel decided its findings indicated a situation in which a review period would not be appropriate. The public interest considerations that Mr Gardner's conviction give rise to were such that this was necessary, appropriate and proportionate. The panel repeats that Mr Gardner's actions, having regard to the sentence he received, are fundamentally incompatible with his being a teacher.

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

In particular, the panel has found that Mr Gardner 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 ...
- 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 Gardner fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include offences contrary to the Sexual Offences Act 2003 involving a pupil and resulting in a term of imprisonment.

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 Gardner, 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, "Mr Gardner's behaviour ultimately led to a term of imprisonment, which demonstrated the public and child protection issues

engaged by his actions together with the other aspects of the sentence imposed.” 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 it sets out as follows, “Whilst Mr Gardner had shown some insight, this was at best emerging and was certainly far from complete. The panel similarly concluded that the level of regret and remorse shown by Mr Gardner was not where it could and should be. In particular, within Mr Gardner’s written submission to the TRA, he alluded to a lack of understanding of his professional obligations with reference to the age of consent and related issues. The panel considered this was at odds with the wider evidence before it regarding the circumstances of the offences and his behaviour both at the time and subsequently. For example, Mr Gardner described his actions as “*foolish*”, which the panel considered was not an appropriate categorisation and trivialised his conduct.”

The panel goes on to note that, “In certain respects, the panel considered that Mr Gardner’s written submission focussed upon the effect of events on himself and, in the panel’s view, insufficiently addressed the impact of his actions on Person A.” 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, “The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Gardner’s behaviour in committing these offences would undoubtedly affect public confidence in the teaching profession, particularly given the influence that teachers may have on pupils, parents and others in the community.” I am particularly mindful of the seriousness of the offences committed by Mr Gardner as well as their nature and the impact that such offences have on the reputation of the teaching 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 offence, 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 Gardner himself and the panel’s comment that, “Mr Gardner appeared to have had an otherwise good record. There was evidence of good character prior to his conviction.” The panel goes on to note that. “Although the panel was not presented with positive references or testimonials

regarding his practice as a teacher, Mr Gardner's abilities as an educator had not been challenged.”

A prohibition order would prevent Mr Gardner 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 have also placed considerable weight on the seriousness of the panel's findings, including sexual offences involving a pupil.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Gardner has made to the profession. In my view, it is necessary to impose a prohibition order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by full remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

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

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

In doing so the panel were mindful of the Advice which indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. These behaviours include serious sexual misconduct and any sexual misconduct involving a child. As the panel observe, “These were both directly applicable in this case, in circumstances where this was sustained behaviour over a prolonged period and critical aspects of Mr Gardner's unlawful actions occurred in a school setting.” The panel conclude that, “The panel repeats that Mr Gardner's actions, having regard to the sentence he received, are fundamentally incompatible with his being a teacher.”


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. These elements are the seriousness of the findings of sexually offences involving a pupil and the lack of full insight or remorse.

This means that Mr Aaron Gardner 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 Gardner 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 Aaron Gardner 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 'M. Cavey', enclosed within a thin black rectangular border.

Decision maker: Marc Cavey

Date: 18 September 2023

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