



Teaching
Regulation
Agency

Mr Michael Baker: Professional conduct panel meeting outcome

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

October 2023

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

Teacher:	Mr Michael Baker
Teacher ref number:	4032773
Teacher date of birth:	18 May 1990
TRA reference:	20848
Date of determination:	17 October 2023
Former employer:	North Crescent Primary School, Wickford

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 17 October 2023 by virtual means to consider the case of Mr Mike Baker.

The panel members were Mr Clive Ruddle (lay panellist – in the chair), Mrs Aisha Miller (teacher panellist) and Mrs Karen Graham (teacher panellist).

The legal adviser to the panel was Mr Priyesh Dave of Eversheds Sutherland (International) LLP.

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 Baker that the allegations be considered without a hearing. Mr Baker provided a signed statement of agreed facts and admitted unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The panel considered the case at a meeting without the attendance of the presenting officer Ms Clare Hastie of Kingsley Napley LLP, or Mr Baker.

The meeting took place in private.

Allegations

The panel considered the allegations set out in the notice of meeting dated 27 September 2023.

It was alleged that Mr Baker was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a Teacher at North Crescent Primary School:

1. On or around 02 May 2022, he downloaded and/or made an indecent image and/or video, namely a category A indecent image of a child.
2. On or around 14 August 2022, he accepted a police caution in relation to the conduct as set out at paragraph 1 above which is contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.

Mr Baker admitted the alleged facts and that it amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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 anonymised pupil list and list of key people – pages 3 to 4

Section 2: Notice of referral, response, and notice of meeting – pages 5 to 17

Section 3: Statement of agreed facts – pages 18 to 20

Section 4: Teaching regulation agency Documents – pages 21 to 92

Section 5: Teacher documents – pages 93 to 101

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 Baker on 12 July 2023.

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 Baker 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 Baker was employed by North Crescent Primary School (the "School") from 1 January 2018 as a learning support assistant and from 1 September 2019 as a teacher. On 28 May 2022, Mr Baker was arrested in respect of an allegation of downloading an indecent image of a child. On 14 August 2022, Mr Baker accepted a police caution in relation to downloading an indecent image of a child.

Findings of fact

The findings of fact are as follows:

The panel found the following particulars of the allegations against Mr Baker proved, for these reasons:

You are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a Teacher at North Crescent Primary School:

- 1. On or around 02 May 2022, you downloaded and/or made an indecent image and/or video, namely a category A indecent image of a child.**
- 2. On or around 14 August 2022, you accepted a police caution in relation to the conduct as set out at paragraph 1 above which is contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.**

The panel has seen evidence that Mr Baker has uploaded a video classed as category A indecent image of a child to his Google Cloud. The National Crime Agency ("NCA") determined the IP address to Mr Baker's home. The NCA questioned Mr Baker under caution on the allegation of downloading a category A indecent image of a child. During the interview, Mr Baker admitted to downloading an indecent image. Mr Baker admitted to watching one minute of the video, after which he watched a different video afterwards, not related to the allegations.

On 14 August 2022, Mr Baker accepted a police caution in relation to the category A indecent image stated above, which the panel has seen within the evidence.

Mr Baker has been placed on the sex offenders register for a period of 2 years.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found the allegations proved, the panel went on to consider whether the facts of those proven allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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

The allegations did not occur within the education setting or involve pupils and therefore the panel was not satisfied that the conduct of Mr Baker, in relation to the facts found proved, involved breaches of the Teachers’ Standards, KCSIE, Working Together to Safeguard Children.

The panel did not, therefore, consider that Mr Baker’s conduct fell significantly short of the standard of behaviour expected of a teacher as set out within the Teachers’ Standards, KCSIE, Working Together to Safeguard Children.

The panel also considered whether Mr Baker’s acceptance of a caution displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice.

The panel found that the offence of any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, or permitting any such activity, including one-off incidents was relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual’s conduct would amount to unacceptable professional conduct.

The panel noted that the allegations took place outside the education setting. However, Mr Baker did receive a caution for viewing an indecent photograph or image of a child. This, therefore, impacts his perception as a teacher with the public.

The panel also considered that the category A image that Mr Baker viewed contained a six-year-old, the same age range as he was teaching at the time.

Accordingly, the panel was satisfied that Mr Baker was guilty of unacceptable professional conduct.

The panel took into account the way the teaching profession is viewed by others, the responsibilities and duties of teachers in relation to the safeguarding and welfare of pupils and considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that

teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way that they behave.

The panel also considered whether Mr Baker's acceptance of a caution displayed behaviours associated with any of the offences in the list that begins on page 12 of the Advice.

The panel found that the offence of any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, or permitting any such activity, including one-off incidents, was relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to conduct that may bring the profession into disrepute.

The findings of misconduct are serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher.

The panel considered that Mr Baker's conduct could potentially damage the public's perception of a teacher.

The panel, therefore, found that Mr Baker's actions constituted conduct that may bring the profession into disrepute.

Having found the facts of particulars 1 and 2 proved, the panel further found that Mr Baker's conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, 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, any mitigation offered by Mr Baker 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.

There was a strong public interest consideration in that the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Baker were not treated with the utmost seriousness when regulating the conduct of the profession.

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

- the commission of a serious criminal offence
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, or permitting such activity, including one-off incidents;
- a lack of integrity.

The behaviour found proved in this case indicated that a prohibition order would be appropriate, taking account of the public interest, 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.

The panel concluded that there was insufficient evidence that Mr Baker had deliberately sought the content within allegation 1 but he did download a file. Mr Baker deliberately decided to watch the video for one minute and thereafter continue watching another video. On this basis, the panel was satisfied that Mr Baker's actions were deliberate.

The panel noted that Mr Baker stated that this was a "one-off stupid mistake" at the police interview.

Based on the evidence, the panel was satisfied that this was a one-off incident.

The panel also gave due regard to the statement from Mr Baker and his Safer Lives Programme Record.

The panel noted that no references were provided from any colleagues who could attest to his abilities as a teacher.

Mr Baker had been teaching at the School for over 2 years, but there was no evidence presented of an exceptional contribution to teaching.

There was no evidence to suggest that Mr Baker was acting under extreme duress, e.g. a physical threat or significant intimidation.

Proportionality

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 Baker 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 Baker. The serious nature of Mr Baker's caution and the deliberate act of watching a minute of the video were 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. One of these includes any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one-off incidents. The panel found that Mr Baker was cautioned for having made an indecent video, namely a category A indecent image of a child.

The panel gave due regard to paragraph 50 of the Advice. The panel balanced the facts of this case and the nature of how Mr Baker came across the content within allegation 1 against the Advice. The panel considered the caution that was given to Mr Baker and the evidence in front of it that a caution was given rather than seeking a criminal conviction. The panel also considered the evidence provided by Mr Baker. Based on the evidence in front of the panel, the panel was satisfied that this was a one-off incident which Mr Baker regrets and does not believe it is likely that this behaviour would reoccur.

The panel decided that the findings indicated a situation in which a review period would be appropriate and, as such, decided that it would be proportionate, given all the circumstances, for the prohibition order to be recommended with provisions for a review period.

As such, the panel decided that it would be proportionate for the prohibition order to be recommended with provision for a review period after 4 years.

The panel concluded that Mr Baker received a caution for a serious offence and determined that a shorter review period would not be appropriate because of the necessity to maintain public confidence in 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 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 unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel has made a recommendation to the Secretary of State that Mr Baker should be the subject of a prohibition order, with a review period of 4 years.

In relation to the panel's consideration of breaches of the teacher standards, KCSIE and Working Together to Safeguard Children, I have noted the following "The allegations did not occur within the education setting or involve pupils and therefore the panel was not satisfied that the conduct of Mr Baker, in relation to the facts found proved, involved breaches of the Teachers' Standards, KCSIE, Working Together to Safeguard Children." However, I disagree that the allegations did not involve pupils, the category A image was of a school aged child, albeit there is no evidence the image was of a pupil at the school.

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

The findings of misconduct are particularly serious as they include a finding of downloading a category A indecent image of a child and accepting a police caution.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have

considered therefore whether or not prohibiting Mr Baker, 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/or safeguard pupils. The panel has observed, "The panel found that the offence of any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, or permitting any such activity, including one-off incidents, was relevant." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "The panel noted that Mr Baker stated that this was a "one-off stupid mistake" at the police interview." I have therefore given this element 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 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." I am particularly mindful of the finding of downloading indecent images 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 unacceptable professional conduct and conduct that may bring the profession into disrepute, 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 Baker himself and the panel's comment "The panel noted that no references were provided from any colleagues who could attest to his abilities as a teacher.

Mr Baker had been teaching at the School for over 2 years, but there was no evidence presented of an exceptional contribution to teaching."

A prohibition order would prevent Mr Baker 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 some weight on the panel's comments concerning insight or remorse. The panel has said, "The panel noted that Mr Baker stated that this was a "one-off stupid mistake" at the police interview."

I have also placed considerable weight on the finding of the panel that "the allegations took place outside the education setting. However, Mr Baker did receive a caution for viewing an indecent photograph or image of a child. This, therefore, impacts his perception as a teacher with the public."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Baker has made to the profession, the panel saw no evidence of an exceptional contribution. 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, 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 a 4 year review period.

I have considered the panel's comments "The panel gave due regard to paragraph 50 of the Advice. The panel balanced the facts of this case and the nature of how Mr Baker came across the content within allegation 1 against the Advice. The panel considered the caution that was given to Mr Baker and the evidence in front of it that a caution was given rather than seeking a criminal conviction. The panel also considered the evidence provided by Mr Baker. Based on the evidence in front of the panel, the panel was satisfied that this was a one-off incident which Mr Baker regrets and does not believe it is likely that this behaviour would reoccur."

The panel has also said "The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period. One of these includes any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or indecent pseudo photograph or image of a child, including one-off incidents. The panel found that Mr Baker was cautioned for having made an indecent video, namely a category A indecent image of a child."

I disagree with the panel on allowing a review period. Mr Baker accepted a police caution in relation to the category A indecent image. Mr Baker has been placed on the sex offenders register for a period of 2 years. The category A image that Mr Baker viewed contained a six-year-old, the same age range as he was teaching at the time. Although the panel felt that this was a one off incident, in my mind the risk of repetition related to the conduct found proven in this case remains, and that puts children and pupils at risk.

As referred to above, the Advice published by the Secretary of State refers to cases that weigh in favour of not offering a review period, including viewing indecent images of a child, including one-off incidents, which were relevant in this case.

Therefore 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 viewing a category A indecent image and the risk of repetition.

I consider therefore that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mr Michael Baker 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 Baker 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 Baker 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 horizontal line underneath.

Decision maker: Sarah Buxcey

Date: 24 October 2023

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