



Teaching
Regulation
Agency

Ms Kandice Barber: Professional conduct panel outcome

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

14 December 2023

Contents

Introduction	3
Allegations	4
Preliminary applications	4
Summary of evidence	6
Documents	6
Witnesses	6
Decision and reasons	6
Findings of fact	7
Panel's recommendation to the Secretary of State	9
Decision and reasons on behalf of the Secretary of State	11

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

Teacher:	Ms Kandice Barber
Teacher ref number:	9211067
Teacher date of birth:	10 July 1985
TRA reference:	18232
Date of determination:	14 December 2023
Former employer:	Princes Risborough School (the School)

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 22 March 2023 and 14 December 2023 online via Microsoft Teams to consider the case of Ms Barber.

The panel members were Ms Susanne Staab (teacher panellist – in the chair), Mr Paul Millett (lay panellist) and Ms Rachel Kruger (teacher panellist).

The legal adviser to the panel was Ms Clare Strickland of Blake Morgan solicitors.

The presenting officer for the TRA was Ms Amalea Bourne of Browne Jacobson solicitors.

Ms Barber was not present and was not represented.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of proceedings dated 8 November 2023.

It was alleged that Ms Barber was guilty of having been convicted of a relevant offence, in that:

1. On or around 15 February 2021 she was convicted at Aylesbury Crown Court of the following offences:

- a. Cause/incite male child U16 engage sexual act offender 18+ penetrate anus/vagina/mouth by penis/body part on 27/09/18 - 20/10/18, contrary to the Sexual Offences Act 2003 s.10 (1) (a)
- b. Engage in sexual communication with a child on 27/09/18 - 20/10/18, contrary to the Sexual Offences Act 2003 s.15A (1)
- c. Cause child 13 to 17 to watch sexual act – offender 18 or over abuse of position of trust on 27/09/18 - 31/01/19, contrary to the Sexual Offences Act 2003 s.19 (1) (e) (ii)

Ms Barber has not admitted the facts of the allegations, or that they amount to convictions of a relevant offence.

Preliminary applications

The panel considered an application from Ms Bourne to proceed in the absence of Ms Barber. It was satisfied that notice of the hearing dated 8 November 2023 was served in accordance with the TRA's procedures. Although the notice did not give Ms Barber 8 weeks' notice, the panel saw written confirmation that she was willing to accept shorter notice of the hearing. The panel then considered whether to exercise its discretion to proceed in her absence. It decided that it was in the interests of justice to proceed. The panel noted that Ms Barber has consistently indicated that she does not intend to attend or be represented at the hearing, or to call witnesses. The panel concluded that she had voluntarily waived her right to attend, and therefore it would be fair to proceed.

The panel then considered an application from Ms Bourne to amend the allegation to correct the date of the conviction from 15 February 2021 to 28 January 2021, which is the date set out on the certificate of conviction. The panel decided to agree to this application, on the basis that it corrected an error without making any material difference to the substance of the allegation. Ms Barber was given limited information that this application would be made, but has not commented. In the circumstances, the panel considered it fair and in the interests of justice for the amendment to be made.

The panel next considered the issue of jurisdiction. Ms Barber has consistently said that she had never been a teacher, had no teaching qualification, and that her role at the School was that of cover supervisor. In her response to the notice of proceedings dated 17 November 2023, she said:

I am not and never have been a teacher so this is a waste of time! Unfortunately due to the conviction and sentence I will be on the sex offenders reg indefinitely [sic] therefore will never be able to work in education and nor would I want to! So what is the point?

The TRA relied on a bundle of evidence and a skeleton argument served on Ms Barber on 27 July 2023. This included transcripts of evidence given by Individual A at an adjourned TRA hearing on 22 March 2023, during which he said that he had received information from colleagues at the School that Ms Barber was working as a form tutor and covering the timetable of a business/IT teacher. As a result, she was independently planning lessons, assessing work, and teaching. The panel also had other information provided by the School about her teaching timetable, which was on occasion significant, and amendments to her pay on two occasions as a result.

Although Ms Barber says that she was not a teacher, she did not engage with the substance of the TRA's evidence and arguments.

Based on the evidence from the TRA, the panel was satisfied that while working at the School, Ms Barber was engaged in teaching work, within the definition set out in Regulation 3(1) of the Teachers' (England) Disciplinary Regulations 2012, that is:

- (a) planning and preparing lessons and courses for pupils;
- (b) delivering lessons to pupils;
- (c) assessing the development, progress and attainment of pupils; and
- (d) reporting on the development, progress and attainment of pupils.

Further the panel was satisfied that her teaching work was not subject to the supervision of a qualified teacher or other person nominated by the head teacher to provide such direction and supervision.

The panel was also satisfied on the evidence that this overlapped with the time when the offences took place and/or came to light.

Summary of evidence

Documents

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

Section 1: Notice of proceedings and response – pages 3 to 39

Section 2: Teaching Regulation Agency documents – pages 41 to 87

In addition, the panel had also received:

- Proceed in absence bundle
- Final bundle re: skeleton argument and jurisdiction. This had been provided to Ms Barber in accordance with the panel's directions at a previous adjourned hearing on 22 March 2023.

Witnesses

The panel did not hear any oral evidence.

Decision and reasons

The panel announced its decision and reasons as follows:

In 2018, Ms Barber was 33 years old and working as a form tutor and cover supervisor at the School. In 2019, police investigated an allegation that she had groomed a 15-year-old male pupil, had sex with him, and sent him sexual communications. The sexual communications included a video of her engaging in sexual activity, and a message containing a sexual innuendo sent while they were both in school, during which Ms Barber referred to teaching him.

Ms Barber was charged with three offences and pleaded not guilty. Following a trial, she was convicted, and on 28 January 2021 she was sentenced to a total of 6 years and 2 months in prison, and made subject to an indefinite sexual harm prevention order.

In sentencing her, the trial judge noted that she had made threats to the child in order to prevent him from disclosing what had happened, and had sought to manipulate him by [REDACTED]'s. The child had become withdrawn and confined himself to his room as a result.

Findings of fact

The panel found the following allegations proved.

1. On or around 28 January 2021 you were convicted at Aylesbury Crown Court of the following offences:

a. Cause/incite male child U16 engage sexual act offender 18+ penetrate anus/vagina/mouth by penis/body part on 27/09/18 - 20/10/18, contrary to the Sexual Offences Act 2003 s.10 (1) (a)

b. Engage in sexual communication with a child on 27/09/18 - 20/10/18, contrary to the Sexual Offences Act 2003 s.15A (1)

c. Cause child 13 to 17 to watch sexual act – offender 18 or over abuse of position of trust on 27/09/18 - 31/01/19, contrary to the Sexual Offences Act 2003 s.19 (1) (e) (ii)

The panel was satisfied that the allegations were proved by the certificate of conviction and the other supporting material, including the transcript of sentencing remarks.

Ms Barber denied the allegation on the basis that she maintained her innocence of the offences for which she has been convicted, most recently saying in her response to the notice of proceedings:

Despite the convictions I have always proclaimed my innocentse. [sic]

The panel was not only satisfied that the convictions were proved, but was also satisfied that there were no exceptional circumstances that would justify it going behind the convictions. The panel therefore proceeded on the basis that Ms Barber had acted as described by the trial judge in the sentencing comments.

Findings as to conviction of a relevant offence

Having found the allegations proved, the panel went on to consider whether the facts of those proven allegations amounted convictions for relevant offences.

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 Ms Barber involved breaches of the Teachers’ Standards. The panel considered that by reference to Part 2, Ms Barber 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.

The panel noted that Ms Barber's actions were relevant to teaching, working with children and working in an education setting. Her victim was a pupil at the School where she was teaching and working as a cover supervisor. He would have perceived her as one of his teachers, and her communication with him would have reinforced that perception. She communicated with him in an inappropriate and sexually suggestive manner during the School day, while in class, sending him a message saying "*You cannot make me blush while I am teaching now, poker face lol*".

The panel noted that the behaviour involved in committing the offences could and did have an impact on the safety and/or security of pupils. The panel had regard to the trial judge's description of the adverse impact that Ms Barber's conduct had on the pupil.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Ms Barber's behaviour in committing the offence could affect public confidence in the teaching profession, given the influence that teachers may have on pupils, parents and others in the community. The panel had no doubt that the public would have perceived Ms Barber as her victim's teacher, and that her conduct towards him constituted a gross breach of trust and abuse of position. Her grooming and sexual exploitation of him was followed by threats and manipulation, demonstrating a callous and selfish disregard for her pupil's well-being. The public would rightly be appalled by her behaviour.

The panel noted that Ms Barber's behaviour ultimately led to a sentence of imprisonment for over 6 years and her being made subject to an indefinite sexual harm prevention order, which was indicative of the seriousness of the offences committed.

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

The panel took into account the mitigating personal circumstances referred to by the trial judge in the sentencing comments, and which were reflected in the length of sentence imposed.

The panel found that the seriousness of the offending behaviour that led to the conviction was relevant to Ms Barber's ongoing suitability to teach. 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 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, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In the light of the panel's findings against Ms Barber, which involved serious sexual offences against one of her pupils, there was a strong public interest consideration in respect of the protection of pupils.

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

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Ms Barber.

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 Ms Barber. 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 were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of the Police Act 1997 and criminal record disclosures;
- misconduct seriously affecting the education and/or safeguarding and well-being of pupils, and particularly where there is a continuing risk;
- 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);
- violation of the rights of pupils;

Even though 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 had regard to the mitigating features set out in the Advice. There was evidence that Ms Barber's actions were deliberate, and that she was not acting under duress. The panel found her actions to be calculated and motivated. Further, the panel saw no evidence about Ms Barber's previous history or character, nor did it see any evidence of insight or remorse from her.

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 Ms Barber 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 Ms Barber. Her conduct was so egregious and harmful as to be fundamentally incompatible with her being allowed to teach in future. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

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

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. 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;
- any sexual misconduct involving a child.

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 Ms Kandice Barber should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Ms Barber 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 Ms Barber fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding which involved sexual offences against one of her pupils, which led to a criminal conviction.

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 Ms Barber, 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 and “The panel noted that the behaviour involved in committing the offences could and did have an impact on the safety and/or security of pupils. The panel had regard to the trial judge’s description of the adverse impact that Ms Barber’s conduct had on the pupil.” 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, set out as follows, “The panel had regard to the mitigating features set out in the Advice. There was evidence that Ms Barber’s actions were deliberate, and that she was not acting under duress. The panel found her actions to be calculated and motivated. Further, the panel saw no evidence about Ms Barber’s previous history or character, nor did it see any

evidence of insight or remorse from her.” In my judgement, the lack of evidence of insight or 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 Ms Barber’s behaviour in committing the offence could affect public confidence in the teaching profession, given the influence that teachers may have on pupils, parents and others in the community. The panel had no doubt that the public would have perceived Ms Barber as her victim’s teacher, and that her conduct towards him constituted a gross breach of trust and abuse of position. Her grooming and sexual exploitation of him was followed by threats and manipulation, demonstrating a callous and selfish disregard for her pupil’s well-being. The public would rightly be appalled by her behaviour.” I am particularly mindful of the finding of serious findings in this case and the impact those findings can have 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 Ms Barber, although the panel saw no evidence about Ms Barber’s previous history or character. A prohibition order would prevent Ms Barber 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 panel’s comment “The panel noted that Ms Barber’s behaviour ultimately led to a sentence of imprisonment for over 6 years and her being made subject to an indefinite sexual harm prevention order, which was indicative of the seriousness of the offences committed.”

I have also placed considerable weight on the finding “The panel decided that the public interest considerations outweighed the interests of Ms Barber. Her conduct was so egregious and harmful as to be fundamentally incompatible with her being allowed to teach in future.”

I have given less weight in my consideration of sanction therefore, to the contribution that Ms Barber may have 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 serious circumstances in this case, that is not backed up by evidence of remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

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

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

I have considered the panel's comments "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;
- any sexual misconduct involving a child."

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 and the lack of evidence of insight or remorse.

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

This means that Ms Kandice Barber 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 her, I have decided that Ms Barber shall not be entitled to apply for restoration of her eligibility to teach.

This order takes effect from the date on which it is served on the teacher.

Ms Barber has a right of appeal to the King's Bench Division of the High Court within 28 days from the date she is given notice of this order.

A handwritten signature in black ink, appearing to read 'SABuxcey'.

Decision maker: Sarah Buxcey

Date: 20 December 2023

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