



Teaching
Regulation
Agency

Andrew Brown: Professional conduct panel outcome

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

April 2024

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

Teacher:	Mr Andrew Brown
Teacher ref number:	1687688
Teacher date of birth:	7 June 1972
TRA reference:	21370
Date of determination:	26 April 2024
Former employer:	Somercotes Academy, North Somercotes

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 26 April 2024 by virtual means to consider the case of Mr Andrew Brown.

The panel members were Mr Paul McGrath (lay panellist – in the chair), Mr Aidan Jenkins (teacher panellist) and Mrs Ashley Emmerson (teacher panellist).

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

The presenting officer for the TRA was Ms Fallon Alexis instructed by Kingsley Napley.

Mr Brown was present and was represented by Mr Steve Lloyd of NASUWT.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of hearing dated 12 February 2024.

It was alleged that Mr Andrew Brown was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute working as a Teacher at Somercotes Academy:

1. On or around 4 September 2022, Mr Andrew Brown sent an image(s) of an inappropriate and/or sexual nature to Person A.
2. In relation to the conduct at paragraph 1 above, Mr Andrew Brown accepted a Community Resolution Order.
3. Between on or around October 2022 and November 2022, Mr Andrew Brown did not inform the School of the police investigation and/or that Mr Andrew Brown accepted a Community Resolution Order in relation to Mr Andrew Brown's actions at paragraph 1.

In the Statement of Agreed Facts, Mr Brown had admitted the facts and allegations (1, 2 and 3). Mr Brown does not admit that the allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Preliminary applications

Admissibility of Late Documents

The teacher has applied to admit his witness statement. This document was not served in accordance with the requirements of paragraph 5.36 of the Procedures, and as such the panel is required to decide whether those documents should be admitted under paragraph 5.34 of the Procedures at the discretion of the panel. The panel took into account the representations from the teacher and that the presenting officer did not object to the admission of the document.

Under paragraph 5.33 of the Procedures, the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel is satisfied that the document is relevant to the case as it relates to the teacher's case against the TRA.

By reason of the above, the panel has decided to admit the document and this should be paginated as follows:

Andrew Brown's witness statement – pages 170-171

Summary of evidence

Documents

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

Section 1: Chronology, Anonymised Pupil List and Key People List – pages 4 to 7

Section 2: Notice of Hearing, Response to Notice of Hearing and Statement of Agreed Facts – pages 8 to 22

Section 3: Witness Statements – pages 23 to 27

Section 4: Teaching Regulation Agency Documents – pages 28 to 165

The panel also have had sight of:

Mr Brown's Notice of Hearing Response which has been added to the bundle pages 166-168

The unredacted image which would have been part of the bundle at page 169

In addition, the panel agreed to accept the following:

Mr Brown's witness statement pages 170-171

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:

Mr Brown's witnesses:

- Andrew Brown

Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Brown had been employed at Somercotes Academy (the "School") since 1 September 2022 as a teacher of mathematics. On or around 4 September 2022, Mr Brown was communicating with Person A. He sent two images via social media to Person A. The images were of Mr Brown undressed from the waist up and an image showing his exposed groin/penis area. It is alleged that Person A is a vulnerable person. Person A

reported the images and the police met with Mr Brown on 22 October 2022. On 22 October 2022, Mr Brown accepted a Community Resolution Order from the police. Mr Brown did not prior to 2 November 2022 inform the School of the Community Resolution Order. He was suspended on the 2 November 2022. Mr Brown's employment was terminated on 19 December 2022.

Findings of fact

The findings of fact are as follows:

1. On or around 4 September 2022, you sent an image(s) of an inappropriate and/or sexual nature to Person A.

The panel has heard evidence that Mr Brown accepted that he sent two images to Person A on Instagram. Mr Brown accepted as part of the agreed facts that one of the images showed him undressed from the waist up and the other showing his groin/penis area.

Mr Brown also accepted as part of the agreed facts that he admitted that the images were inappropriate and/or of a sexual nature.

Mr Brown stated that the extract of the conversation that the panel has seen was only the end of the exchange and that the day prior, Mr Brown was having a flirtatious conversation with Person A and Mr Brown alleged that Person A admitted that she had wanted to do various sexual acts with him in the past.

It is clear to the panel from the exchange within the bundle Person A declined swapping pictures of each other. Therefore, the second image of Mr Brown's exposed groin/penis area was after Person A had made it clear that she did not want to swap pictures of any kind.

The panel heard evidence that Mr Brown had deleted the exchange between him and Person A before 22 October 2022 when he met the police.

The panel has heard evidence on whether Person A was a vulnerable adult. Mr Brown in his evidence stated that he knew that Person A was suffering from mental health issues years ago but believed that as these related to her mother and she was now living alone that he assumed she didn't have any further mental health issues. However, the panel has seen numerous references from the police when dealing with Person A and awareness that an appropriate adult may need to be present. This evidence impacted the panel's assessment of Mr Brown's credibility.

As this allegation has been admitted, the panel has found this allegation proven.

2. In relation to the conduct at paragraph 1 above, you accepted a Community Resolution Order.

The panel has heard that the police tried to contact Mr Brown on 30 September 2022. The police attended Mr Brown's house twice again and on the second occasion left a note asking him to contact the police. On 12 October 2022, Mr Brown was able to agree a time to meet with the police, scheduled for 22 October 2022.

On meeting the police on 22 October 2022, Mr Brown confirmed in his statement of agreed facts that the police asked him if he had sent a communication to Person A, he confirmed that he did, and Mr Brown accepted a Community Resolution Order.

As this allegation has been admitted, the panel has found this allegation proven.

3. Between on or around October 2022 and November 2022, you did not inform the School of the police investigation and/or that you accepted a Community Resolution Order in relation to your actions at paragraph 1.

The panel understood from the evidence that the School's half-term fell at the time Mr Brown accepted the Community Resolution Order. Mr Brown gave evidence that he did not have contact details for the senior leadership team ("SLT") at the School to notify them. The panel found it difficult to understand why Mr Brown wasn't able to send an email to a member of the SLT to at least try and arrange a call or meeting for the first day back in school. Although, the panel is aware that Mr Brown did have a face-to-face meeting at the first opportunity.

As this allegation has been admitted, the panel has found this allegation proven.

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

Having found a number of the allegations proved, the panel went on to consider whether the facts of those proved 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".

Unacceptable Professional Conduct

The panel was satisfied that the conduct of Mr Brown, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mr Brown 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

- showing tolerance of and respect for the rights of others

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

The panel was satisfied that the conduct of Mr Brown fell significantly short of the standard of behaviour expected of a teacher.

The panel also considered whether Mr Brown's conduct 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 sexual activity 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, the panel was not satisfied that the misconduct would affect the way in which Mr Brown fulfils his teaching role or that his misconduct may lead pupils being exposed to or influenced by the behaviour in a harmful way. The panel took careful consideration of the Advice in relation to paragraph 25 and has concluded that they were not satisfied that Mr Brown was guilty of unacceptable professional conduct.

Conduct That May Bring The Profession Into Disrepute

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 Brown's conduct 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 sexual activity 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 panel noted that the advice is not intended to be exhaustive and there may be other behaviours that panels consider to be "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 Brown's conduct could potentially damage the public's perception of a teacher.

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

Having found the facts of particulars 1, 2 and 3 proved, the panel further found that Mr Brown's conduct amounted to conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of 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 and any mitigation offered by Mr Brown 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 protection of 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 panel's findings against Mr Brown, which involved Mr Brown sending an image of his exposed groin/penis area to a vulnerable adult which was found to be an image of a sexual nature. The police gave Mr Brown a Community Resolution Order on 22 October 2022 and Mr Brown did not inform the School of the police investigation or that fact he received a Community Resolution Order before 2 November 2022. There was a strong public interest consideration in respect of the protection of other members of the public, given the findings of sending images of a sexual nature to an individual who declined swapping pictures.

The panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Brown were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Brown was outside that which could reasonably be tolerated.

Whilst no doubt had been cast upon his ability as an educator, the panel considered that the adverse public interest considerations above outweigh any interest in retaining Mr Brown in the profession, since his behaviour fundamentally breached the standard of conduct expected of a teacher.

The panel considered carefully the seriousness of the behaviour, noting that the Advice states that the expectation of both the public and pupils, is that members of the teaching profession maintain an exemplary level of integrity and ethical standards at all times.

The panel 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;

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, taking account of the public interest and the seriousness of the behaviour and the likely harm to the public interest were the teacher be allowed to continue to teach, the panel went on to consider whether there were mitigating circumstances.

The panel notes that no references were provided to the panel.

Mr Brown has not provided any evidence of an exceptional contribution to teaching.

There was no evidence to suggest that Mr Brown was acting under extreme duress, e.g. a physical threat or significant intimidation and, in fact, the panel was satisfied Mr Brown's actions were deliberate and motivated.

Mr Brown had insight into his behaviours as stated in this witness statement, however there was no insight into the harm he may have caused Person A. Mr Brown has also not provided any evidence of what he has done in the last two years to demonstrate any insight or reflection or remorse.

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 Brown 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 Brown. The sexual nature of the images sent to Person A who was a vulnerable adult was a significant factor in forming that opinion. Accordingly, the panel made a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

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

The Advice indicates that there are cases involving certain conduct where it is likely that the public interest will have greater relevance and weigh in favour of not offering a review period. None of those cases was relevant to Mr Brown's conduct.

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 a longer period before a review is considered appropriate. None of those cases was relevant to Mr Brown's conduct.

The panel took into account the issue of mitigation, however no significant mitigation was provided for the panel to consider. The lack of insight and genuine remorse shown by Mr Brown meant that the panel could not be satisfied that there would not be repeated inappropriate images or failure to notify the School immediately.

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 3 years.

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 conduct that may bring the profession into disrepute.

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

In particular, the panel has found that Mr Brown 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
 - showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

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

The findings of misconduct are particularly serious as they include the sending of an image(s) of an inappropriate and/or sexual nature to a vulnerable adult leading to the issue of a Community Resolution Order.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In assessing 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 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 Brown, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and safeguard pupils. The panel records that it:

“...noted that the allegations took place outside the education setting. However, the panel was not satisfied that the misconduct would affect the way in which Mr Brown fulfils his teaching role or that his misconduct may lead pupils being exposed to or influenced by the behaviour in a harmful way.”

I have also taken into account the panel's comments on insight and remorse, which it sets out as follows, "Mr Brown had insight into his behaviours as stated in this witness statement, however there was no insight into the harm he may have caused Person A. Mr Brown has also not provided any evidence of what he has done in the last two years to demonstrate any insight or reflection or remorse." In my judgement, the lack of evidence that Mr Brown has attained full insight into and remorse for his actions means that there is some risk of the repetition of this behaviour. 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 records that it "...considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Brown were not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the sexual nature of the images sent by Mr Brown and the potential negative impact that such a finding could 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 conduct likely to 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 Brown himself. The panel note that it saw neither references nor evidence of Mr Brown's contribution to the education sector.

A prohibition order would prevent Mr Brown 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 nature of the misconduct found, including the sending of sexual images to a vulnerable adult resulting in a Community Resolution Order, as well as the panel's comments concerning the lack of full insight and remorse demonstrated by Mr Brown.

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Brown has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by full 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 a three-year review period.

I have considered the panel's comments:

"The panel took into account the issue of mitigation, however no significant mitigation was provided for the panel to consider. The lack of insight and genuine remorse shown by Mr Brown meant that the panel could not be satisfied that there would not be repeated inappropriate images or failure to notify the School immediately."

The panel goes on to conclude that:

"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 3 years."

I have considered whether a three-year 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 doing so I have placed significant weight on the seriousness of the misconduct found by the panel and the lack of evidence that Mr Brown has attained the level of insight and remorse that would provide confidence that this behaviour would not be repeated in the future.

I agree with the panel therefore that a three-year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr Andrew Brown is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 2027, three years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Brown remains prohibited from teaching indefinitely.

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

Mr Brown 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: 1 May 2024

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