



Teaching
Regulation
Agency

Mr Ben Thomas: Professional conduct panel outcome

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

June 2024

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

Teacher:	Mr Ben Thomas
Teacher ref number:	3854231
Teacher date of birth:	31 March 1992
TRA reference:	0021749
Date of determination:	17 June 2024
Former employer:	St Mary's Catholic Voluntary Academy, Brigg

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 17 June 2024 by way of a virtual hearing, to consider the case of Mr Ben Thomas.

The panel members were Ms Nicola Hartley (lay panellist – in the chair), Mr Ian Hylan (teacher panellist) and Mr Carl Lygo (lay panellist).

The legal adviser to the panel was Mr James Danks of Blake Morgan LLP.

The presenting officer for the TRA was Mr Callum Heywood of Browne Jacobson LLP.

Mr Thomas was not present and was not represented.

The hearing took place in public and was recorded.

Allegations

The panel considered the allegation (as amended) set out in the notice of hearing dated 18 March 2024.

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

1. On 12 July 2022, he was convicted of taking indecent photographs or pseudo-photographs of children between 16/06/21 – 22/07/21 contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.
2. On 12 July 2022, he was convicted of making an indecent photograph or pseudo-photographs of a child on 3 occasions on 10/08/2021 contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.

Mr Thomas, before the criminal courts, pleaded guilty to the above but had not participated with the TRA's proceedings. As a result, it was assumed that the allegation was not admitted.

Preliminary applications

The panel considered an application from Mr Heywood to proceed in the absence of Mr Thomas.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of *R v Jones* [2003] 1 AC 1 (as considered and applied in subsequent cases, particularly *GMC v Adeogba*; *GMC v Visvardis* [2016] EWCA Civ 162).

Subject to one point, the panel was satisfied that the notice of hearing ("the Notice") had been sent in accordance with 5.23 and 5.24 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession 2020 ("the Procedures") and that the requirements for service had been satisfied.

Mr Thomas had not responded to the Notice or to other correspondence sent to him.

The panel went on to consider whether to proceed in Mr Thomas's absence or to adjourn, in accordance with Rule 5.45 of the Procedures.

The panel had regard to the fact that its discretion to continue in the absence of a teacher should be exercised with great caution and with close regard to the overall fairness of the proceedings. The panel gave careful consideration to the fact that Mr Thomas is not in attendance and will not be represented at this hearing, should it proceed, and the extent of the disadvantage to him as a consequence.

On balance, the panel decided that the hearing should continue in the absence of Mr Thomas for the following reasons:

- Mr Thomas had not sought an adjournment and there was no medical evidence before the panel which indicated that he was unfit to attend the hearing due to ill-health.
- The panel had before evidence of three letters being sent to Mr Thomas, between January and May 2024, and that each letter was signed for as being received by a person giving their name as 'Ben' or 'Thomas'. The panel inferred this to mean the letters had been received by Mr Thomas and was satisfied that his absence was therefore voluntary, and he had waived his right to attend.
- The risk of reaching the wrong conclusion and the disadvantage to Mr Thomas in not being present were mitigated by the fact that the panel had the sentencing remarks.
- Given Mr Thomas's non-engagement, there was no indication that he might attend at a future date such that no purpose would be served by an adjournment.
- There is a public interest in hearings taking place within a reasonable time.
- There is a burden on all professionals who are subject to a regulatory regime to engage with their regulator.

Having decided that it is appropriate to proceed, the panel would strive to ensure that the proceedings are as fair as possible in the circumstances, bearing in mind that Mr Thomas is neither present nor represented.

The panel also considered an application from Mr Heywood to amend the allegation, to include the usual stem of the TRA's application, and for particular 3 to be withdrawn.

Mr Heywood explained that the Notice, due to a typographical error, did not include the term "You are guilty of having been convicted of a relevant offence" at the beginning of the allegation. He submitted that this was not fatal to the allegation as there were other references to 'relevant offence,' including in the response form that accompanied the Notice, and in the proposed statement of agreed facts (albeit this was not before the panel).

Mr Heywood also applied for particular 3 to be withdrawn as that offence had also been withdrawn by the CPS at the criminal trial.

With regard to the application to amend the allegation, the panel was content that the particulars of allegation contained in the Notice made it an inevitable inference that being convicted of a relevant offence would have been understood to be the allegation. This

was supported by inclusion of that reference (albeit with the other 2 potential allegations) in the response form, and also in the proposed statement of agreed facts. Mr Thomas was aware as to the allegation to be answered, and there was no unfairness to him to allow the inclusion of the usual stem.

With regard to the second application to amend, the panel was content that the allegation should properly suit the evidence, and also allowed this.

Summary of evidence

Documents

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

Section 1: Notice of hearing – pages 3 to 14

Section 2: Teaching Regulation Agency documents – pages 16 to 60

Section 3: Correspondence sent to teacher – pages 48 to 60.

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing.

Witnesses

The panel did not receive any live evidence in this matter.

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 Thomas was employed as a music teacher at St Mary's Catholic Voluntary Academy, a primary school, from September 2019 to September 2021. A parent of a pupil raised a concern against Mr Thomas, regarding inappropriate communication from him to their child, which led to a police investigation.

On 15 July 2022, Mr Thomas pleaded guilty to a number of criminal offences, which included taking 16 Category C photographs of children, who were his pupils, and making thousands of indecent photographs of children. The photographs that were made ranged from the most serious Category A photographs (1625 in total) to Category C photographs (20,063 in total).

Due to the seriousness of the offences, Mr Thomas was sentenced at Grimsby Crown Court on 5 August 2022. He received a 24-month custodial sentence in respect of the videos, and concurrent sentences of 12, 8 and 4 months in respect of the photographs. A sexual harm prevention order was also imposed for 10 years, until 2032.

Findings of fact

The findings of fact are as follows:

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

1. On 12 July 2022, you were convicted of taking indecent photographs or pseudo-photographs of children between 16/06/21 – 22/07/21 contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.

The panel noted that, in the bundle before it, was the certificate of conviction in respect of the criminal offence stated above. Mr Thomas, on 12 July 2022, pleaded guilty to taking 16 'videos' of children, which were stated to be Category C.

The certificate of conviction was supported by the sentencing remarks made on 5 August 2022.

The panel therefore considered this allegation proved.

2. On 12 July 2022, you were convicted of making an indecent photograph or pseudo-photographs of a child on 3 occasions on 10/08/2021 contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.

The panel noted that, in the bundle before it, was the certificate of conviction in respect of the allegation stated above. For clarity, the panel noted that the '3 occasions' were actually 3 separate convictions, as set out at pages 33 and 34 of the bundle.

The 3 offences included the following detail of the criminal conviction on 12 July 2022:

- Making 1625 Category A photographs and videos of a child;
- Making 1298 Category B photographs and videos of a child;
- Making 20,063 Category C photographs and videos of a child.

In the light of the certificate of conviction, and sentencing remarks, the panel was clear that Mr Thomas had been convicted of the above offences, and found the facts proved.

Findings as to conviction of a relevant offence

The panel was satisfied that the conduct of Mr Thomas in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr Thomas 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 and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel noted that the individual's actions were relevant to teaching, working with children, and working in an education setting. Mr Thomas was a music teacher, spending time with young pupils, and as demonstrated by the convictions, had a clear sexual interest in young children.

The panel noted that the behaviour involved in committing the offence could have had an impact on the safety and/or security of pupils and/or members of the public.

The panel also took account of the way the teaching profession is viewed by others. Mr Thomas had been convicted of downloading over 20,000 indecent images onto his laptop from March 2019 onwards. The judge, in her sentencing remarks, commented on the following aggravating features of the case:

- The time period when Mr Thomas was in possession of the images;
- The vulnerability of the children in the images;
- The number of different victims; and
- That Mr Thomas had systematically stored the images.

The panel considered that Mr Thomas's behaviour in committing the offences would affect public confidence in the teaching profession, given the influence that teachers may have on pupils, parents and others in the community.

The panel noted that Mr Thomas's behaviour ultimately led to a sentence of imprisonment, which was indicative of the seriousness of the offences committed. It also noted that he is still subject to a Sexual Harm Prevention Order and will remain so until 2032.

This was a case concerning an offence of viewing, taking, making, possessing, distributing, or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting any such activity, including one-off incident, which the Advice states is likely to be considered a relevant offence.

The panel noted the steps the judge stated had been taken by Mr Thomas in respect of his offending behaviour. Save for the information contained in the sentencing remarks, there was no mitigation before it from Mr Thomas.

Nevertheless, in circumstances when a teacher has been convicted of a number of criminal offences involving the taking or making of indecent images, the panel was clear that these must be considered relevant to being a teacher, and therefore determined that to be the case for the convictions in the allegation.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of convictions of relevant offences, it was necessary 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 safeguarding and wellbeing of pupils;
- 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 Thomas which involved him taking photographs of pupils in his care, there was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils.

The panel considered that public confidence in the profession would be seriously weakened if conduct such as that found against Mr Thomas was not treated with the utmost seriousness when regulating the conduct of the profession. His actions were described by the sentencing judge as an “...*abuse of trust placed in you by the school who employed you...*”

Similarly, in circumstances when Mr Thomas’s actions were also described as “*grotesque*” by the sentencing judge, the panel was of the view that a strong public interest consideration in declaring proper standards of conduct in the profession was present. The conduct found against Mr Thomas was outside that which could reasonably be tolerated.

In addition to the public interest considerations set out above, the panel went on to consider whether there was a public interest in retaining Mr Thomas in the profession. The panel had no information before it, either way, of Mr Thomas’s ability as a teacher and, therefore, gave this consideration minimal weight.

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 Mr Thomas.

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 Thomas.

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);
- sexual misconduct;
- 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;

- 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;
- a deep-seated attitude that leads to harmful behaviour.

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.

There was no evidence that Mr Thomas' actions were not deliberate, nor that he was acting under duress. The panel did note that Mr Thomas appeared to have a previously good history but, considering the convictions and that some of the offending behaviour time took place during this 'good history,' gave that minimal weight in its consideration.

Whilst Mr Thomas had not attended before the panel to give evidence, nor provided any material at all for the hearing bundle, the panel noted that he had pleaded guilty at an early stage of the criminal process. That could potentially indicate some reflection. The panel also recognised that the sentencing judge had referenced Mr Thomas demonstrating genuine remorse and had taken some steps to address his offending behaviour.

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 Thomas 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 Thomas.

As stated by the sentencing judge, part of Mr Thomas's offending arose from the "*grotesque abuse of trust.*" That trust was placed in him by the School, and the parents of the pupils. The extent of Mr Thomas' offending also meant that he was subject to, and would remain subject to, a Sexual Harm Prevention Order until 2032.

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 certain types of case where, if relevant, the public interest will have greater relevance and weigh in favour of not offering a review period.

Those relevant to the case include:

- serious sexual misconduct
- any sexual misconduct involving a child;
- 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.

Mr Thomas had been convicted of taking and making indecent images of children, and this behaviour had been over a period of time. The panel noted that the sentencing judge had stated that Mr Thomas had demonstrated an increase in seriousness of his offending behaviour, by moving from viewing the images to actually creating the photographs, as referenced in particular 1 of the allegations.

In the panel's view, either of the particulars contained in the allegation was towards the serious end of the spectrum, and likely to lead to a recommendation of there being no review period. It necessarily follows that, when both are considered, 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 Mr Ben Thomas should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mr Thomas 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 and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Mr Thomas, involved breaches of the responsibilities and duties set out in statutory guidance Keeping children safe in education (KCSIE).

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

The findings of misconduct are particularly serious as they include a conviction for taking and making indecent images of children.

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 Thomas, 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, "In the light of the panel's findings against Mr Thomas which involved him taking photographs of pupils in his care, there was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils." 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, "Whilst Mr Thomas had not attended before the panel to give evidence, nor provided any material at all for the hearing bundle, the panel noted that he had pleaded guilty at an early stage of the criminal process. That could potentially indicate some reflection. The panel also recognised that the sentencing judge had referenced Mr Thomas demonstrating genuine remorse and had taken some steps to address his offending behaviour." I have therefore given this element some 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 considered that public confidence in the profession would be seriously weakened if conduct such as that found against Mr Thomas was not treated with the utmost seriousness when regulating the conduct of the profession. His actions were described by the sentencing judge as an *"...abuse of trust placed in you by the school who employed you..."* I am particularly mindful of the finding of a relevant conviction in this case, involving taking and making indecent images of children 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 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 Mr Thomas and the panel comment "the panel went on to consider whether there was a public interest in retaining Mr Thomas in the profession. The panel had no information before it, either way, of Mr Thomas' ability as a teacher and, therefore, gave this consideration minimal weight."

A prohibition order would prevent Mr Thomas 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 comment "There was no evidence that Mr Thomas' actions were not deliberate, nor that he was acting under duress. The panel did note that Mr Thomas appeared to have a previously good history but, considering the convictions and that some of the offending behaviour time took place during this 'good history,' gave that minimal weight in its consideration."

I have also placed considerable weight on the finding of the panel that “As stated by the sentencing judge, part of Mr Thomas’ offending arose from the *“grotesque abuse of trust.”* That trust was placed in him by the School, and the parents of the pupils. The extent of Mr Thomas’ offending also meant that he was subject to, and would remain subject to, a Sexual Harm Prevention Order until 2032.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Thomas 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 serious 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 that no provision should be made for a review period.

I have considered the panel’s comments “Mr Thomas had been convicted of taking and making indecent images of children, and this behaviour had been over a period of time. The panel noted that the sentencing judge had stated that Mr Thomas had demonstrated an increase in seriousness of his offending behaviour, by moving from viewing the images to actually creating the photographs, as referenced in particular 1 of the allegations.” The panel went on to say, “the panel decided that the findings indicated a situation in which a review period would not be appropriate.”

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 indecent images of children and the lack of evidence of full 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 Mr Ben Thomas 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 Thomas 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 Thomas has a right of appeal to 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 'SABuxcey'.

Decision maker: Sarah Buxcey

Date: 1 July 2024

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