



Teaching
Regulation
Agency

Daniel Smith: Professional conduct panel outcome

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

November 2024

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

Teacher:	Mr Daniel Smith
Teacher ref number:	2046411
Teacher date of birth:	26 May 1993
TRA reference:	20767
Date of determination:	15 November 2024
Former employer:	Lutterworth College

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 15 November 2024 by way of a virtual hearing, to consider the case of Mr Smith.

The panel members were Mr Adnan Qureshi (lay panellist – in the chair), Dr Louise Wallace (lay panellist) and Mrs Kate Hurley (teacher panellist).

The legal adviser to the panel was Miss Sarah Price of Blake Morgan LLP solicitors.

The presenting officer for the TRA was Ms Cher Lyne Peh of Browne Jacobson solicitors.

Mr Smith 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 Hearing dated 20 August 2024.

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

1. On or around 29 March 2023, you were convicted at Leicester Magistrates' Court for the offence of Possessing Extreme Pornographic Images.

2. On or around 29 March 2023, you were convicted at Leicester Magistrates' Court for the offence of Making Indecent Photographs of Children.

Mr Smith did not respond to the allegations.

Preliminary applications

Proceed in absence

The panel considered an application from the presenting officer to proceed in the absence of Mr Smith.

The panel carefully considered all relevant documentation and the submissions by the Presenting Officer. It accepted the legal advice provided.

Firstly, the panel was satisfied that the Notice had been served in accordance with the Rules. Whilst the initial Notice had been returned undelivered, the TRA made efforts to trace the address of Mr Smith. The panel saw evidence that the TRA then contacted Mr Smith at his correct address, which was confirmed by Mr Smith himself.

The panel was also satisfied that reasonable efforts had been made to bring the hearing to Mr Smith's attention.

The panel went on to consider whether the hearing should proceed in Mr Smith's absence.

Mr Smith had not responded directly to the Notice.

The panel was satisfied that Mr Smith had voluntarily waived his right to attend the hearing. He had given no reason for his non-attendance and had not sought an adjournment. There was no indication that Mr Smith might attend at a later date.

The panel also considered that there is a public interest in hearings taking place within a reasonable time.

The panel did not consider that it would reach the wrong conclusion as a result of not being able to hear from Mr Smith, in the specific facts of this case.

In the light of these factors, the panel determined that it should proceed with the hearing in the absence of Mr Smith.

The panel will take great care and have close regard to the overall fairness of these proceedings, bearing in mind that Mr Smith is neither present nor represented.

Summary of evidence

Documents

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

Section 1: Notice of hearing and response – pages 4 to 14

Section 2 : TRA documents – pages 28 to 88

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

The panel was also provided with documents in regards to the application in Mr Smith's absence. These comprised of a one page letter, dated 3 October 2024 and a one page email dated 23 October 2024, which confirmed Mr Smith's correct address was on file.

In the consideration of this case, the panel had regard to the document Teacher Misconduct: Disciplinary Procedures for the Teaching Profession 2024, (the "Procedures").

Witnesses

The panel did not hear any oral evidence.

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 Smith had been employed at Lutterworth College ("the School") since 23 August 2021 as a teacher of computer science. On 25 April 2022, Mr Smith was arrested on suspicion of possession of indecent images of children.

Mr Smith was convicted and sentenced on 29 March 2023 in relation to the two offences as set out in the allegation. Mr Smith was sentenced to a two year community order, 100 hours unpaid work, 40 days rehabilitation activity and made subject to a sexual harm prevention order for 5 years.

Mr Smith was subsequently referred to the TRA.

Findings of fact

The findings of fact are as follows:

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

1. On or around 29 March 2023, you were convicted at Leicester Magistrates' Court for the offence of Possessing Extreme Pornographic Images.

The panel was provided with a copy of the Certificate of Conviction which showed that Mr Smith was convicted of an offence of possessing extreme pornographic images.

In addition, the panel was provided with a printout from the Police National Computer ("PNC") and the police report, which set out the circumstances pertaining to the offence.

The panel accepted the certificate of conviction as proof of the commission of the offences. Therefore, allegation 1 was found proved.

2. On or around 29 March 2023, you were convicted at Leicester Magistrates' Court for the offence of Making Indecent Photographs of Children.

The panel was provided with a copy of the Certificate of Conviction which showed that Mr Smith was convicted of an offence of making indecent photographs of children.

In addition, the panel was provided with a printout from the Police National Computer ("PNC") and the police report, which set out the circumstances pertaining to the offence.

The panel accepted the certificate of conviction as proof of the commission of the offences. Therefore, allegation 2 was found proved.

Findings as to conviction of a relevant offence

Having found the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to convictions of 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 Mr Smith, in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr Smith 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
 - 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 Mr Smith's actions were relevant to teaching, working with children and working in an education setting. The evidence provided to the panel indicated that Mr Smith had downloaded indecent images whilst he was on School premises. The panel considered there was a risk of children being able to access those images in the School.

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

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr Smith's behaviour in committing the offences 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 noted that Mr Smith's behaviour did not lead to a sentence of imprisonment, which was indicative that the offence was at the less serious end of the possible spectrum. The panel also had sight of the sentencing remarks from the Judge, which indicated that full credit was given for the early guilty plea.

This was a case concerning offences involving 'sexual activity' and 'any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child', which the Advice states is likely to be considered a relevant offence. The panel noted that the list as set out in the Advice is not exhaustive. The panel was satisfied that both possessing extreme pornographic images and making indecent photographs of children amounted to a relevant offence.

The panel took into account relevant mitigating factors that had been set out in the documents provided, although the panel was mindful that it had not heard or received any direct evidence relating to this information. In particular, the panel took into

consideration Mr Smith's account of the difficulties he described that he was experiencing at the relevant time, which included a new job, [REDACTED] and new house.

The panel was not provided with any evidence regarding Mr Smith's abilities as an educator. Although, the panel did note that Mr Smith appeared to be of previous good character.

The panel found that the seriousness of the offending behaviour that led to the convictions were relevant to Mr Smith'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 convictions of relevant offences, 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 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.

There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the panel's findings that Mr Smith's conduct took place on School premises.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Smith 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 Smith 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 Smith in the profession. Mr Smith had not engaged in these proceedings and the panel had not been provided with evidence to attest to Mr Smith's abilities as a teacher. Therefore, the panel did not consider that the public interest in retaining Mr Smith was engaged.

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 Smith.

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 Smith. 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;
- 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.

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.

There was no evidence that Mr Smith's actions were not deliberate.

There was no evidence to suggest that Mr Smith was acting under duress.

The panel was not provided with any evidence of Mr Smith's character or abilities as a teacher.

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 Smith 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 Smith. The seriousness of the conduct that resulted in the two criminal offences were significant factors 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 certain types of cases where, if relevant, the public interest will have greater relevance and weigh in favour of not offering a review period.

One of these include:

- 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 considered that this category was clearly engaged in light of its findings that Mr Smith was convicted of making indecent images of children. This behaviour weighed in favour of not offering a review period.

Although the panel considered that the behaviour of possessing extreme pornography did not fall under the categories listed in the Advice, it did consider that this was relevant in making its decision not to offer a review period because it is a serious sexual offence and undermines the public confidence in the profession.

The Advice also indicates that where a case involves certain other characteristics, 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 the listed characteristics were engaged by the panel's findings.

The panel noted that Mr Smith had not engaged with the TRA. There was no evidence that demonstrated Mr Smith's insight or remorse, nor remediation for his actions. The panel also did not have the benefit of any character evidence about Mr Smith.

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

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

The findings of misconduct are particularly serious as they include a relevant conviction for possessing extreme pornographic images and making indecent photographs 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 Smith, 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, "There was a strong public interest consideration in respect of the safeguarding and wellbeing of pupils, given the panel's findings that Mr Smith's conduct took place on School premises." 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 Smith had not engaged with the TRA. There was no evidence that demonstrated Mr Smith's insight or remorse, nor remediation for his actions. The panel also did not have the benefit of any character evidence about Mr Smith." In my judgement, the lack 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 Mr Smith's behaviour in committing the offences could affect public confidence in the teaching profession, given the influence that teachers may have on pupils, parents and others in the community." I am particularly mindful of the finding of a conviction for possessing extreme pornographic images and making indecent photographs of children 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 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 Smith himself and the panel comment "The panel was not provided with any evidence regarding Mr Smith's abilities as an educator. Although, the panel did note that Mr Smith appeared to be of previous good character."

A prohibition order would prevent Mr Smith from teaching. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel's comments, "The panel noted that Mr Smith's actions were relevant to teaching, working with children and working in an education setting. The evidence provided to the panel indicated that Mr Smith had downloaded indecent images whilst he was on School premises. The panel considered there was a risk of children being able to access those images in the School."

I have also placed considerable weight on the finding of the panel that "Mr Smith had not engaged in these proceedings and the panel had not been provided with evidence to attest to Mr Smith's abilities as a teacher. Therefore, the panel did not consider that the public interest in retaining Mr Smith was engaged."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Smith 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 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 certain types of cases where, if relevant, the public interest will have greater relevance and weigh in favour of not offering a review period.

One of these include:

- 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 considered that this category was clearly engaged in light of its findings that Mr Smith was convicted of making indecent images of children. This behaviour weighed in favour of not offering a review period."

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 insight and 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 Daniel Smith 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 Smith 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 Daniel Smith 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 'S Buxcey', with a stylized flourish at the end.

Decision maker: Sarah Buxcey

Date: 24 November 2024

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