

THE HIGH COURT
IN THE MATTER OF SECTION 44(5) OF THE TEACHING COUNCIL ACT 2001 AS AMENDED
AND IN THE MATTER OF A REGISTERED TEACHER AND ON THE APPLICATION OF THE
TEACHING COUNCIL

[2022] IEHC 30
[2022 No. 11 MCA]

BETWEEN

THE TEACHING COUNCIL

APPLICANT

AND

CIAN COONEY

RESPONDENT

Ex Tempore judgment of Ms. Justice Irvine, President of the High Court, delivered on the 24th day of January 2022

Proceedings

1. The within proceedings concern an application brought by the applicant in the terms of s. 44(5) of the Teaching Council Act 2001 ("the Act") seeking an order from the High Court confirming the decision of the panel of the applicant's disciplinary committee ("the panel") that the name of the respondent be removed from the register and that he be ineligible to apply, under s. 31 of the Act, to be restored to the register for a period of 30 years beginning with the date of removal. Further, an order is sought to allow the applicant liberty to communicate the terms of the orders to the bodies identified in the Notice of Motion.
2. The application is brought by way of originating *ex parte* docket and grounded on the affidavit of Declan O'Leary, head of the disciplinary committee unit of the applicant, sworn on 13th January, 2022.

Background

3. The applicant is a statutory body which established and maintains the Register of Teachers ("the register"). The respondent was at all material times a registered teacher.
4. On 10th June, 2019, the applicant's executive committee considered documentation before it, in particular an email from Detective Inspector Michael Lynch, Garda National Protective Services Bureau dated 30th May, 2019. This email reported that the respondent was arrested at a school on 21st May, 2019 and charged with 10 counts of defilement of a child under the age of 15. On foot of this, the executive committee decided to make a complaint to the applicant's investigating committee ("investigating committee").
5. By way of High Court Order, perfected the 9th July, 2019, the respondent's name in the register was suspended until the completion of such steps as might be taken by the applicant pursuant to Part 5 of the Act or until further order of the Court.
6. The investigating committee met on four occasions. The final meeting occurred on 9th February, 2021. The investigating committee formed the opinion, pursuant to s. 42(9)(a) of the Act, that there was a *prima facie* case to warrant further action being taken in relation to the complaint. It decided to refer the complaint in whole to the applicant's

Disciplinary Tribunal. The grounds for the referral is set out in s. 42(1)(g) of the Act which provides that where a teacher has been convicted in the state of an offence triable on indictment the complaint may be considered by the disciplinary tribunal.

7. The panel of the disciplinary committee ("the panel") prepared a notice of inquiry, dated 30th July, 2021, containing the allegations against the respondent. This was sent to the respondent's legal representatives. The allegations summarised are:
 - (a) That in January, 2020, the respondent was convicted in the Circuit Court of five counts of an offence triable on indictment pursuant to ss. 2(1) and 2(2) of the Criminal Law Sexual Offences Act 2006. These are offences which involved the respondent having sexual intercourse with a child under 15 years of age.
 - (b) That in January, 2020, the respondent was convicted in the Circuit Court of an offence triable on indictment in that the respondent sexually exploited a child contrary to s.3 of the Child Trafficking and Pornography Act 1998 as amended by s.6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 as substituted by s.3(2) of the Criminal Law (Human Trafficking) Act 2007.
 - (c) That in May, 2020, the respondent was convicted in the Circuit Court of four counts of an offence triable on indictment pursuant to s.2(1) and 2(2) of the Criminal Law Sexual Offences Act 2006.
 - (d) That in May, 2020, the respondent was convicted in the Circuit Court of an offence triable on indictment in that the respondent sexually exploited a child contrary to s. 3 of the Child Trafficking and Pornography Act 1998 as amended by s. 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 as substituted by s. 3(2) of the Criminal Law (Human Trafficking) Act 2007.

The allegations are set out in full in the notice of inquiry.

8. On 7th October, 2021, the panel held a preliminary hearing. The respondent was not present at this. At that hearing, his then legal representatives indicated that they would no longer be representing the respondent and withdrew from the meeting. The panel proceeded to hear oral submissions from the legal representatives on behalf of the director of the applicant. The submissions addressed the issue of whether the inquiry should proceed by way of written submissions or oral submissions, and whether any oral hearing should be heard in public or otherwise than in public. The panel decided the inquiry should proceed by way of oral hearing and take place in public but with the identity of the victim anonymous, as is provided for under s. 43(9) of the Act.
9. On 19th November, 2021, the inquiry was heard before the panel. The respondent was not present but was legally represented. There was also a legal assessor present to assist the panel.
10. The panel, having heard submissions and considered the evidence, prepared a report dated 26th November, 2021. The panel found all allegations were proven beyond a

reasonable doubt by reason of the respondent's admissions through his solicitor and the order made by the Circuit Court in January, 2021 setting out his convictions and sentence. The panel, when any finding in respect of the registered teacher is in the terms of s. 42(1)(g) of the Act, is required to set out whether the findings affect the fitness of that teacher to teach. The panel found that the respondent's fitness to teach was affected by reason of both the serious nature of the offences and the respondent's admission that it affected his fitness to teach.

11. On the same day the panel proceeded to hear oral submissions as to sanction. Pursuant to s.44(1)(a) of the Act, the panel decided to remove the name of the respondent from the register and further decided that the respondent should not be eligible to apply to have his name restored to the register for 30 years.
12. By letter dated 2nd December, 2021 and by email on 3rd December, 2021, the applicant provided the respondent with a copy of its report containing the panel's decision concerning sanction and the reasons supporting that decision.
13. The respondent has not made an application pursuant to s. 44(3) of the act to annul the decision on sanction and the 21 day period to do so has now expired. Thus the applicant makes the application under s. 44(5) of the Act seeking an order confirming their decision.

Decision

14. Section 44(5) of the Act provides:

Where a registered teacher does not apply to the High Court under subsection (3) for annulment of the decision, the Council shall, within 21 days of the expiry of the period for making an application under that subsection, or such further period as the High Court considers just and equitable in the circumstances, apply ex parte to the High Court for confirmation of the decision and, where the Council so applies, the Court, on the hearing of the application shall, unless it sees good reason to the contrary, confirm the decision or may give such other directions to the Council as the Court considers appropriate and may make such order as to costs as it considers appropriate.

15. Therefore, the Court must confirm the decision of the applicant unless it sees good reason to the contrary. As set out by Kelly P. in *Medical Council v. Lohan Mannion* [2017] IEHC 401, the Court has a restricted function in applications such as this. Kelly P. outlined *the obligation of the court is to deal with the issues...such as adherence to correct procedural norms, adherence to the requirements of natural and constitutional justice and the making of a decision by the Medical Council which is a reasonable one or to put it another way is one which cannot be said to be one which no reasonable council would come to.*
16. The Court notes that the panel had the assistance of Mr. Nicholas Butler, S.C., as legal assessor. During the inquiry, Mr. Butler, S.C., set out the principles to be considered when deciding on sanction. Reference was made to *Medical Council v Dr Michael Murphy*

[1984] 6 JIC 2901, wherein it was provided that the sanction should act as a deterrent to the teacher and profession as a whole insofar as it should send an appropriate message as to the seriousness of the finding. Crucially, the sanction must also protect the public. Mr. Butler, S.C., reminded the panel of the obligation to be as lenient as possible and take into account any factors of mitigation that may exist. Finally, the panel was advised that the sanction must be proportionate in the circumstances and Mr. Butler, S.C., drew the panel's attention to the guide on sanctions published by the applicant.

17. It is clear that the protection of children and the public generally were considered to be of paramount importance when the panel came to decide on the sanction to be imposed in that it noted in its report that it was vital that the sanction should have the effect of maintaining public trust and confidence in teachers and the teaching profession. Also, the panel was concerned that the sanction imposed would be one which would give the public trust in the manner in which the teaching profession is regulated.
18. The panel viewed the wrongdoing of the respondent as being at the very highest end of the spectrum of wrongdoing, involving as it did deliberate and severe harm visited by a teacher on a young child. And, it noted the likely possibility of the child concerned suffering lifelong effects as a result of the respondent's actions. The panel further observed that as a teacher, the respondent would have been aware of the vulnerability of many young girls and that he had exploited this knowledge. It also noted the entitlement of children and parents alike to assume that teachers would at a minimum strive to protect children from harm rather than cause them harm.
19. Finally, in deciding upon sanction, the panel had regard to such mitigating factors as existed, namely, the respondent's participation in the disciplinary process, the fact that he had never previously come to the attention of the applicant and had pleaded guilty to the offences with which he had been charged in the Circuit Court.
20. In coming to its decision, the panel considered each of the possible sanctions set out in s. 44 of the Act before concluding that the only fair and proportionate sanction in all of the circumstances would be to remove the respondent from the register. The panel was of the view that a 30 year period before the respondent would be eligible to apply to have his name restored to the register would be appropriate given his age and the statement made on his behalf to the effect that he did not expect to ever be in a position to teach again.
21. I am acutely aware that the sanction in respect of which the Court's confirmation is sought is the most severe provided for in s. 44 of the Act. However, I can see no good reason not to confirm the panel's decision in this regard. The respondent's wrongdoing could hardly have been more egregious. He inflicted terrible harm on a young vulnerable and impressionable child. The wrongdoing began when the respondent started to groom a barely adolescent child and having done so later subjected her to repeated extreme sexual abuse over a considerable period of time. In these circumstances and having regard to the fact that the objectives sought to be achieved by the imposition of sanction include the protection of the public and the maintenance of trust and confidence in the

teaching profession, it is difficult to see how any lesser sanction would be appropriate. Neither would any lesser sanction in my view serve as an effective deterrent to any teacher considering engaging in heinous conduct of the type carried out by the respondent in these proceedings, that being a further objective of the sanction to be imposed.

22. Accordingly, given that I am fully satisfied that the sanction proposed is proportionate and fair and was reached after a full consideration of all material factors, I will confirm the decision of the applicant to remove the respondent's name from the register and that he will not be eligible to apply to have his name restored to the register for 30 years from the date of its removal.