

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr Joseph Alexander Kerr

Teacher ref no: 03/66516

Teacher date of birth: 04/01/1962

TA Case ref no: 9189

Date of Determination: 3 December 2012

Former Employer: Paul Nicholas School of Acting, Thornton-Cleveleys

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 3 December 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Joseph Alexander Kerr.

The Panel members were Professor Ian Hughes (Lay Panellist– in the Chair), Mrs Margaret Simpson (Teacher Panellist) and Mr David Longson (Teacher Panellist).

The Legal Adviser to the Panel was Mr Paul Owston of Berrymans Lace Mawer LLP Solicitors.

The Presenting Officer for the Teaching Agency was Ms Louisa Atkin of Browne Jacobson LLP Solicitors.

Mr Kerr was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 24 August 2012.

It was alleged that Mr Kerr was had been convicted of relevant offences, namely:

1. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Assault with a female. He committed this offence between 1 January 2009 and 31 December 2009. He was sentenced on 27 February 2012 to 3 months imprisonment (concurrent, wholly suspended for 24 months) with Supervision requirement of 12 months.

2. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Assault with a female. He committed this offence between 1 January 2009 and 31 December 2009. He was sentenced on 27 February 2012 to 3 months imprisonment (concurrent, wholly suspended for 24 months) with Supervision requirement of 12 months.
3. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Assault with a female child under 16 years. He committed this offence between 23 August 2007 and 22 August 2008. He was sentenced to 3 months imprisonment on 27 February 2012 (concurrent, wholly suspended for 24 months) and received a Sex Offenders Notice for 7 years and a Sexual Offenders Prevention Order for 5 years with Supervision requirement of 12 months.
4. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Activity with a female child under 16 years. He committed this offence between 23 August 2008 and 22 August 2009. He was sentenced to 3 months imprisonment on 27 February 2012 (concurrent, wholly suspended for 24 months) with Supervision requirement of 12 months.

Mr Kerr had not admitted that he had received these convictions or that they were relevant offences.

C. Summary of Evidence

Documents

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

Notice of Proceedings & (uncompleted) Response to Notice of Proceedings – on pages 1 -7

Teaching Agency documents – on pages 8 – 56

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

Ms Atkin did not call any witnesses and relied solely on the documentary evidence. She gave a brief opening address in relation to the documents, the nature of the convictions and their relevance. After the announced decision she gave a brief address on the factors to be considered in relation to the Panel's recommendation to the Secretary of State.

D. Decision and Reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

It is alleged that Mr Kerr has been convicted of four relevant offences which relate to sexual activity with two female pupils, one of whom was 17 and the other was 15.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against Mr Kerr proven, for these reasons:

Mr Kerr was convicted of the following offences:

1. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Assault with a female. He committed this offence between 1 January 2009 and 31 December 2009. He was sentenced on 27 February 2012 to 3 months imprisonment (concurrent, wholly suspended for 24 months) with Supervision requirement of 12 months.
2. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Assault with a female. He committed this offence between 1 January 2009 and 31 December 2009. He was sentenced on 27 February 2012 to 3 months imprisonment (concurrent, wholly suspended for 24 months) with Supervision requirement of 12 months.
3. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Assault with a female child under 16 years. He committed this offence between 23 August 2007 and 22 August 2008. He was sentenced to 3 months imprisonment on 27 February 2012 (concurrent, wholly suspended for 24 months) and received a Sex Offenders Notice for 7 years and a Sexual Offenders Prevention Order for 5 years with Supervision requirement of 12 months.
4. On 31 January 2012 he was convicted at Preston Crown Court of the offence of Sexual Activity with a female child under 16 years. He committed this offence between 23 August 2008 and 22 August 2009. He was sentenced to 3 months imprisonment on 27 February 2012 (concurrent, wholly suspended for 24 months) with Supervision requirement of 12 months.

We have accepted the evidence in the Record of Finding dated 13 August 2012 from Preston Crown Court, and also the information provided by the Crown Prosecution Service, in their letter to the Presenting Officer dated 11 September 2011, and by Lancashire Constabulary, in their letter to the Presenting Officer letter dated 10 August 2012.

Findings as to Conviction, at any time, of a Relevant Offence

Having found that Mr Kerr was convicted of the offences 1. to 4. we further find that those are relevant offences.

The convictions are for offences which are relevant to Mr Kerr's fitness to be a teacher.

The convictions contravene the latest Teacher's Standards published by the Department for Education. Specifically, such convictions amount to a failure to uphold public trust in the profession and to maintain high standards of ethics and behaviour within and outside of school by:

- Failing to treat pupils with dignity, build relations rooted in mutual respect and at all times observe proper boundaries appropriate to a teacher's professional position; and
- Failing to have regard to the need to safeguard pupils' wellbeing in accordance with statutory provisions.

The convictions relate to sexual offences with children, one of whom was under the age of consent, and took place in an educational context on several occasions. Further, terms of imprisonment were imposed albeit suspended.

Panel's Recommendation to the Secretary of State

When considering what sanction, if any, to recommend we have had regard to "The Prohibition of Teachers – DfE advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession". In particular we have had regard to the protection of children, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct. We have sought to approach the issue bearing in mind the principle of proportionality. We have concluded that in this instance it is appropriate to recommend that a Prohibition order be made.

We have carefully considered the documents that we have been provided with and the submissions made by Ms Atkin

The convictions received by Mr Kerr are incompatible with being a teacher for several reasons:

- They constituted a serious departure from the personal and professional elements of the latest teacher's standards published by the Department for Education;
- They amounted to misconduct that may have or did seriously affect the education and/or well being of the pupils concerned;
- There is evidence of a deep-seated attitude leading to harmful behaviour;
- The offences in question were serious sexual offences that led to the imposition of terms of imprisonment, albeit suspended.

Mr Kerr has not engaged with the proceedings or provided any evidence of insight or mitigation. In any event his actions were deliberate, over a course of time with two different pupils.

We recommend that Mr Kerr should be allowed to apply to set aside the Prohibition Order but not before 10 years have elapsed. This is because Mr Kerr received a Sex Offender Notice of 7 years and it is clearly inappropriate that he should be allowed to apply in this period. We consider that after an additional period of 3 years Mr Kerr should be allowed the opportunity to provide evidence of his suitability to re-enter the teaching profession. This is a sufficient period after the Notice expires during which Mr Kerr might be able to undertake activities that he would not be able to do whilst the Notice was in force.

Secretary of State's Decision and Reasons

I have given very careful consideration to this case. I have given careful consideration to the recommendation of the panel in respect of sanction. I have also given very careful consideration to the recommendation of the panel in respect of a review period.

Mr Kerr has four convictions for Sexual Assault, two of which are for sexual assault with a female under the age of sixteen.

The panel have found that this behaviour represents a serious departure from the standards expected of a teacher. Indeed the panel have made clear that the offences:

- constituted a serious departure from the personal and professional elements of the latest teacher's standards published by the Department for Education;
- amounted to misconduct that may have or did seriously affect the education and/or well being of the pupils concerned;
- include evidence of a deep-seated attitude leading to harmful behaviour;
- were serious sexual offences that led to the imposition of terms of imprisonment, albeit suspended.

For these reasons I support the recommendation of the panel that Mr Kerr be prohibited.

I have also given careful consideration to the review period.

The panel have recommended a 10 year review period.

I have considered this very carefully.

It is evident from the panel's recommendation that Mr Kerr has not engaged with the proceedings or provided any evidence of insight or mitigation. In any event his actions were deliberate, over a course of time with two different pupils.

The panel also point to evidence of a deep-seated attitude leading to harmful behaviour.

In my view these factors contribute significantly to what is already a very serious case. I do not accept the recommendation of the panel regarding a review period.

Instead my decision is to not allow a review period. These offences were very serious and took place in an educational context on several occasions.

This means that Mr Joseph Kerr 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 Joseph Kerr 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 Joseph Kerr has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this Order.

NAME OF DECISION MAKER: Alan Meyrick
Date 3 December 2012