



National College for
Teaching & Leadership

Beverley Birss: Professional Conduct Panel outcome

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

October 2013

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher:	Ms Beverley Birss
Teacher ref no:	02/60816
Teacher date of birth:	17 September 1962
NCTL Case ref no:	9948
Date of Determination:	17 October 2013
Former employer:	Woodchurch Road Primary School, Metropolitan Borough of Wirral

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 16 and 17 October 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Ms Beverley Birss.

The Panel members were Mr John Pemberton (Teacher Panellist– in the Chair), Ms Jean Carter (Lay Panellist) and Dr Geoffrey Penzer (Lay Panellist).

The Legal Adviser to the Panel was Mr Graham Miles of Morgan Cole LLP solicitors.

The Presenting Officer for the National College was Miss Laura Hackney of Browne Jacobson LLP solicitors.

Mrs Beverley Birss 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 1 August 2013.

It was alleged that Ms Birss was guilty of unacceptable professional conduct and/ or conduct that may bring the profession into disrepute, in that:

Whilst employed as a teacher at Woodchurch Road Primary School during the academic years 2010/2011 and 2011/2012, she:

- i. On or around 25 May 2012 pulled Pupil A by his shirt and forcibly sat him down at a table;**
- ii. Shouted excessively at at least one pupil;**
- iii. Placed at least one pupil in a store cupboard;**
- iv. Excluded pupils from lessons despite this being contrary to school policy;**
- v. Failed to adequately supervise pupils who you had excluded from your classroom; and**
- vi. Failed to maintain a safe classroom environment.**

The facts of the allegations were not admitted.

No admissions were made as to whether the alleged facts amount to unacceptable professional conduct or conduct that may bring the profession into disrepute.

C. Preliminary applications

Application to proceed in the absence of the teacher

Ms Birss was not present nor represented. The Presenting Officer applied for the hearing to proceed in the absence of Ms Birss. The Presenting Officer stated that the Notice of Proceedings dated 1 August 2013 had been sent to Ms Birss' address. In addition a chase letter dated 2 September 2013 had been delivered to the address of Ms Birss on 3 September 2013 and there was a signed record to that effect. Miss Hackney submitted that, as Ms Birss was aware of the hearing arrangements but had decided not to attend, Ms Birss had voluntarily waived her right to attend. No application for an adjournment had been made.

The Chair announced the decision of the Panel as follows:

'We have decided that the hearing should proceed in the absence of Ms Birss for the following reasons:

- We are satisfied that the Notice of Proceedings has been served in accordance with Rule 4.10.
- Ms Birss is aware of the hearing and no explanation for her failure to attend has been given. We are satisfied that Ms Birss has voluntarily waived her right to attend.

- No application for an adjournment has been made and no purpose would be served by an adjournment.

Amendment of allegation

The Chair asked the Presenting Officer to clarify whether the date 25 May 2012 applied to all of the limbs of the allegations or simply to limb (i). If the other limbs are not confined to 25 May 2012, the Presenting Officer was asked to confirm the relevant period. The Presenting Officer confirmed that the allegations relate to the final two years that Ms Birss was employed at Woodchurch Primary School ('the school'). The Chair confirmed that the allegations ought to be amended to make clear what the relevant period is. Accordingly, the Panel amended the overarching words of the allegation to read 'Whilst employed as a teacher at Woodchurch Road Primary School during the academic years 2010/11 and 2011/12'. The Panel was satisfied that this amendment would cause no prejudice to Ms Birss.

D. Summary of evidence

Documents

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

- Section 1** Anonymised pupil list and chronology on pages 2 to 3
- Section 2** Notice of proceedings and response on pages 5 to 10
- Section 3** Witness statements on pages 12 to 30
- Section 4** National College for Teaching and Leadership documents on pages 32 to 218
- Section 5** Teacher's documents on pages 215 to 218

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

Witnesses

The Panel heard oral evidence from two witnesses called by the Presenting Officer, namely, Witness A, Headteacher of the school and Witness B, who is employed by the school as a teacher.

E. 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.

Ms Beverly Birss attained qualified teacher status on 9 February 2004 and successfully completed a statutory induction period on 17 March 2005. She started working at Woodchurch Road Primary School, Wirral on 1 September 2004 and was employed under successive fixed term contracts until 1 April 2007 when she was appointed on a permanent basis. She remained employed at the school until her resignation on 18 October 2012.

The Headteacher, Witness A, had concerns about Ms Birss’ performance as a classroom teacher for some time. Despite offering support, Witness A said that these concerns escalated over the final two years of Ms Birss’ employment at the school. Ms Birss also had significant periods of sickness absence during her time at the school and there were a number of phased returns to work.

Ms Birss was suspended following an incident on 25 May 2012 in which it was alleged that she had pulled a pupil by his shirt whilst shouting at him. A disciplinary investigation was undertaken, which involved interviewing members of staff at the school and Ms Birss. During this investigation evidence was gathered, this included reports of interviews conducted by the Headteacher with three pupils shortly after the incident.

Following the investigation, a disciplinary hearing was ultimately scheduled for 31 October 2012. Her GP wrote to say that she was unfit to attend and Ms Birss subsequently resigned on 18 October 2012 and so the hearing did not take place. The Headteacher has stated that it was her intention to recommend Ms Birss’ dismissal. Ms Birss was not the subject of capability proceedings, although Witness A said in her evidence that it is likely that capability proceedings would have been instigated had Ms Birss’ employment not come to an end as it did.

Findings of Fact

Our findings of fact are that:

- i. **On or around 25 May 2012 [Ms Birss] pulled Pupil A by his shirt and forcibly sat him down at a table;**

We find the allegation that Ms Birss pulled Pupil A by his shirt proven. However, the evidence presented does not establish that she forced the pupil to sit down at a table. In making this finding we accept the first-hand evidence of Witness B, who we found to be a

credible witness. She witnessed the event and was able to provide a clear description. In addition, we accept the evidence of the Headteacher, Witness A, who we also found to be credible. When Witness A interviewed Ms Birss shortly after the incident, Ms Birss said to her that she had been physical with Pupil A, although she denied pulling his shirt. Ms Birss said that she had to be physical because she had to 'control' him. Witness B said that she saw Ms Birss pull Pupil A towards the table by his t-shirt whilst shouting at him and that Ms Birss had hold of the t-shirt in a tight grip which caused the t-shirt to 'bunch up'. Witness B said that Pupil A was not really resisting and that he sat down at the table of his own accord.

ii [Ms Birss] Shouted excessively at at least one pupil;

We find this allegation proved. In coming to this conclusion, we had regard to a dictionary definition of 'excessive' as 'exceeding a normal, usual, reasonable, or proper limit'. We accept the first-hand evidence of Witness B that she witnessed Ms Birss shout at Pupil C on 25 May 2012 and that such shouting was aggressive, louder than she would have expected and 'over the top'. In addition, we accept the written evidence of Individual C who said that Ms Birss could frequently be heard shouting uncontrollably at pupils. Individual C's teaching area was adjacent to that of Ms Birss. This is reinforced by the accounts of Pupils A, B and C and the fact that a number of parents had complained to the Headteacher regarding Ms Birss shouting at their children.

iii. [Ms Birss] Placed at least one pupil in a store cupboard;

We find the facts of this allegation proved. In making this finding, we rely on the statements of Individual D, the Teaching Assistant in Ms Birss' class, and also the records of interviews of Pupils A, B and C. Furthermore, the evidence of Witness A is that the area concerned is an 'L' shaped storage area. It does not have a door, but pupils should not be placed there because it has stock, some of which could harm children if used unsupervised. However, Individual D said in her statement that pupils can remain in sight of an adult when placed there.

iv. [Ms Birss] Excluded pupils from lessons despite this being contrary to school policy;

We find the facts of this allegation not proved. We are not satisfied that the exclusion of pupils from lessons was contrary to school policy. We noted that the exclusion of pupils from lessons is not expressly referred to in the Behaviour Management Policy. We accept that the exclusion of pupils from lessons is not custom and practice in the school or acceptable to the Headteacher. In witness statements, staff refer to the fact that this is a strategy which should not be used. The Headteacher acknowledged this in her oral evidence by indicating that the Behaviour Management Policy will be amended to expressly deal with this matter.

v. [Ms Birss] Failed to adequately supervise pupils who [she] had excluded from [her] classroom;

We find the facts of this allegation proved. We accept the evidence of Witness B and the witness statements of Individuals D and E that when pupils were excluded from Ms Birss' lessons they had sometimes been misbehaving in the corridor. There is evidence that on occasions the pupils were completely unsupervised and Witness B confirmed that sometimes more than one pupil was excluded at the same time.

vi. [Ms Birss] Failed to maintain a safe classroom environment.

We find the facts of this allegation not proved. We recognise there were concerns and that Ms Birss' classroom was frequently untidy and disorganised. We also accept the evidence of Witness A and the written evidence of Individual F that, on or about 18 May 2012, they both went to Ms Birss' classroom and found it to be hazardous. In her oral evidence, Witness A said that it was unsafe on that occasion. Ms Birss was told to rectify the situation that day and, with the help of colleagues, she did. Witness A confirmed that, after that date, the classroom was not unsafe. A single occasion when there was a reported accident to a pupil has been brought to our attention. However, the precise cause of this accident is not clear. In the light of these factors, we are not satisfied that Ms Birss failed to maintain a safe classroom environment.

Findings as to Unacceptable Professional Conduct and/or Conduct that may bring the profession into disrepute.

We are satisfied that, in respect of the facts found proved in allegations (i), (ii),(iii) and (v) taken together, Ms Birss is guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute. Allegation (i) is the most serious.

In making this determination, we find that Ms Birss breached the personal and professional conduct elements of the latest Teachers' Standards. Ms Birss did not uphold public trust and confidence in the profession or maintain high standards of ethics and behaviour in that she failed to treat pupils with dignity and build relationships rooted in mutual respect. In addition, Ms Birss did not have proper and professional regard for the ethos, policies and practices of the school in which she taught.

Panel's recommendation to the Secretary of State

We have decided to recommend a Prohibition Order for the following reasons.

We have found that Ms Birss' behaviour was a serious departure from the personal and professional conduct elements of the latest Teachers' Standards and was misconduct seriously affecting the education and wellbeing of pupils. Although Ms Birss' suspension was triggered by a single incident, there is evidence of a pattern of behaviour preceding this. There is some evidence of a deep seated attitude that leads to harmful behaviour

and no evidence that Ms Birss recognised this. Ms Birss chose not to engage with this process and we have heard no evidence in mitigation or as to her current circumstances. It is possible that Ms Birss was suffering from health and/or personal problems that affected her behaviour but, in her absence, we have not been able to test this.

In the view of the Panel, a Prohibition Order is necessary in order to protect children, to maintain public confidence in the teaching profession and to declare and uphold proper standards of conduct. We are satisfied that this is a proportionate recommendation.

We have decided to recommend that Ms Birss be allowed to apply to have the Prohibition Order set aside after a period of three years. Our reasons are that her behaviour may have been exacerbated by poor health and/or other personal problems. If this is the case, it is right that she should have the opportunity to demonstrate that she has overcome them. The Headteacher in her evidence made clear that some aspects of Ms Birss' teaching practice were satisfactory or even good and a Review Panel might conclude that she should be given the opportunity to return to teaching.

Decision and reasons on behalf of the Secretary of State

I have given careful consideration to the findings and recommendations of the panel in this case.

The panel have found a number of the allegations proved and that those facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

Ms Birss' behaviour was a serious departure from the standards expected of a teacher and seriously affected the education and wellbeing of pupils. There is evidence of a pattern of behaviour and additionally there is evidence of a deep seated attitude with no evidence that Ms Birss recognises this.

Ms Birss has not engaged with the process and the panel heard no evidence in mitigation. Whilst it is possible that her health and/or personal issues affected her behaviour, there has been no opportunity to test this.

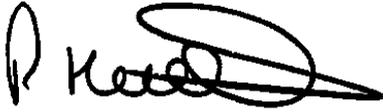
In the circumstances I agree that a prohibition order is a proportionate sanction in the public interest. I agree that Ms Birss should have an opportunity to apply for the order to be set aside after a minimum of 3 years have passed.

This means that Ms Beverley Birss is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the Prohibition Order to be set aside, **but not until 24 October 2016, 3 years from the date of this order at the earliest.** If she does apply, a

panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Ms Beverley Birss remains barred from teaching indefinitely.

This Order takes effect from the date on which it is served on the Teacher.

Ms Beverley Birss has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this Order.

A handwritten signature in black ink, appearing to read 'P Heathcote', with a large, sweeping flourish at the end.

NAME OF DECISION MAKER: Paul Heathcote

Date: 17 October 2013

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