

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr Graham Jon Martin
Teacher ref no: 72/54052
Teacher date of birth: 7 June 1953
TA Case ref no: 8478
Date of Determination: 1 November 2012
Former Employer: Winwick CE Primary School, Warrington

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 31 October & 1 November 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Graham Jon Martin.

The Panel members were Mrs Pamela Belmour (Teacher Panellist– in the Chair), Mr Stan Szaroleta (Lay Panellist) and Mr Mark Tweedle (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 Lucy Alicea of Kingsley Napley LLP Solicitors.

Mr Martin was present and was represented by Mr Andrew Faux of Counsel.

The hearing took place in public and in private and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 26 June 2012 as amended (see below re amendment).

It was alleged that Mr Martin was guilty of unacceptable professional conduct, in that:

1. Whilst employed as a Head Teacher at Winwick CE Primary School, Warrington, he:
 - (a) Carried out external work as an Ofsted Inspector between around 1996 and around June 2010;
 - (b) Carried out external work as a School Improvement Partner between around September 2009 and around June 2010;

- (c) He carried out the work at 1 (a) above without the written permission of the Governing Body;
- (d) He carried out the work at 1 (b) above without the written permission of the Governing Body;
- (e) He received personal payment for the work at 1 (a) and/or 1 (b) above;
- (f) Payment for the work at 1 (a) and/or 1 (b) should have been provided to the school;
- (g) His actions at 1 (e) were dishonest.

Mr Martin admitted the facts of allegations 1 (a) to (e).

C. Summary of Evidence

Documents

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

Notice of Proceedings & Response – on pages 1 – 7

Teaching Agency Statements – on pages 8 – 18

Teaching Agency Documents – on pages 19 – 237

Teacher Documents – on pages 238 – 242

(The Panel also had a separate bundle containing the skeleton arguments, documents and legal advice in relation to the jurisdiction issue)

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

In addition, the Panel agreed to accept the following:

Two pages from the 2012 School Teachers' Pay and Conditions (submitted by way of clarification of the like document at pages 143 & 144)

Winwick CE Primary School Ofsted inspection report 2008 (submitted by Mr Faux in mitigation)

Opening Addresses

Ms Alicea outlined the facts to be considered and the documents that were relevant to those. Mr Faux addressed the Panel on the particular issue of dishonesty.

Brief summary of evidence given

Please note that this is intended to be a summary – it does not reflect the complete evidence given.

Ms Alicea called two witnesses – Witness A, the Chair of Governors of the school, and Witness B, School Diocesan Advisor. Both their statements were taken as read and they answered questions from Ms Alicea and the Panel and were cross examined by Mr Faux.

Witness A now knew the correct procedures for dealing with external work by the Head Teacher but at the time of the events in question he had been new to his role and had accepted matters as they were. He had readily accepted Mr Martin's role as an Ofsted inspector and took comfort in that. Remuneration was never discussed. He had learnt about the procedures when dealing with Mr Martin's School Improvement Partner (SIP) role. In relation to that he had explicitly trusted Mr Martin and been naïve. Parents had made comments about Mr Martin's frequent absences from school, if he needed to contact Mr Martin he was usually away and the school calendar on Mr Martin's desk showed that he was out more than he was in. The school had not received any payments for Mr Martin's external work and the matter was now in the hands of Solicitors.

Witness A could not directly recall the school implementing the Warrington Model Whole School Pay Policy 2009/2010. He recounted the history of his dealings with Mr Martin in relation to the SIP work. During that time building work was taking place at the school. He did not recollect Mr Martin saying other than that he was doing the SIP work in his own time and the school would not be affected and he was entirely sure that Mr Martin had not said he would do it in his own time as far as possible.

Witness B confirmed that she had reviewed the minutes of Governors meetings back to 2006, before which they were not readily available. The Warrington Pay Policy had been adopted as it stood and the relevant section had not been completed. The way matters had been dealt with at the school was contrary to the normal position. There should have been an audit trail and proper disbursement of the fees accrued. She had not come across this situation before. Mr Martin had a duty as a role model and all financial matters should be transparent. He should have complied with the guidance on the issue. Governors would rely on advice and guidance from the Head Teacher. She had not investigated matters with Cheshire East Council because they were in a different Diocese and she did not know who to speak to.

Mr Faux called Mr Martin to give evidence on his own behalf. His statement was taken as read and he answered questions from Mr Faux and the Panel and was cross examined by Ms Alicea.

Mr Martin recounted the history of his work as an Ofsted inspector and that the previous Chair of Governors had been happy with that. Pay had been discussed but no decision on that had ever been made. He was quite open about the time he spent out of the school and everyone knew about that including Witness A's wife, who worked at the school. He was not aware of the guidance on pay for such work. He knew of another Head Teacher who he understood was paid directly. He recounted his dealings with Witness A in relation to the SIP work. He had said that as far as he could he had dealt with that in his own time. He had not said it was all in his own time. It was clear at school what he was doing. It had been a particularly busy time at school. He was there late because building work was being done and there were staff issues.

Mr Martin detailed the work he had done latterly for Ofsted and whilst the reference to up to 66 days work was correct less than half of that was in school time. He accepted that he should have obtained permission but felt at the time that he had consensual permission from the previous Chair of Governors. He had not addressed it with Witness A when he became Chair because it was known what he was doing and he felt that it was a matter of custom and practice. He denied that he had been dishonest and felt that he had been open and transparent. He detailed the process by which he came to do the SIP work and what work he had done. Some of that had been in school time but a lot of it was in his own time. He denied that there had been any intention to deceive Witness A in his emails about this. Cheshire East Council had pressed him for an invoice. He was at fault for not bringing it to the attention of the Governors at that stage but they were also at fault for not finalising matters. The school had been closed for Easter and he gave Cheshire East Council his own account details and then transferred the money into a holding account. He did not have a discussion with the Governors after the holidays and shortly after that had been suspended. With hindsight he could see that he had not kept to the highest of standards but he had not deliberately withheld information or intended to deceive.

Mr Martin confirmed that he was a full member of the Governing Body. He had approached the SIP work on the basis that was something he would do when he retired but his plans had been disrupted when the Deputy Head Teacher retired first.

Closing Addresses

Ms Alicea and Mr Faux addressed the Panel in detail on the allegations that were in issue and in particular the issue of dishonesty. They also dealt with the issue of unacceptable professional conduct and Mr Faux accepted that if dishonesty was proved there was no argument that that amounted to unacceptable professional conduct.

(After the Panel announced their decision on the facts and unacceptable professional conduct Ms Alicea and Mr Faux addressed the Panel again, on mitigation and sanction)

D. Decision and Reasons

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 whilst Mr Martin was the Head Teacher at Winwick Church of England Primary School, Warrington he carried out external work without permission and acted dishonestly in relation to payments he received for that work.

Findings of fact

Our findings of fact are as follows:

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

1. Whilst employed as a Head Teacher at Winwick CE Primary School, Warrington, you:
 - (a) Carried out external work as an Ofsted Inspector between around 1996 and around June 2010;
 - (b) Carried out external work as a School Improvement Partner between around September 2009 and around June 2010;
 - (c) You carried out the work at 1 (a) above without the written permission of the Governing Body;
 - (d) You carried out the work at 1 (b) above without the written permission of the Governing Body;
 - (e) You received personal payment for the work at 1 (a) and/or 1 (b) above;
 - (f) Payment for the work at 1 (a) and/or 1 (b) should have been provided to the school;
 - (g) Your actions at 1 (e) were dishonest.

Mr Martin has admitted allegations 1 (a) to (e) through his representative, Mr Faux. We have also accepted the evidence in the Teaching Agency documents and the oral evidence of Witness A, the Chair of the School Governing Body, and Witness B, Diocesan Adviser, in relation to these allegations.

In relation to allegation 1 (f), the statutory guidance contained in the Teachers' Pay and Conditions document is clear and unambiguous that payment for external work conducted by staff at schools should accrue to the school. We do not consider that it is credible for Mr Martin, as an experienced Head Teacher of 20 years standing, who was a registered OFSTED inspector and an accredited School Improvement Partner (SIP), to claim that he was unaware of the guidance. Further, the letter from Cheshire East Council, dated 6 July 2009, to the Chair of Governors and copied to Mr Martin makes it explicit that they expected to "...reimburse the school for his time" and they would "...set the school up as a supplier for the Council".

We have also accepted the evidence of Witness B that the School had adopted the Warrington Borough Council Model Whole School Pay Policy 2009/2010, albeit without adapting it specifically for the school. Mr Martin was a full member of the Governing Body at this time. We would also expect that as the Head Teacher he would have used this document in his dealings with his own staff and therefore be cognisant of it. Document S2 para 49 (1) (d) states that "The relevant body has discretion to make payments to Head Teachers who provide an external service to one or more additional schools...payments are not automatic".

The Panel accepts Witness A's evidence that the minutes of the Governors, going back over four years, showed no formal arrangements or review of the payments being received by Mr Martin for his external work. Therefore no authority had been given for the direct receipt of such monies by Mr Martin, contrary to the guidance and model policy, and we do not consider that such authority accrued by reason of any custom and practice, regardless of any discussions Mr Martin may have had with the

previous Chair. He should have sought to formalise the arrangements and have them reviewed on an annual basis.

Accordingly, payments for Mr Martin's external activities should have been provided to the School.

In relation to allegation 1 (g), we have considered the payments made by OFSTED and Cheshire East Council separately.

With regard to the payments from OFSTED, the Panel are of the view that by the ordinary standards of reasonable and honest people it was dishonest for Mr Martin to receive personal payment for this work when it was carried out in school time. We were concerned that Governors were unaware of the full extent of the work being undertaken, particularly the 66 days undertaken in 2009\10, at a daily rate of approximately £400 a day. When they sought full disclosure, in relation to the SIP work, that was not provided.

However, Mr Martin has claimed that an arrangement was in place that such payment would accrue to him and we have not heard any evidence to the contrary. Further, the inspection work he carried out started some time ago and developed on a piecemeal basis. Neither did he seek to conceal the work that he was carrying out. We are therefore of a view that on balance Mr Martin did not realise that his conduct was dishonest.

Therefore we do not find that part of the allegation in relation to OFSTED work proved.

We consider that from an objective point of view it was similarly dishonest for payments for the SIP work to be paid directly to Mr Martin. We further consider that he must have realised that was the case.

This is because Mr Martin's responses to repeated requests from the Chair of Governors about the status of the SIP work were, in the view of the Panel, intentionally misleading. Governors were unaware for three months that Mr Martin had already started the work with Cheshire East Council even though they had not given their consent.

Further, despite the intention of the Council to reimburse the school Mr Martin invoiced the Council directly and arranged for payment to be made into a personal account rather than to the school. We find his explanation that it was expedient to make these private arrangements, because the Council was pressing him and it was the Easter holidays, unconvincing. As Head Teacher he had a significant role in the financial management of the school and had knowledge of the school account details and could have arranged for the money to be paid directly into the school account.

Therefore we find that part of the allegation in relation to SIP work is proved.

Findings as to Unacceptable Professional Conduct

Having found the facts of the allegations proved we further find that those amount to unacceptable professional conduct.

This is because:

Mr Martin's actions constituted misconduct of a serious nature, falling significantly short of behaviour expected of a teacher.

We have noted Mr Martin's admission through his representative, Mr Faux that if we were to make a finding of dishonesty that would inevitably constitute unacceptable professional conduct.

Mr Martin's actions breached the GTC Code of Conduct and Practice for Registered Teachers, effective from 1 October 2009. Specifically he failed to demonstrate honesty and integrity and uphold public trust and confidence in the teaching profession in relation to management and school finance.

Having regard to the latest teachers' standards published by the Department for Education in 2012, he also failed to uphold public trust in the profession and maintain high standards of ethics and behaviour in that he behaved dishonestly; he did not have proper and professional regard for the ethos, policies and practices of his own school; neither did he act within the statutory frameworks that set out the professional duties and responsibilities of teachers.

Mr Martin was in a position of authority and trust which he used for personal gain rather than the benefit of the school. In 2009/10 in addition to undertaking 66 days of work for OFSTED he further contracted for 35 days of SIP work. This was at a time, when by his own admission, there were additional significant demands due to extensive building work and staffing issues. In the view of the Panel this excessive commitment would have impacted on the quality of provision for pupils at his own school, particularly given that no arrangements were made, financial or otherwise to compensate for Mr Martin's absence. Governors were unaware of the extent of the external work being carried out by Mr Martin or the financial benefits accruing to him.

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 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, including the 2008 OFSTED report submitted by Mr Faux, and the submissions by Mr Faux and Ms Alicea.

Mr Martin's actions are incompatible with being a teacher. This is because:

We have found that Mr Martin's actions constituted a serious departure from the standards expected of him and constituted an abuse of position of trust and dishonesty. The dishonesty had serious consequences, in financial terms for the school; the £10,600 Mr Martin received from Cheshire East Council was not an inconsequential sum for a small primary school. Whilst the Panel found that the dishonesty had not been repeated it was of the view that Mr Martin, in relation to the SIP money, had on repeated occasions sought to mislead his employers.

Further, whilst he did not act dishonestly in relation to the monies he received from OFSTED, over the years the school lost out on money he received for that work, which he did without permission and which was paid into his private account. We do not accept Witness A's somewhat crude calculation about the amount involved being in the order of £250,000 but nevertheless it is likely to be a substantial sum.

Comparing this to a case of theft, if a school employee had taken such sums of money, or indeed any money, from school funds they would expect serious consequences to include a custodial sentence.

There are mitigating factors. We have taken account of Mr Martin's long service and that the main impact of his failings and his dishonesty occurred in a relatively brief period of his career. However, this was at a time when Mr Martin enjoyed the benefits of his position as Head Teacher, both pecuniary and otherwise. He cannot expect to have these without taking responsibility and being held to account for his actions. Mr Martin informed us that he was preparing to retire and that his SIP and OFSTED activities were going to form the basis of the next stage of his career. His actions were evidently deliberate and he was not acting under duress.

We recommend that Mr Martin should not be allowed to apply to set aside the Prohibition Order. This is because his actions were a breach of trust, akin to theft and constituted serious dishonesty.

Secretary of State's Decision and Reasons

I have given careful consideration to the recommendation of the panel both in respect of sanction and in respect of a review period.

Mr Martin was a head teacher who failed to uphold the acceptable standards of behaviour especially in terms of finance and school management. The panel made a finding of dishonesty and also found that his actions were deliberate and that he did not act under duress.

The public should have confidence in the honesty and integrity of teachers. Mr Martin's behaviour undermined that public confidence and trust.

I therefore support the recommendation of the panel that Mr Martin should be prohibited from teaching.

The panel set out clearly the mitigating factors that they have considered but also show that Mr Martin's behaviour was at a time when he was a head teacher. Mr Martin's deliberate actions were a clear breach of trust and dishonest. I therefore also support the recommendation that there should be no review period.

This means that Mr Graham Martin 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 Graham Martin 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 Graham Martin 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: 5 November 2012