



National College for
Teaching & Leadership

Mr Brian Leslie Foakes: Professional Conduct Panel outcome

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

6 March 2015

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

Teacher: Mr Brian Leslie Foakes

Teacher ref no: 7461045

Teacher date of birth: 3 May 1953

NCTL case ref no: 0011929/Foakes

Date of determination: 6 March 2015

Former employer: [Redacted] York

A. Introduction

A Professional Conduct Panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 6 March 2015 at 53-55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Brian Leslie Foakes.

The Panel members were Ms Nicole Jackson (lay panellist – in the chair), Mr Colin Parker (teacher panellist) and Mr Tony Woodward (teacher panellist).

The legal adviser to the panel was Mr Stephen Murfitt of Blake Morgan, solicitors LLP.

The meeting took place in private and the decision was announced in public.

The published decision was amended on 19 March 2015.

B. Allegations

The Panel considered the allegation(s) set out in the Notice of Meeting dated 19 February 2015.

It was alleged that Mr Foakes was guilty of having been convicted of relevant offences, in that:

1. On 11 April 2014 he was convicted at York Crown Court of an offence of making indecent photograph or pseudo-photograph of children between 01/01/2013 - 30/04/2013. He was sentenced to 15 months imprisonment, made subject to a sexual offences prevention order for 20 years, sex offender's notice for 10 years, and images and equipment seized were forfeited.

2. On 11 April 2014 he was convicted at York Crown Court of advertising an indecent photograph or pseudo-photograph of a child between 01/01/13 - 30/04/2014. He was sentenced to 15 months imprisonment, concurrent.
3. On 11 April 2014 he was convicted at York Crown Court of on offence of voyeurism – installing equipment/construct/adapt/structure with the intention of enabling one to record persons doing a private act between 01/01/2005-31/12/2010. He was sentenced to 3 months imprisonment, consecutive.
4. On 11 April 2014 he was convicted at York Crown Court of on offence of voyeurism –record a person doing a private act between 01/01/2005-31/12/2010. He was sentenced to 3 months imprisonment, concurrent.

Mr Foakes admitted that he had been found guilty of four relevant offences at York Crown Court on the 11 April 2014.

C. Preliminary applications

There were no preliminary applications.

D. Summary of evidence

Documents

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

Section 1: Chronolgy

Section 2: Notice of Referral, Response and Notice of Meeting

Section 3: Statement of Agreed Facts

Section 4: National College Documents.

Section 5: Teacher documents

The panel members confirmed that they had read all of the documents in advance of the meeting.

Witnesses

The panel received no oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

Mr Foakes was formerly employed as an Assistant Houseparent at [redacted] in York commencing in January 2013. Mr Foakes had held a number of teaching posts since 1975, including those of Head of Music and Housemaster. He had spent a number of years teaching in Zimbabwe and Kenya.

On 30 April 2013 Mr Foakes was arrested at [redacted] in York when the police searched his premises at the College and his home. The Police seized Mr Foakes' computer for forensic examination, and two video cameras disguised as spy pens. Mr Foakes was convicted of four offences at York Crown Court on 11 April 2014. The offences occurred prior to the start of his employment at the school at which he was employed at the time of his arrest. He was sentenced to a total term of imprisonment of 18 months, made the subject of a Sexual Offenders Prevention Order for 20 years and a Sex Offenders Notice for 10 years.

Findings of fact

The panel's findings of fact are as follows:

The panel determines that the requirements for a meeting as set out in Rules 4.83 to Rule 4.91 of the Teacher Disciplinary Procedures have been satisfied.

Mr Foakes and the presenting officer submitted a Statement of Agreed Facts signed by Mr Foakes on 26 January 2015. Mr Foakes admits that he was convicted of four offences at York Crown Court on 11 April 2014 and the details of those offences are set out in the Statement of Agreed Facts. Mr Foakes accepts that the four offences are relevant offences to a person's fitness to be a teacher in accordance with the guidance set out in the Department for Education advice document 'The Prohibition of Teachers'.

The Police examination of Mr Foakes' computer found 611 indecent images of children ranging from level 1 to level 5 on the Copine scale, a rating system used to categorise the severity of images of child sex abuse. There were 671 indecent videos of children ranging from level 1 to level 5 on the Copine scale. 15 of the videos had been made available for distribution by Mr Foakes.

Amongst the videos were 23 files which showed acts of voyeurism. Three of the videos showed Mr Foakes installing a camera in a shower cubicle and 20 of the videos showed pre-pubescent males showering naked. The Police had taken statements from staff at a

previous school where Mr Foakes had been employed and the staff were able to identify locations at the school shown on the videos.

Accordingly the Panel is satisfied that the facts set out in the Notice of meeting are proved.

Findings as to conviction of a relevant offence

The panel is satisfied that the conduct of Mr Foakes in relation to the facts found proved involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Foakes is in breach of the following Standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour
- Treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position.
- 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.

The panel is satisfied that the conduct of Mr Foakes fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Foakes' conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the Guidance (Teachers misconduct: the prohibition of teachers). The Guidance advises consideration as to whether and to what extent the teacher's actions:

- Were contrary to the standards of personal and professional conduct expected of a teacher, with reference to the Teachers' Standards,
- Were relevant to teaching, working with children and/or working in an education setting,
- Would be likely to have an impact on the safety or security of pupils or members of the public; or
- Would be likely to affect public confidence in the teaching profession if the teacher were allowed to continue teaching.

The Guidance also indicates that any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child is likely to be considered a relevant offence.

The four relevant convictions are serious and likely to have an impact on the reputation of the teaching profession. Teachers are regarded as role models and influence pupils. The panel considers that all of the factors above apply in this case.

For all of these reasons the panel determines that Mr Foakes has been convicted of relevant offences.

Panel's recommendation to the Secretary of State

The panel has made factual findings as to the committing of relevant criminal offences by Mr Foakes and it is now necessary for the panel 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 has to consider whether it is a proportionate measure and if it is 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 a punitive effect.

The panel has considered the public interest, and in particular:

- The protection of children;
- The maintenance of public confidence in the profession;
- Declaring and upholding proper standards of conduct.

The panel has considered the advice on Teachers' Misconduct in relation to the Prohibition of Teachers, and has concluded that the following are relevant:

- Serious departure from the personal and professional conduct elements of the latest teachers' standards, as published by, or on behalf of, the Secretary of State.
- Misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk.
- Abuse of position of trust or violation of the rights of pupils.
- Deliberate behaviour that undermines the profession, the school or colleagues.
- Activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity.
- The commission of a serious criminal offence, including those that resulted in a conviction.

The panel has found that the allegations against Mr Foakes involved acts of abuse of trust, and the violation of pupil rights, which affect the reputation of the teaching profession. The conduct of Mr Foakes was planned, deliberate and maintained over a period of time.

Similarly, the panel considers that public confidence in the profession could be weakened if such conduct, as the panel has found proved, was not treated with seriousness when

regulating the conduct of the profession. The Guidance states that a teacher's behaviour will be considered to be incompatible with being a teacher if there are convictions similar to the relevant offences found proved against Mr Foakes. The factual findings against Mr Foakes raise important public interest considerations in declaring proper standards of conduct for the teaching profession. Teachers are at all times role models and are expected to act with integrity.

Notwithstanding the public interest considerations that were present, the Panel has to consider carefully whether or not it would be proportionate to impose a Prohibition Order. The panel has taken careful note of the mitigating circumstances listed by Mr Foakes at page 95 of the hearing bundle. The panel noted that there were no matters of a regulatory nature recorded against Mr Foakes and the Judge at his criminal trial made reference to a number of mitigating circumstances. These included an early plea of guilty, and the voluntary work of Mr Foakes in Africa.

In carrying out the balancing exercise the panel has decided that the public interest considerations outweigh by some margin the interests of Mr Foakes. Accordingly a consideration of the public interest requires the panel to make a recommendation to the Secretary of State that a Prohibition Order should be imposed with immediate effect.

The panel then went on to consider whether or not it would be appropriate to recommend that a review period of the order should be considered. The panel has been mindful that the advice given is that a Prohibition Order applies for life, but there may be circumstances in any given case that may make it appropriate for a review period of not less than two years to be recommended in order for the teacher to apply to set aside the Order. The panel is satisfied that the relevant offences committed by Mr Foakes are incompatible with Mr Foakes being a teacher and that in those circumstances a review period would not be appropriate. Accordingly the panel recommends a Prohibition Order without a review period.

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 all the facts proven and judged that those facts amount to convictions of relevant offences. Mr Foakes has been convicted of making and advertising an indecent photograph or pseudo photograph of a child and also 2 offences relating to voyeurism. Mr Foakes has received custodial sentences in relation to these offences.

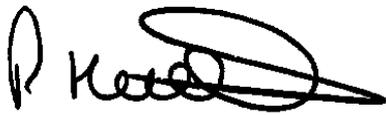
The panel have given due consideration to both the interests of the public and the interests of the teacher and have concluded that a prohibition order would be an appropriate and proportionate sanction. I agree with their recommendation.

The panel has further satisfied themselves that the relevant offences committed by Mr Foakes are incompatible with Mr Foakes being a teacher and that in the circumstances a review period would not be appropriate. I agree with their recommendation.

This means that Mr Brian Leslie Foakes 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 Brian Leslie Foakes 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 Brian Leslie Foakes 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.

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: 9 March 2015

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