



National College for
Teaching & Leadership

Lisa Potgieter: Professional conduct panel outcome

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

October 2015

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

Teacher: Ms Lisa Potgieter
Teacher ref number: 8662453
Teacher date of birth: 18 May 1964
NCTL case reference: 11415
Date of determination: 30 October 2015
Former employer: Cobblers Lane Primary School, West Yorkshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 10 August 2015 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Lisa Potgieter.

The panel members were Kulvinder Sandal (teacher panellist – in the chair), Sarah Evans (teacher panellist) and Ian Hughes (lay panellist).

The legal adviser to the panel was Mr Peter Shervington of Eversheds LLP, solicitors.

The presenting officers for the National College were Ben Rich of Counsel (10 August 2015) and Christopher Geering of Counsel (resumed hearing 30 October 2015).

Ms Potgieter was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel initially considered the allegation(s) set out in the Notice of Proceedings dated 22 May 2015.

It was alleged that Ms Potgieter was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that on 7 July 2014 at Wakefield and Pontefract Magistrates' Court she was convicted of the offence of theft, which occurred between 28 March 2013 and 14 February 2014 contrary to s.1 of the Theft Act 1968. She was conditionally discharged for 2 years and ordered to pay compensation of £2,057.

This allegation was subsequently amended on the application of the presenting officer. Under the amended allegation (accepted by the panel at the hearing on 30 October 2015) it was alleged that Ms Potgieter was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that between 28 March 2013 and 14 February 2014 she stole £2,057 belonging to Cobblers Lane Primary School.

In the absence of the teacher the allegation was taken not to have been admitted.

C. Preliminary applications

Initial Application to Proceed in Absence

At the outset of the hearing on 10 August 2015, the panel considered an application from the presenting officer to proceed in the absence of Ms Potgieter.

The following decision was read:

1. The panel has considered whether this hearing should continue in the absence of the teacher.
2. The panel is satisfied that the College has complied with the service requirements of Regulation 19 a to c of the Teachers' Disciplinary (England) Regulations 2012 ("the Regulations") in that the Notice of Proceedings was sent to the teacher's last known address more than 8 weeks in advance.
3. The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession ("the Procedures").
4. The panel has determined to exercise its discretion under Paragraph 4.28 of the Procedures to proceed with the hearing in the absence of the teacher.

5. The panel understands that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.
6. In making its decision, the panel has noted that the teacher may waive her right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of R v Jones [2003] 1 AC1. The panel notes that after the investigation, the Notice of Proceedings and other documents were sent to an alternative address. Ms Potgieter then responded to the presenting officer's instructing solicitors and identified that, even if arrangements were put in place to overcome her physical difficulties in attending, she did not want to be involved in the proceedings. This is recorded in a note at page 25 of the bundle. Following this comment:
 - Ms Potgieter was informed during the same call that she should make contact with the presenting officer's instructing solicitors if she did wish to participate in the proceedings.
 - Ms Potgieter was then sent a further letter confirming the substance of the telephone call and reiterated that she should make contact if she wished to discuss anything further.

The panel therefore considers that the teacher has waived her right to be present at the hearing in the knowledge of when and where the hearing is taking place.

7. The panel has had regard to the requirement that it be only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There is no indication that an adjournment might result in the teacher attending the hearing.
8. The panel has had regard to the extent of the disadvantage to the teacher in not being able to give her account of events, having regard to the nature of the evidence against her. The panel has not identified any significant gaps in the documentary evidence provided. Should such gaps arise during the course of the hearing, the panel may take such gaps into consideration in considering whether the hearing should be adjourned for such documents to become available and in considering whether the presenting officer has discharged the burden of proof. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account. We also wish to make it clear that insofar as there is an absence of information as to the context of the offence which is the

subject matter of this case, the panel will exercise a particularly cautious approach in the interests of fairness to the teacher.

9. The panel has had regard to the seriousness of this case, and the potential consequences for the teacher and has accepted that fairness to the teacher is of prime importance. However, it considers that in light of the teacher's clear waiver of her right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; and taking into account the substantial delay which is likely to follow from an adjournment; that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

Application to amend the allegation

Subsequently an application was made by the presenting officer to amend the allegation. The panel decided that, in all the circumstances, it would not be appropriate to determine the appropriate approach to adopt in relation to the proposed amendment without giving the teacher an opportunity to respond to the proposal. The panel determined that as a consequence, the hearing fell outside the range of exceptional cases where it is appropriate to proceed in the absence of the teacher and that the cost and delay associated with an adjournment were outweighed by the overriding need to ensure that the matter is dealt with justly and fairly.

The hearing was duly adjourned and the panel directed that the application for amendment to the allegations be served on the teacher providing an opportunity for her to respond.

Applications at the hearing on 30 October 2015

The hearing reconvened on 30 October 2015. A fresh application was made by the presenting officer to proceed in the teacher's absence. The panel received legal advice and the following decision was read:

The panel has determined to proceed with this hearing in the absence of the teacher. In reaching this decision it notes that in addition to previous attempts to contact her outlined in the panel's decision to proceed prior to the adjournment, the teacher was sent on 17 August 2015 a copy of the presenting officer's application for an amendment to the allegation, along with a copy of the panel's decision to adjourn. Those documents were then emailed to the teacher on 3 September 2015 after Nabarro had confirmed her email address. Finally, Rachel Morgan of Nabarro telephoned the teacher on 27 October 2015, during which call the teacher confirmed she had received the correspondence, confirmed she had no comment on the amended allegation and stated that she would be unable to

attend the hearing. When an offer was made to make arrangements for her to attend by telephone she declined the offer.

The teacher has had ample opportunity to respond to the presenting officer's application and has willingly and consciously declined the option of participating in these proceedings.

The panel repeats the reasons given at the outset of the hearing on 10 August 2015. For those reasons, and given the further opportunity provided to the teacher to respond, the panel has decided to proceed.

Having heard submissions from the presenting officer and received legal advice, the panel went on to accept the proposed amendment to the allegation, as set out under heading 'B' above.

D. Summary of evidence

Documents

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

Section 1: Chronology – page 2-4

Section 2: Notice of Proceedings – pages 4-9

Section 3: NCTL documents – pages 11-18

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

In addition, the panel accepted 9 pages of documents relating to service of the Notice of Proceedings and Ms Potgieter's response. These were added at pages 19 to 27 of the bundle.

A proposed amended allegation was submitted and added at page 28 of the bundle.

After resumption of the hearing on 30 October further correspondence with Ms Potgieter was submitted by the presenting officer and added at pages 29 to 35 of the bundle.

Witnesses

The panel did not hear oral evidence from any witness.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before us and has reached a decision.

The panel confirms that it has read all the documents provided.

Ms Potgieter had been employed at Cobblers Lane Primary School since September 2010. It was alleged that between 28 March 2013 and 14 February 2014 she stole £2,057 belonging to the school.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegation against you proven, for these reasons:

You are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that between 28 March 2013 and 14 February 2014 you stole £2,057 belonging to Cobblers Lane Primary School.

The panel received legal advice that in view of the provisions of Section 14 of the Power of Criminal Courts (Sentencing) Act 2000, Ms Potgieter's conditional discharge should be deemed not to be a conviction for the purpose of these proceedings. Consequently, the panel was not bound to treat the criminal proceedings as conclusive evidence of the relevant facts. Accordingly, it turned its independent mind to the evidence before it.

The panel finds the facts of the allegation proved. In reaching this conclusion it finds the following evidence particularly persuasive:

1. The record of the police interview from page 16 of the bundle. During the course of the interview, Ms Potgieter clearly admitted stealing from the school. She states that she had not provided the accounts to the school because 'I was scared of this coming out'. She accepted that her actions were dishonest. Given the formal context of this interview, conducted by police officers and in the presence of a solicitor, the panel considers this highly persuasive evidence.
2. The record at page 11 of the bundle, which confirms that Ms Potgieter pleaded guilty to stealing £2,057 from the school. Again the panel finds this highly persuasive evidence that the facts alleged occurred, particularly in view of the formal nature of the proceedings in which the admission was made.

In circumstances where clear admissions have been made in a formal context with no suggestion of duress or mistake, and having regard to the full range of material before it, the panel finds the facts of the allegation are proved on the balance of probabilities.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found the allegation proved, the panel has gone on to consider whether the facts proved amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as “the Advice”.

The panel is satisfied that the conduct of the teacher in relation to the facts proved, involved breaches of the Teachers’ Standards (“the Standards”). The panel considers that by reference to Part Two, the teacher is in breach of the following Standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel notes reference in the preamble to the Standards that teachers should ‘act with honesty and integrity’. The panel considers that Ms Potgieter’s behaviour in stealing from the school fell substantially short of this expectation, and well below the Standards expected of the profession.

The panel has also considered whether Ms Potgieter’s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel is satisfied that Ms Potgieter displayed behaviour associated with serious theft. In reaching this conclusion it has had particular regard to both the scale of the theft (being a not inconsiderable sum of money), and Ms Potgieter’s admission that she withheld the accounts out of fear of her actions becoming known. It also takes into account Ms Potgieter’s admission to the police, recorded at page 18 of the bundle, that whilst she initially intended to pay the money back she ended up taking more.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual’s conduct would amount to unacceptable professional conduct.

The panel considers that Ms Potgieter’s behaviour took place within the education setting since the opportunity arose in the context of her role as treasurer and it involved the theft of Parent Teacher Association (PTA) funds which are inherently connected to the school’s work.

In conclusion, the panel is satisfied that Ms Potgieter is guilty of unacceptable professional conduct.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. In this case, the findings of misconduct are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception. The panel therefore finds that Ms Potgieter's actions constitute conduct that may bring the profession into disrepute.

Having found the particulars of the allegation proved, we further find that Ms Potgieter's conduct amounts to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct/conduct that may bring the profession into disrepute, it is necessary for the panel to go on 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 an appropriate and proportionate measure, and whether 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 particular public interest considerations set out in the Advice and having done so has found two to be relevant in this case, namely: the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Ms Potgieter, which involved a serious theft from school funds over a period of time, there is a strong public interest consideration in ensuring confidence in the integrity of the profession is maintained. The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Potgieter was not treated with the utmost seriousness when regulating the conduct of the profession.

The panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Ms Potgieter was outside that which could reasonably be tolerated.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order taking into account the effect that this would have on Ms Potgieter.

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Ms Potgieter. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- abuse of position or trust;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. In this case, there was no evidence of harm to pupils, the teacher admitted her offence in interview with the police and pleaded guilty at the first opportunity before the Magistrates' Court. There was also no record of any previous conviction nor any suggestion that the teacher was not of good character (although no references have been seen). Nevertheless her actions in stealing from the school were a serious matter. There was no evidence that her actions were not deliberate, or that she was acting under duress.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Ms Potgieter. The serious nature of the theft and the fact that she had taken advantage of a position of trust and responsibility to carry out her actions were significant factors in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend that a review period of the order should be considered. The panel were mindful that the Advice advises that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours is theft from a person or other serious cases of theft. Ms Potgieter has been responsible for stealing a significant

amount of money from PTA funds, exploiting her position as treasurer. Nevertheless, taking account of (i) Ms Potgieter's open admission and expression of remorse in police interview (ii) her early plea of guilty before the Magistrates' Court and (iii) the lack of evidence of serious harmful behaviour towards pupils, the panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period.

The panel has considered carefully the appropriate period which should pass before a review takes place. In this case the panel considers that a review period of 5 years would provide sufficient time for Ms Potgieter to demonstrate standards of trustworthiness and integrity befitting a return to the profession. The panel therefore recommends that provision is made for a review period of 5 years.

Decision and reasons on behalf of the Secretary of State

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

The panel has found the allegation proven and determined that Ms Potgieter's actions amount to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel has properly taken account of the public interest considerations relevant to this case, namely: the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct. The panel has determined that Ms Potgieter was not acting under duress and her actions were deliberate.

The panel has recommended that prohibition is an appropriate and proportionate sanction and I agree with that recommendation.

Ms Potgieter has been responsible for stealing a significant amount of money from PTA funds, exploiting her position as treasurer. Nevertheless the panel have taken account of

- Ms Potgieter's open admission and expression of remorse in police interview;
- her early plea of guilty before the Magistrates' Court; and
- the lack of evidence of serious harmful behaviour towards pupils.

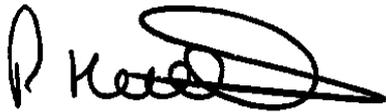
The panel have recommended that Ms Potgieter should be allowed to apply to have the order set aside after a minimum period of 5 years has elapsed and I agree.

This means that Ms Lisa Potgieter 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 11 November 2020, 5 years from the date of this order at the earliest. This is not

an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Lisa Potgieter remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Ms Lisa Potgieter 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.

Decision maker: Paul Heathcote

Date: 3 November 2015

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