

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr David Philips
Teacher ref no: 03/50470
Teacher date of birth: 29 December 1965
TA Case ref no: 9310
Date of Determination: 14 February 2013
Former Employer: Barnfield South Academy, Luton

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 14 February 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr David Philips.

The Panel members were Mr Andrew Potts (Lay Panellist– in the Chair), Mr Mark Tweedle (Teacher Panellist), and Mrs Sharon Gimson (Lay Panellist).

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

The Presenting Officer for the Teaching Agency was Ms Shannett Thompson of Kingsley Napley LLP, Solicitors.

Mr David Philips was not present and was not represented.

The hearing took place private, save that the Panel’s findings of fact and in relation to whether Mr Philips was guilty of conduct that may bring the profession into disrepute, were announced in public. The hearing was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 29 November 2012.

It was alleged that Mr David Philips was guilty of conduct that may bring the profession into disrepute, in that he:

- (a) Engaged in sexual activity with a 14 year old child (Child A) during 2010;
- (b) On 9 and 11 December 2010, sent inappropriate text messages to Child A.

The alleged facts were not admitted.

C. 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.

On 12 December 2010, Child A, accompanied by her mother, reported to the police that, since January 2010, Mr Philips had been inappropriately touching her. She alleged that on 11 December 2010, Mr Philips had texted her a number of times around midnight whilst she was in her bedroom. Child A claimed that this led to Mr Philips going to her bedroom where he touched her breasts over and under her clothing, removed her bra and touched, kissed and licked her breasts, neck and mouth.

Findings of fact

Our findings of fact are as follows:

(a) Engaged in sexual activity with Child A during 2010

In relation to (a), we find the facts proved.

In making this finding, we have taken into account the evidence of Witness A as to complaint made by Child A and her mother on 12 December 2010. Witness A conducted a video-recorded interview with Child A on 13 December 2010 and we have seen the transcript of that interview. We have also seen the witness statements of Child A and her mother made on 12 and 13 December respectively. Child A's mother described Child A as a 'trustworthy child'.

We heard oral evidence from Witness A as to the child's demeanour during interview. Witness A said that she believed what Child A had said and her demeanour was consistent with what she would have expected given her wide experience of child protection matters. Child A's account was detailed and consistent.

Following Child A's disclosure to her mother, Mr Phillips initially denied the allegation to Child A's mother and then left the house. In Child A's mother's statement, she related that Mr Philips had subsequently phoned her in a distressed state and said '*what have I done. You have welcomed me and now you must hate me*' Mr Philips also said that he has been fighting with the demons.

The Panel has seen a written statement of Individual A and his contemporaneous hand-written notes. He reported that he had been contacted by Individual B, who was known to him, on 13 December 2010. Individual B wanted advice regarding an old friend (initially unnamed, but subsequently identified as Mr

Philips) who had confessed to him that he had been molesting a 14 year old girl by sucking her breasts. Individual A advised Individual B to persuade Mr Philips to surrender himself to the local police. Subsequently, Mr Philips handed himself in to Individual A.

When Mr Philips sat in the car he said to Individual A *"I have been in a dark place for the last few days and am still in shock at what I have done- I recognise that I have a problem a perverse spirit- I have struggled with this for so long"*. We find Individual A's evidence provide strong and independent corroboration of the accounts of both Child A and her mother.

When Mr Philips was arrested and interviewed under caution, he remained silent when questioned about the allegations. He did not assist the inquiry by providing his mobile phone. In January 2011, Child A and her mother gave statements to the police saying that they wished to drop the charges. Child A's mother commented that *'the content of the previous statement is true....as a religious family we can forgive this.'* Child A said *'I have decided I do not want to continue with the case. I want to forget about it all'*.

The Panel are of the view that the statements given in January 2011 are not inconsistent with the earlier accounts of Mr Philip's behaviour. We note that Mr Philips provided no response to the investigative and disciplinary processes conducted by the Academy, despite being given several opportunities to do so.

Following his dismissal, Mr Philips did engage at the appeal stage when he, and a union representative, attended the appeal hearing on 7 October 2011. The appeal panel accepted that Mr Philips had been suffering from stress and anxiety which prevented his attending the disciplinary hearing. As part of his evidence to the appeal panel, he presented letters purporting to be from Child A and her mother. The letter from Child A's mother said that she now realised that her daughter had made false allegations and that Mr Philips was innocent. The letter from Child A said that the things that she had previously described were part of a bad dream about Mr Philips. In judging the weight to be attached to these letters, we took into account the fact that the letter from Child A's mother was unsigned. Furthermore, these letters were presented some 10 months after the initial allegation.

Both of the letters were short in content and detail as compared with the original detailed accounts given by Child A and her mother. The Panel considered that these letters might have been an attempt to assist Mr Philips in his appeal. We consider the original accounts of Child A and her mother to be the more reliable versions because of their detail and consistency and because they were corroborated by the evidence of PC Svensson.

(b) On 11 December 2010, sent inappropriate text messages to Child A.

In relation to (b), we find the facts proved.

We are satisfied that the messages were sent from Mr Philips' phone. Child A's mother confirmed that the telephone number from which the messages were sent was that of Mr Philips. The device report dated 17 December 2010 gave the details

of the text messages sent to Child A's phone from that number. The Panel considers that the messages were sent to Child A by Mr Philips with a view to visiting Child A in her bedroom to engage in sexual activity. Whilst the content of the messages were not explicitly sexual, they were, nevertheless, inappropriate. At the appeal hearing, Mr Philips said that he had sent Child A a text message to see if she was OK. However, the device report reveals no such message. We considered the explanation advanced by Mr Philips at the disciplinary appeal that Child A, having borrowed his phone, might have sent some text messages to herself. However, we found this explanation to be implausible.

Findings as to Conduct that may bring the profession into disrepute

We are satisfied that the actions of Mr Philips amounted to conduct that may bring the profession into disrepute.

The Panel considers the facts proven to be of a serious nature. The conduct involved sexual misconduct against a young teenage child. There was evidence that this conduct had carried on unchecked for some appreciable time. The Panel found that the conduct also amounted to a serious breach of trust and abuse of position and, as such, was directly related to suitability to be a teacher.

Panel's Recommendation to the Secretary of State

We have taken into account the evidence of Individual C to the effect that Mr Philips had a previous good history and was considered to be a sound teacher.

The Panel finds that there are several elements of Mr Philips' behaviour that are incompatible with him continuing to be a teacher. His conduct represented a serious departure from the personal and professional conduct elements of the latest teacher's standards. The serious sexual misconduct, in relation to a vulnerable young teenager, continued for some time and was clearly an abuse of his position of trust. The Panel noted the references to a deep seated attitude which could lead to further harmful behaviour. Mr Philips has not sought to engage throughout this process. In requesting a reference from his employer, Mr Philips clearly has the desire to continue in his profession. Were he to do so, the Panel consider that there would be a risk to the well-being of pupils under his care because Mr Philips has failed to show any insight into his harmful behaviour. Therefore, we have concluded that a Prohibition Order is necessary in order to protect children and uphold proper standards of conduct and maintain public confidence in the profession. We consider this to be proportionate and recommend this sanction to the Secretary of State.

Given the serious nature of the misconduct and the evidence of a deep-seated harmful attitude, we recommend that there be no provision for Mr Philips to apply to set aside the Prohibition Order.

Secretary of State's Decision and Reasons

I have given very careful consideration to this case. Mr Philips has been found guilty of conduct that may bring the profession into disrepute. This was a serious offence,

which was sustained over a period of time, against a vulnerable teenager. It was a clear breach of acceptable standards and a breach of trust and of his position.

Mr Philips has shown no insight into the consequences of his behaviour and indeed there is some evidence to show that he wishes to continue to work as a teacher.

I support the recommendation of the panel that Mr Philips is prohibited from teaching.

In the light of the seriousness of his actions and the complete lack of insight I believe that it is also a proportionate response and in the public interest that Mr Philips should not be able to apply to review that order.

This means that Mr David Philips 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 allegation found proved against him, I have decided that Mr David Philips 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 David Philips 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: 15 February 2013