

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr Rajpal Bhakerd
Teacher ref no: 9652951
Teacher date of birth: 17 April 1973
TA Case ref no: 8195
Date of Determination: Wednesday 7 November 2012
Former Employer: Bristol City Council

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 5 to 7 November 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Rajpal Bhakerd.

The Panel members were Mr Kevin Nolan (Teacher Member in the Chair), Dr Lele Meleyal (Lay Member), Professor Ian Hughes (Lay Member).

The Legal Adviser to the Panel was Mr Paddy Roche of Morgan Cole LLP, Oxford.

The Presenting Officer for the Teaching Agency was Ms Sophie Lister of Kingsley Napley LLP, London.

Mr Rajpal Bhakerd was present and was represented by Mr Richard Harris of NASUWT.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 10 September 2012.

It was alleged that Mr Rajpal Bhakerd was guilty of Unacceptable Professional Conduct in that whilst employed at School A he engaged in an inappropriate relationship with Pupil A between 2000 to 2002, in that he:-

- a. On more than one occasion invited Pupil A to his house and/or his brother's house;
- b. On more than one occasion he met with Pupil A in a public house;
- c. On more than one occasion he had sexual intercourse with Pupil A.

Mr Bhakerd admitted Particular 1a. He denied Particulars 1b and 1c.

C. Summary of Evidence

Documents

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

Section 1	Anonymised Pupil List	Pages 1 to 2.
Section 2	Notice of Proceedings and Response	Pages 3 to 9.
Section 3	Teaching Agency Statements	Pages 11 to 26.
Section 4	Teaching Agency Documents	Pages 27 to 88.
Section 5	Teacher Documents	Pages 89 to 146.

In addition and by consent the Panel admitted the following additional documents:-

Chronology	Pages 147 to 154.
Teacher's Witness Statement	Pages 155 to 161.
Medical Records and Supporting Documents	Pages 162 to 168.

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

Brief Summary of Evidence

Both the Presenting Officer and the Teacher's representative made opening statements.

The Teaching Agency called in evidence the following witnesses:-

Pupil A. This witness gave evidence on oath and adopted her witness statement (pp 11 – 16). She dealt with:-

- Her attraction towards Mr Bhakerd while a member of his Tutor Group at School A.
- Walking home with him after the Asian Boys Club at School in 2000.
- The development of her relationship with him.
- Visits to his home and his brother's home.

- Her developing feelings towards Mr Bhakerd during 2000 and her physical involvement with him.
- Her interview with a Social Worker in January 2001 during counselling.
- Her emotional and domestic issues.
- Her attendance record at School A and the fact that she did not attend for over twelve months in 2001 to 2002.
- Meeting Mr Bhakerd again at a School Graduation Evening in May 2002.
- Providing Mr Bhakerd with her mobile telephone number.
- Meeting with Mr Bhakerd in May 2002 at a Public house.
- Incidents of physical intimacy with Mr Bhakerd in a field and on another occasion when sexual intercourse took place at his home when she was aged 16.

Witness A gave evidence on oath by telephone and adopted her witness statement at pp 17 – 26. She dealt with:-

- Her position as the Head Teacher at School A.
- Mr Bhakerd's position as a member of the teaching staff in the Science Department in the year 2000.
- Notification received from Pupil A's mother that Pupil A was having a relationship with a teacher at the School.
- Further information she received and an interview with Mr Bhakerd.
- Notes of the interview which were true and accurate as far as she could recollect.
- Issuing Mr Bhakerd with a formal letter in November 2000 confirming that his behaviour had exceeded that, which would be deemed professionally appropriate.
- In September 2002 conducting an investigation into a further allegation that Mr Bhakerd had continued an inappropriate relationship with Pupil A.
- An interview with Mr Bhakerd on 11 September 2002.
- Mr Bhakerd's admissions that he had contacted Pupil A by telephone at the end of the Year 11 Achievement Evening and arranged to meet her at a local public house.

- Further admissions that he subsequently met Pupil A on another occasion near to the Queens Head public house and then they walked together to his house where they went inside and Pupil A used the bathroom and he offered her a coffee.
- Later conversations with her Deputy Head Teacher and a Social Worker when it was suggested that a sexual relationship had begun between Pupil A and Mr Bhakerd.
- Her conclusion that Mr Bhakerd had placed himself in a very compromising position and abused his position of trust as a Teacher.
- A disciplinary hearing scheduled for 18 October 2002 which did not proceed because Mr Bhakerd tendered his letter of resignation.

At the close of the Teaching Agency's case an application was made by the Presenting Officer to amend Particular 1c of the allegation by deleting the words: "more than" so that the particular would read: "On one occasion you had sexual intercourse with Pupil A".

She took the Panel through the evidence given by the Teaching Agency's witnesses and in particular Pupil A as to occasions when sexual intercourse had allegedly taken place during 2002.

She submitted that it would be in the interests of justice to allow the amendment but the Panel should consider the extent of any prejudice to the teacher by allowing the application. In that regard the amendment sought represented a reduction rather than an expansion of the allegation. She submitted that such an amendment was both in the public interest, in the interests of justice and required because this was such a serious allegation.

On behalf of the teacher Mr Harris submitted that the allegation and particulars had been drafted in its present form for a considerable time presumably to reflect the seriousness of the allegation against Mr Bhakerd and the evidence on which the Teaching Agency relied.

He submitted that the Presenting Officer's submission simply recognised that the evidence "might not do the job of persuading the Panel that the allegation had been made out." There was a point of principle and the teacher was entitled to know in advance the case that he faced. It was quite inappropriate at this late stage to alter the charge. It was not in the public interest to allow the amendment requested.

Legal Advice

Before the Panel retired to consider this application the Legal Adviser declared the following advice:-

1. Rule 4.55 provided that: "The Panel may, in the interests of justice, amend an allegation or the particulars of an allegation, at any stage before making its decision about whether the facts of the case have been proved. Before

making an amendment the Panel will consider any representations by the Presenting Officer and by the Teacher or Teacher's representative, and take advice from the Legal Adviser."

2. The test to be applied therefore was whether the application should be granted as being in the interests of justice. In that regard the Panel should consider whether allowing the application would cause injustice or prejudice to the Teacher. That was a matter for the Panel's judgement.
3. Criminal precedents suggested that the main consideration for deciding whether to allow an amendment was the risk of injustice. If an amendment could not be made without injustice it must not be made.
4. The longer the interval between the commencement of the case and any amendment sought the more likely it was that injustice would be caused and in every case in which amendment was sought it was essential to consider with great care whether the accused person would be prejudiced thereby - *R v Johal*.
5. In *O'Connor* there was held to be a risk of injustice where the effect of an amendment made at the close of the Prosecution case was to allow the Prosecution to shift its ground significantly. In that case the Court of Appeal held that an amendment was unfair because the Appellant had been confronted with a different and more difficult case.
6. In this case the Panel might wish to consider whether the cross examination put on behalf of the Teacher would have been any different if the amendment sought to Particular 1c had been made at the commencement of the hearing.

The Panel retired to consider the application and made the following announcement:-

"We are asked by the Presenting Officer to permit an amendment to Particular 1c of the allegation faced by Mr Bhakerd as set out in the Notice of proceedings dated 10 September 2012.

The amendment requested is to delete the words "more than" so that particular 1c would read "On one occasion you had sexual intercourse with Pupil A." It is common ground that sexual intercourse in this context means penetration of a man's penis into a woman's vagina. The application is made because of the evidence given to the panel by Pupil A as to the number of occasions on which she alleges that sexual intercourse with Mr Bhakerd occurred. Ms Lister submits that the amendment should be allowed in the interests of justice and that it represents a reduction rather than an expansion of the case faced by the teacher. She invites the Panel to consider the extent of any prejudice to Mr Bhakerd and asserts that the amendment should be made in the public interest, in the interests of justice and because this is "such a serious allegation".

On behalf of the teacher the application has been opposed by Mr Harris. He says that the allegation has been set out in its current form for some considerable time and that the Teaching Agency now recognises that the evidence “might not do the job of persuading the Panel that this allegation in its current form is made out.” He submits there is a point of principle in that the teacher is entitled to know in advance the case that he has to meet. He further suggests that it cannot be in the public interest for any public body to be allowed to alter charges in the way contemplated in this case.

On that last point the Teaching Agency Disciplinary Procedure Rules and specifically rule 4.55 do, in fact, permit a disciplinary panel to amend an allegation or the particulars of an allegation, at any stage before making its decision as to whether the facts of the case have been proved. However it should only do so if it is in the interests of justice.

We have very carefully considered whether allowing this application which is made at the close of the Teaching Agency’s evidence would be in the interests of justice and whether it would lead to injustice or prejudice to the teacher. We do not believe that the amendment requested is trivial and we particularly take into consideration the principle set out from criminal precedents that if an amendment cannot be made without injustice it should not be made. We have concluded that the principal reason for the application is to modify the terms of particular 1c to fit the evidence given by Pupil A and thus make a finding of guilt on this particular more likely. As such, to permit the application would in our view inevitably cause prejudice to Mr Bhakerd even though the amended allegation would be marginally less serious in its ambit than the particular as currently drafted. We therefore refuse the application.”

The Teacher’s Case

Mr Rajpal Bhakerd gave evidence on oath in accordance with his witness statement (Pages 155 to 161). He dealt with:-

- His realisation, in hindsight, that he should not have met Pupil A in a public house in 2002 – he had wanted clarification in his head as to why she had made allegations against him.
- His wish that he had done things differently but he just tried to be a caring Tutor and member of staff.
- His denial of engaging in sexual intercourse with Pupil A on 8 June 2002 or any other date.
- That when Pupil A had come to his house they had just talked.
- That he did not have a relationship with Pupil A.
- His shock at seeing her at the Graduation Evening.
- His awareness of Pupil A’s problems at home.

- His acceptance that he was in a position of authority as her Teacher.
- He did not know if Pupil A was a fantasist.
- His employment record since leaving School A.
- His duty of care relationship with Pupil A.
- His realisation now that she was troubled but he did not see her as vulnerable at the time.

Both the Presenting Officer and the Teacher's representative made closing submissions to the Panel.

D. Panel's 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.

Summary of case

It is alleged in this case that Mr Rajpal Bhakerd while employed as a Teacher at School A, engaged in an inappropriate relationship with Pupil A between 2000 and 2002.

It is specifically alleged that in 2000 Pupil A was a member of Mr Bhakerd's tutor group and developed feelings for him. She began to stay after School to watch a Martial Arts Club that he ran and following the club activities used to walk home with Mr Bhakerd. On a few occasions it is alleged that Mr Bhakerd took Pupil A to his own home and his brother's home and also met with her at weekends. At the time of some of these events Pupil A was aged 13/14.

In due course information about a relationship developing between Pupil A and Mr Bhakerd was notified by Pupil A's mother which led to the Head Teacher conducting an interview with Mr Bhakerd in November 2000 to discuss the allegations made against him. Mr Bhakerd said that he recognised Pupil A – who was then 14 - had a crush on him and admitted that he had invited Pupil A into his home for a coffee while his wife was absent. He also acknowledged that he had given her a cuddle to comfort her. He accepted in so doing that his behaviour was not appropriate.

As a consequence the Head Teacher sent a formal letter to Mr Bhakerd indicating that his "behaviour exceeded that which would be deemed to be professionally appropriate". He was advised not to develop relationships that were over friendly and "could be misinterpreted by students and you should certainly not put yourself in a situation where you are alone with them. Any further behaviour of this nature could

result in disciplinary action". At that stage no specific allegation of sexual conduct was made against the Teacher.

It is said that Pupil A did not attend School at all during the academic year from September 2001 to May 2002.

In May 2002 she attended the School's Year 11 Graduation Ceremony and there saw Mr Bhakerd. It is alleged that Mr Bhakerd asked for her mobile telephone number and that he contacted her and they arranged to meet. Pupil A alleges that on 30 May 2002 they went to a field near to a park where they attempted to have penetrative sex. At this time she had just turned 16 years old. She further alleges a meeting on 8 June 2002 when they later went together to Mr Bhakerd's house and penetrative sex took place which was consensual.

Mr Bhakerd denies that he engaged in any sexual activity with Pupil A but admits that on occasions he took Pupil A to his brother's house and also to his own house. He accepts that in his relationship with Pupil A he made some serious errors of judgement but denies absolutely that he had a sexual relationship with her at all. He says that he was primarily concerned about her attendance at School, her under achievement and her general welfare.

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:-

- a. On more than one occasion you invited Pupil A to your house and/or your brother's house;

You have admitted this particular and acknowledged in your evidence given on oath that you took Pupil A to both your own home and your brother's home on occasions during the period covered by the allegation.

Pupil A also told us in her evidence that this occurred.

- b. On more than one occasion you met with Pupil A in a public house;

You accepted in your evidence that you met with Pupil A at the Queens Head public house on two occasions in 2002. On the first occasion you had a drink with Pupil A within the pub. Following that meeting you arranged to see Pupil A a second time at the Queens Head but when you arrived the public house was closed. It was a Saturday afternoon. Your intention to meet within the pub was frustrated only by the unexpected fact that you found the public house to be closed. As a matter of common sense we find that this particular is proved.

We have found the following particulars of the allegation against you not proven, for these reasons:

c. On more than one occasion you had sexual intercourse with Pupil A.

We should indicate initially that we found Pupil A to be a broadly credible witness and preferred her evidence to that given by yourself. We accept the main thrust of her evidence and thus are satisfied that there was sexual contact between you and Pupil A. Nonetheless we do not feel able to rely on everything we heard from Pupil A or have read in her diaries. Having so indicated we are satisfied that the diary extracts are authentic and were written by Pupil A.

This particular is very specific and requires us to conclude that you and Pupil A engaged in sexual intercourse which we accept must mean penetrative sex on more than one occasion.

We have very carefully considered the evidence given by Pupil A in relation to the incident of sexual contact in a field near to the park on 30 May 2002 described at paragraph 25 of Pupil A's statement. In the statement she says that "we attempted to have penetrative sex but he had some performance anxiety."

In her evidence on oath to the hearing Pupil A said sexual intercourse "didn't transpire." And "we tried but I don't think he could get an erection from what I can remember." We are therefore not satisfied that this was an occasion on which penetrative sex took place.

In relation to the sexual activity alleged by Pupil A on 8 June 2002 she says in her witness statement at paragraph 26 we "went to his house and penetrative sex took place. This was consensual."

This account was confirmed by Pupil A in her evidence to the hearing. You denied that sexual contact of any sort took place.

The particular we are required to determine is that sexual intercourse occurred on more than one occasion. We note that in her diary (p 88) Pupil A on 8 June describes "4 shags tonight/today. It was two people Raj 3". We have considered therefore whether that note indicates sexual intercourse occurred with you on "more than one occasion". We accept that the word "shag" connotes an act of sexual intercourse.

In Pupil A's evidence on oath she told the hearing that she remembered the one occasion in your house. Under cross examination she went on to explain that she could not be sure how she would have defined three acts of sexual intercourse based on her understanding of sex at that time (when she would have been 16). It could have been based on the number of times she climaxed or the number of times you climaxed. She also confirmed that there had been no other instances of sexual intercourse occurring.

Given Pupil A's own uncertainty of how she arrived at the description of 3 "shags" we are unable to conclude that there was probably more than one act of sexual intercourse and therefore this particular is not proved.

Findings as to Unacceptable Professional Conduct

We consider that your relationship with Pupil A, who was a particularly vulnerable pupil, transgressed the professional boundaries that teachers must be expected to observe. You did so by meeting privately with her outside school at your home and elsewhere and making telephone contact with her. Your meetings with her in 2002 were arranged at your instigation and in breach of the clear advice and written instruction you had received from the Headteacher following the school's investigation which was concluded in November 2000.

Despite your assertions to the contrary we conclude that you showed little or no regard for Pupil A's wellbeing. You were her assigned form tutor. You fundamentally failed to observe the appropriate boundaries in relation to your professional position which was one of a position of trust with a particularly vulnerable pupil.

We have found two of the factual particulars in this case proved. Based on those findings we have no hesitation in concluding that this is a case of Unacceptable Professional Conduct.

Panel's Recommendation to the Secretary of State

The particulars we have found proved disclose both a serious departure from the professional and personal standards teachers should exhibit and a very clear breach of trust in Mr Bhakerd's position as the tutor of a very vulnerable pupil. We did not, however, find the most serious particular to be proved.

We have also made clear in giving our reasons that we broadly accepted the evidence of Pupil A as to the context in which the meetings with Pupil A occurred. We think that the meetings with Pupil A of themselves are very serious and we did not get any sense from Mr Bhakerd's evidence on oath that he had any real understanding of the nature of his transgressions and its likely effect on Pupil A. We have also considered what view the public would take of Mr Bhakerd's conduct. In essence we accept that Mr Bhakerd has broadly admitted in his evidence those elements of his unacceptable conduct which we have found to be proved.

We have taken account of the fact that the incidents we are concerned with occurred over 10 years ago. Prior to these incidents he had been a teacher for 5 years. We are told that no complaint or allegation of any similar conduct has been made against Mr Bhakerd since these events happened. He tells us that he has moved on and is happily married with three young children.

The report of the Lucy Faithfull Foundation concludes that: - "The balance of the available information would certainly suggest that any inappropriate behaviour with Pupil A sits apart from the rest of Mr Bhakerd's record. There is no evidence of a pattern of problematic behaviour and no suggestion that his dealings with other pupils attracted concerns or feedback, despite his subsequent employers being aware of his problems at school A. On the balance of available evidence I do not consider Mr Bhakerd to represent a risk of sexual or emotional harm to children."

However the facts that we have found proved lead us to conclude that our duty to the public requires that a Prohibition Order should be imposed not least to maintain public confidence in the profession and to uphold proper standards of conduct.

On the basis of the limited particulars we have found to be established we recommend that the teacher should be allowed to apply for the Prohibition Order to be set aside after a period of two years has elapsed. Such an order would allow Mr Bhakerd, if he wishes to do so, to advance reasons as to why he should be considered suitable at that time to teach again. It accords with our duty to consider the proportionality of the recommended Prohibition Order.

Secretary of State's Decision and Reasons

I have given very careful consideration to this case.

This case is a very problematic one with particular reference to the 3rd allegation which the panel found not proven. I must accept their finding and must therefore ensure that my decision in respect of their recommendation to me is focused solely on the two allegations that the panel did find proven.

In order to be able to demonstrate that my decision has been taken solely on the basis of the recommendation from the panel in respect of allegations 1 and 2, I need to set out specifically what I have not taken into account as well as those factors that I have taken into account.

Allegation 1

The panel find this proven. Pupil A was a very vulnerable pupil, aged 14, and Mr Bhakerd's behaviour in taking her to his own home and to the home of his brother on more than one occasion fell very seriously short of the behaviour expected of a teacher. Mr Bhakerd seriously breached professional boundaries and failed to demonstrate the trust expected of those in the teaching profession.

Allegation 2

Despite a formal letter and a meeting with the head teacher at which he was warned about his conduct, Mr Bhakerd initiated further meetings with Pupil A at a public house in 2002. This also represents a serious failure to meet the standards of behaviour expected of a teacher.

On the basis of these two findings alone, I am satisfied that Mr Bhakerd's misconduct with a very vulnerable pupil is so serious that it falls within the guidance for a prohibition order and I support the recommendation of the panel.

Allegation 3

I am required under the relevant regulations to consider only those findings of misconduct made by the panel. The panel made no finding in respect of allegation 3. This means that I have not been able to take any account, in my decision about prohibition, of the sentence which reads, "We accept the main thrust of her evidence and thus are satisfied that there was sexual contact between you and Pupil A."

A description of an alleged incident in a park on 30 May 2002 is also contained in the report. The panel are clear that sexual intercourse did not occur on this occasion. There is a description of alleged sexual activity – but as there is no finding of misconduct relating to this incident I have also put the whole of this incident from my mind when making my judgement about prohibition in respect of allegations 1 and 2.

Similarly with regard to the incidents that may have taken place on 8 June 2002. The panel are clear that they were unable to be satisfied that sexual intercourse took place on a number of occasions and have therefore made no finding of misconduct in terms of the allegation that was before them. I have therefore specifically and explicitly had to ignore any of the account of that day.

I have read the decision of the panel relating to the request of the presenting officer to amend allegation 3. I make no comment on that and indeed have put that from my mind when making this decision.

My decision is therefore based solely on the findings of the panel around allegations 1 and 2.

I now turn to the issue of a review period.

The panel had before it a report from the Lucy Faithfull Foundation.

I have given careful thought to this and I support the recommendation of the panel that a two year review period is appropriate in this case.

This means that Mr Rajpal Bhakerd is prohibited from teaching indefinitely and cannot teach in any school, Sixth Form College, relevant youth accommodation or children's home in England. He may apply for the Prohibition Order to be set aside, but not until 15 November 2014, 2 years from the date of this order at the earliest. If he does apply, a panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Mr Rajpal Bhakerd remains barred from teaching indefinitely.

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

Mr Rajpal Bhakerd 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: 9 November 2012