



National College for
Teaching & Leadership

Mr Scott Smith: Professional conduct panel outcome

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

November 2016

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

Teacher: Mr Scott Smith

Teacher ref number: 0464380

Teacher date of birth: 01 May 1979

NCTL case reference: 14997

Date of determination: 21 November 2016

Former employer: Devonshire Park Primary School, Birkenhead

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 21 November 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Scott Smith.

The panel members were Mr Mike Carter (teacher panellist – in the chair), Mr Michael Lewis (teacher panellist) and Ms Ann Walker (lay panellist).

The legal adviser to the panel was Mr Nick Leale of Blake Morgan solicitors.

The presenting officer for the National College was Mr Oliver Bristow of Nabarro solicitors.

Mr Smith was not represented.

The case proceeded by way of meeting and took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegation set out in the Notice of Meeting dated 3 November 2016.

It was alleged that Mr Scott Smith was guilty of having been convicted of the following relevant offence:

1. On 21 December 2015, at Liverpool and Knowsley Magistrates' Court you were convicted of intentionally exposing your genitals intending that someone would see them and be caused alarm or distress on 26 February 2015, contrary to the Sexual Offences Act 2003 (s.66). On 25 January 2016, you were sentenced to a Community Order for 18 months, a rehabilitation requirement, an unpaid work requirement, a Sex Offenders Notice for five years and ordered to pay costs of £620 and a victim surcharge of £60.

Mr Smith had admitted that he had been so convicted and that the offence amounted to a relevant offence by way of his response to the Notice of Referral which he had signed on 18 August 2016.

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: Chronology - page 2

Section 2: Notice of Meeting and response - pages 3 to 8

Section 3: Statement of Agreed Facts and presenting officer representations - pages 9 to 15

Section 4: NCTL documents – pages 16 to 79

Section 5: Teacher documents – pages 80 to 81

Witnesses

The case proceeded by way of meeting. No live evidence was called.

E. Decision and reasons

The panel announced its decision and reasons as follows.

We have 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.

This case involves a teacher who was found guilty of an offence of exposure contrary to section 66 of the Sexual Offences Act 2003. He had followed a group of young men in his car before deliberately exposing his genitals when they approached him.

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. On 21 December 2015, at Liverpool and Knowsley Magistrates' Court you were convicted of intentionally exposing your genitals intending that someone would see them and be caused alarm or distress on 26 February 2015, contrary to the Sexual Offences Act 2003 (s.66). On 25 January 2016, you were sentenced to a Community Order for 18 months, a rehabilitation requirement, an unpaid work requirement, a Sex Offenders Notice for five years and ordered to pay costs of £620 and a victim surcharge of £60.

Mr Smith had admitted that he had been so convicted and that the offence amounted to a relevant offence by way of his response to the Notice of Referral which he had signed on 18 August 2016.

Findings as to conviction of a relevant offence

The panel was satisfied that Mr Smith has been convicted of a criminal offence that is relevant to his ongoing suitability to be a teacher. Mr Smith has been convicted of a sexual offence that must be considered relevant to the appropriateness of him continuing to work with children in an education setting. The conviction could be considered likely to affect confidence in the teaching profession should he be allowed to continue teaching. The offence is of a sexual nature for which he is subject to a 5 year sexual offences notification requirement. The panel considers this a serious matter.

The panel took account of how the teaching profession is viewed by others. The panel considered that Mr Smith's behaviour in committing the offence could affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.

Given that this conviction is a relevant offence the panel considered it necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of this being a case involving a conviction of a relevant offence, it was 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 considered whether it was an appropriate and proportionate measure, and whether it was 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 punitive effect.

The panel considered the particular public interest considerations set out in the Advice and having done so found a number of them to be relevant in this case, namely the protection of pupils/the protection of other members of the public; the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In carrying out the balancing exercise the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Smith. The panel took further account of the Advice, which suggests that the teacher's behaviour is likely to be considered to be incompatible with being a teacher where the facts include sexual misconduct, as they do in this case.

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 serious nature of the behaviour in this case.

There was no evidence to suggest that the teacher was acting under duress. The panel found the teacher's actions to be pre-meditated sexual misconduct.

The teacher did have a previously good history but the panel also noted that he continues to dispute the finding of the criminal court and has therefore failed, thus far, to show any insight into the inappropriateness of his behaviour.

Therefore, given the seriousness of the conviction and the lack of any significant mitigation, the panel is of the view that prohibition is both proportionate and appropriate. 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 them to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice recommends 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 serious sexual misconduct, e.g. where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons. The panel has found that Mr Smith has been responsible for a sexually motivated act that has the potential to result in harm. He has shown no insight into that behaviour as he continues to dispute the correctness of his conviction.

The panel felt the findings indicated a situation in which a review period would not be appropriate and decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have considered very carefully the findings and recommendations of the panel in this case, in both sanction and review. The panel has found the allegation proven, given Mr Smith has been convicted as alleged of a relevant offence.

Mr Smith has been convicted of a sexual offence that is relevant to the appropriateness of him continuing to work with children in an education setting. The offence is of a sexual nature for which he is subject to a 5 year sexual offences notification requirement. I agree with the panel that this a serious matter.

I note the panel took account of the Advice, which suggests that the teacher's behaviour is likely to be considered to be incompatible with being a teacher where the facts include sexual misconduct, as they do in this case.

I have considered the public interest in this case. The panel has found that Mr Smith has been responsible for a sexually motivated act that has the potential to result in harm. He has shown no insight into that behaviour as he continues to dispute the correctness of his conviction.

Due to the serious nature of this case, I agree with the panel that prohibition is both an appropriate and proportionate response.

For the reasons set out above, I agree with the panel's recommendation, that a prohibition order should be imposed and that no review period should be allowed.

This means that Mr Scott Smith 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 Smith 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 Smith 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 'J. Millions', with a small dot at the end of the signature.

Decision maker: Jayne Millions

Date: 8 December 2016

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