

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: David John Wolfarth
Teacher ref no: 04/63247
TA Case ref no: 7101
Date of Determination: 15 January 2013
Former Employer: Saints Peter & Paul Catholic College, Widnes/
Halton Borough Council

A. Introduction

A Professional Conduct Panel ("the Panel") of the Teaching Agency convened on 18 July 2012 and 15 January 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of David John Wolfarth.

The Panel members were Janet Draper (Lay Panellist– in the Chair), William Brown OBE (Lay Panellist) and John Pemberton (Teacher Panellist).

The Legal Adviser to the Panel was Miss Judith Chrystie of Field Fisher Waterhouse LLP Solicitors.

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

Mr Wolfarth was not present but was represented by Andrew Faux of Counsel.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegation set out in the Notice of Proceedings dated 13 March 2012 (as amended in accordance with paragraph 4.55 of the Disciplinary Procedures for the Regulation of the Teaching Profession ("the Disciplinary Procedures")).

It was alleged that Mr Wolfarth was guilty of unacceptable professional conduct in that:

1. During 2008, whilst employed at Cowley Language College, St Helens, he failed to maintain appropriate professional boundaries with pupils, in that:
 - (a) in respect of Pupil A he:

- (i) kissed her on the lips;
 - (ii) communicated with her on Facebook; and
 - (iii) met her during the summer holidays, took her to his home and attempted to kiss her;
 - (b) in respect of Pupil B he communicated with her in relation to personal matters:
 - (i) on Facebook (a social networking site).
2. Whilst employed at St Peter and Paul Catholic College, Widnes, Cheshire, he failed to maintain appropriate boundaries with Pupil C, in that he:
- (a) held a number of one-to-one meetings with her in his classroom between January and May 2010, both during the college day and after college, which included conversations about personal matters, despite receiving written instruction in February 2010 regarding his awareness of safeguarding issues; and
 - (b) on 2 December 2009, responded to an email sent to him by her while she was on placement.
3. His conduct set out in particulars 1 and 2 was in breach of the guidance for safer working practices for adults who work with children and young people in education settings.

On behalf of the Teacher, Mr Faux advised that Mr Wolfarth admitted particulars of allegation 1(a)(ii), 1(b)(i), 2(a) and (b) and 3. He denied sub-particular of allegation 1(a)(i). In respect of sub-particular of allegation 1(a)(iii) he admitted that he had met Pupil A during the summer holidays and taken her to his home but he denied that he had attempted to kiss her.

Mr Faux advised that his client accepted that those elements of the particulars of allegation that he had admitted amounted to unacceptable professional conduct.

C. Summary of Evidence

Documents

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

- Section 1: Anonymised pupil list, with page numbers i – ii;
- Section 2: Notice of Proceedings in response, with page numbers from 1 – 8;
- Section 3: Teaching Agency statements, with page numbers from 9 – 17;
- Section 4: Teaching Agency documents, with page numbers from 18 – 113;
- Section 5: Teacher documents, with page numbers from 114 – 118.

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

Brief summary of evidence given

Please note that this is intended to be a summary – it does not reflect the complete evidence given.

The Panel heard evidence from Witness A, who was Head Teacher of St Peter and Paul Catholic College ("the School") until his retirement. He had been a Head Teacher for 9 years and a teacher for 35 years.

The Panel confirmed that Witness A's statement dated 15 September 2011 (pages 10 – 17 of the panel bundle) could be taken as read.

Witness A advised that all staff at the School received a refresher in safeguard training at the beginning of each academic year when a hard copy of the *Guidance for Safer Working Practice for Adults Working with Children and Young People in Education Settings* produced by the Department of Children, Schools and Families (as was) was handed to each member of staff.

Witness A advised that during the Autumn term of 2009 he had received a call from the Head Teacher of Cowley Language College (where the Teacher had been employed until August 2009). Witness A said that he was advised that allegations had been raised against the Teacher by Pupil A that she had been kissed by him and gone to his home during the summer holidays and by Pupil B that the Teacher had contacted her using Facebook. Witness A stated that he was advised that he should not discuss the matters with the Teacher until after the police investigation had concluded. Following the completion of the police enquiries, Witness A said that he spoke to Mr Wolfarth and advised him that his behaviour was unacceptable and he arranged for Mr Wolfarth to have one-to-one safeguarding training so that there could be no misunderstanding as to how a professional teacher should conduct himself in relation to students and to ensure that there was no repetition within the School.

Witness A advised that Mr Wolfarth underwent his one-to-one training in January 2010. Following his training, he had sent Mr Wolfarth a letter to make it quite clear how he should conduct himself at the School. A copy of the letter sent on 22 January 2012 was contained in the bundle at page 37 together with a copy of an amended letter sent on 1 February 2010 at page 40.

Witness A said that he was confident that he had personally handed the letters to Mr Wolfarth. The requirement at (f) of the later letter, namely, that if Mr Wolfarth was organising out of college activities on a one-to-one basis or with a group of students he must notify his curriculum team leader in advance giving details of times and locations of such events, was a requirement that was particular to Mr Wolfarth.

Witness A said that it was a matter of great concern and alarm that he was advised that Pupil C, a student at the School, was visiting Mr Wolfarth on a regular basis after college, during a free period or during breaks and lunch times. He stated that it was reported to him that the discussions appeared to be of a frivolous and a social nature. Witness A said that he was asked by the Head of Governors

to conduct an investigation as, if the allegations were true, Mr Wolfarth was behaving in a wholly unprofessional manner and contrary to the verbal and written instructions he had received from the Head Teacher.

Witness A advised that one-to-one meetings with students are always inherently dangerous and should only be conducted if necessary with appropriate safeguards such as the door being open.

Witness A took the Panel to an email exchange between Mr Wolfarth and Pupil C. He confirmed that every student and teacher at the School had an email address and the fact that a student and a teacher were emailing each other was not inappropriate in itself. However, he described the pupil's tone as extremely familiar. He said that it was extremely worrying that a student felt that she was able to email a teacher in those terms. He advised that he had no problems with the response sent by Mr Wolfarth but he was concerned that Mr Wolfarth had responded and had not been concerned about the email particularly as he had spent a full day in a police station answering allegations made by him by Pupil B not that long before the email had been sent by Pupil C.

Witness A identified that Mr Wolfarth should have recognised that there was an infatuation, that this should have been recorded, that he was spending too much time with one student and demonstrating favouritism and there was grooming and concerns that the relationship may have developed.

Witness A confirmed that during his investigation he ascertained that it was true that Mr Wolfarth was meeting with Pupil C in one-to-one meetings. He said that it appeared that Mr Wolfarth still did not understand that such conduct was completely unacceptable and contrary to the additional training and written instructions that he had received. He suggested that on a personal level Mr Wolfarth had no understanding as to what was acceptable as a suitable level of interaction with a student.

Witness A denied that it was common knowledge that Mr Wolfarth had been interviewed by the police and, if it was, it was information that had been circulated by Mr Wolfarth himself.

On it being suggested to him that Mr Wolfarth was immature, Witness A advised that he saw Mr Wolfarth in a completely different light; he regarded Mr Wolfarth's conduct towards Pupil C as a route to a much more involved personal relationship. He advised that despite having spent a day at a police station, having had training from the most senior individual in safeguarding issues and uncomfortable experiences when he was handed letters by the Head Teacher in his office, Mr Wolfarth still took risks with Pupil C.

D. 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.

It was alleged that Mr Wolfarth failed to maintain appropriate professional boundaries in his contact with three female pupils A, B and C aged between 15-17 years. The allegations related to kissing a pupil, taking a pupil to his empty home during the summer holidays, using Facebook and email to communicate with pupils, holding inappropriate one to one meetings and breaching safeguarding guidance.

Mr Wolfarth, whose date of birth is 7 July 1982, did not attend the hearing but was represented. Through his legal representative he admitted several of the particulars of allegations but denied that he had kissed or attempted to kiss a pupil.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegation against Mr Wolfarth proven, for these reasons:

1 During 2008 whilst employed at Cowley Language College, St Helen's, he failed to maintain appropriate professional boundaries with pupils in that:

a. In respect of Pupil A he:

ii. Communicated with her on Facebook

The Teacher has admitted this sub-particular. Further, the Panel notes that the day book of the police constable who spoke with Pupil A records that she told him, *"I contacted Mr Wolfarth through Facebook and he asked to meet me in Liverpool which I did"*.

iii. Met during the summer holidays, took her to his home and attempted to kiss her

The Panel is confronted with hearsay evidence in relation to this sub-particular. It is unfortunate that it has not had the benefit of testing Pupil A's version of events and, perhaps, more surprisingly, the Panel has not heard oral evidence from Mr Wolfarth, who has voluntarily chosen not to attend or to provide a statement in the bundle.

Through his legal representative today, Mr Wolfarth specifically denies that he attempted to kiss Pupil A. At the time of the police interview, the Teacher did not unequivocally deny that he attempted to kiss her. When the police

constable put to Mr Wolfarth that Pupil A alleged that whilst at his house they were both sat on the sofa and he tried to kiss her, Mr Wolfarth responded, *"She was talking about this month and what was wrong, and she was getting stressed so I put my arm around her and said, look you've got another couple of days of this and it's over and you're getting paid. And if I kissed her, I kissed her on the cheek"*.

Given Pupil A's reported version of events, the nature of the Teacher's response during his police interview together with the fact that he did meet her during the summer holiday and take her to his house where they were alone, on the balance of probabilities, the Panel is satisfied that Mr Wolfarth did attempt to kiss Pupil A.

b. In respect of Pupil B he communicated with her in relation to personal matters:

(i) on Facebook

The Teacher has admitted this sub-particular. Further, the Panel notes that in the interview with the police constable on 20 December 2009, Mr Wolfarth suggested that he had communicated with Pupil B via Facebook about a book that he was writing in which one of the characters was loosely based on her.

2 Whilst employed at Saints Peter and Paul Catholic College, Widnes Cheshire, he failed to maintain appropriate boundaries with Pupil C in that he:

- a. Held a number of one-to-one meetings with her in his classroom between January and May 2010 both during the college day and after college which included conversations about personal matters, despite receiving written instruction in February 2010 regarding his awareness of safeguarding issues;**

Mr Wolfarth has admitted this sub-particular of allegation. The Panel is content that the evidence within its Bundle also supports this sub-particular and it is satisfied that it is proved.

3 His conduct set out at Particulars 1 and 2 was in breach of the Guidance for Safer Working Practice for Adults who work with Children and Young People in Education settings.

Although the Panel has not found all of the facts proved, it is content that the conduct that it has found proved did breach certain elements of the Guidance copied to the Panel at (pages 74-78 of the Panel bundle). The Panel had particular regard to the requirement to:

... always maintain appropriate professional boundaries and avoid behaviour which might be misinterpreted by others. They should report and record any incident with this potential.

We have found the following particulars of the allegations against Mr Wolfarth not proven, for these reasons:

1 During 2008 whilst employed at Cowley Language College, St Helen's, he failed to maintain appropriate professional boundaries with pupils in that:

a. In respect of Pupil A he:

(i) kissed her on the lips

The Committee is not satisfied that there is evidence that Mr Wolfarth kissed the pupil on the lips. The note made by the police officer who spoke with Pupil A records that she told him, "*At the end of term Mr Wolfarth kissed me in July when I gave him a bottle of wine as a leaving present. It was just a peck*". In his interview with the police officer, in response to the question, "*And did you kiss her?*" Mr Wolfarth said, "*I put my arms around her and said thank you. Well I put my arms on her shoulders I should say and, I am just trying to remember. I probably did.*" On being asked where he kissed her, Mr Wolfarth replied, "*On the cheek*".

Neither Pupil A nor Mr Wolfarth state that any kiss was on the lips and the Panel does not find proved this sub-particular of the allegation, as drafted.

2. Whilst employed at Saint Peter and Paul Catholic College, Widnes Cheshire, he failed to maintain appropriate boundaries with Pupil C in that he:

b. On 2 December 2009 responded to an email sent to him by her whilst she was on a placement;

Mr Wolfarth has admitted that he responded to an email from Pupil C on 2 December 2009. The Panel's bundle contains a copy of the email which was sent via the School's email system. The Panel received evidence from Witness A, the Headteacher at the School, that it was standard practice for pupils and teachers to communicate via the School's email system. The Panel was advised that all pupils and all teachers had a School email address.

Pupil C was on a placement at the time she sent the email. In it she asks Mr Wolfarth what had been covered in lessons during her absence. The email was familiar in tone but the Panel considers that it was not untypical of the language used by students of that age. Mr Wolfarth's response was described by the Presenting Officer as professional and was not criticised by Witness A.

However, in the Headteacher's view, Mr Wolfarth should not have responded to the email owing to its overly familiar nature. The Panel considers that given the nature of the request by Pupil A, Mr Wolfarth should not be criticised for responding to the email.

Further, the Panel notes that the email was sent before the Teacher had had warnings from the Headteacher about his future conduct (these were contained in letters dated 22 January and 1 February 2010) and prior to his individual safeguarding training on 22 January 2010. In addition, the email exchange with

Pupil C was before Mr Wolfarth was interviewed by the police in relation to concerns about his conduct towards Pupils A and B.

The Panel is not therefore content that by responding to the email, Mr Wolfarth failed to maintain appropriate professional boundaries.

Findings as to Unacceptable Professional Conduct

The Panel judges that Mr Wolfarth's conduct amounts to Unacceptable Professional Conduct – this is accepted by Mr Wolfarth through his legal representative.

The Panel has had regard to the Teacher's Standards (May 2012), the Code of Conduct and Practice for Registered Teachers (versions from October 2009 and from 1 November 2004). It is content that across all the standards and in its judgement, his behaviour fell significantly short of the standard of behaviour expected of a teacher.

The Panel is particularly concerned about Mr Wolfarth's conduct towards Pupil A. He admitted that he took her to his empty home and the Panel has found that he also attempted to kiss her. This was an abuse of his position of trust and responsibility. In addition, in relation to Pupils A, B and C, he disregarded his safeguarding duties and failed to observe proper boundaries. His conduct put public trust in the profession at risk and he failed to maintain a high standard of ethics and behaviour.

Panel's Recommendation to the Secretary of State

The Panel is not satisfied that it would be sufficient to conclude this matter with no sanction.

The Panel is unanimous that it should recommend to the Secretary of State that Mr Wolfarth be prohibited from teaching. The Panel has determined that Mr Wolfarth has seriously departed from the standards expected of a teacher and has abused his position of trust towards three pupils; this was a pattern of behaviour. Taking a pupil to his empty home and attempting to kiss her is incompatible with being a teacher. Prohibition is necessary to protect children and to maintain public confidence in the profession.

Mr Wolfarth admitted, through his legal representative, that his conduct amounted to unacceptable professional conduct. However, a lack of insight and understanding is evident by the fact that his behaviour continued to cause concern in relation to Pupil C. He acted in defiance of warnings and existing Guidance and without regard to the training he received about safeguarding.

However, although the Panel was split, the majority considered that Mr Wolfarth should not be denied an opportunity to apply for the Prohibition Order to be set aside. It recommended that the order should remain in place for a minimum period 7 years. It considers that this period is proportionate in the public interest in terms of protection of children, confidence in the profession and to declare appropriate standards of conduct within the profession.

Secretary of State's Decision and Reasons

I have carefully considered the decisions and recommendations of the panel in this case. The panel have found a number of the allegations proven and that Mr Wolfarth's conduct amounts to unacceptable professional conduct, this is accepted by Mr Wolfarth through his legal representative.

Mr Wolfarth's behaviour is a serious departure from the standards expected of a teacher and he has abused his position of trust. He has shown a lack of insight and understanding through his failure to heed the warnings he was given, his failure to adhere to guidance and his lack of regard to the safeguarding training he received.

In the circumstances I endorse the panel's recommendation that a prohibition is appropriate and that no review shall be allowed **until 23 January 2020, 7 years from the date of this order at the earliest.**

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

Mr David John Wolfarth 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.

DECISION MAKER: Paul Heathcote

DATE: 16 January 2013