

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: MR JAMES KEMP

Teacher ref no: 94/48518

TA Case ref no: 7554

Date of Determination: 30 May 2012

A. Introduction

A Professional Conduct Panel ("the Panel") the Teaching Agency convened 30 May 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr James Kemp.

The Panel members were Mr Michael Simon (Lay Panellist – in the Chair), Mr Andrew Potts (Lay Panellist) and Ms Jennifer Sims (Professional Panellist).

The Legal Adviser to the Panel was Mr Andrew Lockley of Irwin Mitchell LLP.

The Presenting Officer for the Teaching Agency was Ms Julie Matheson of Kingsley Napley LLP.

The teacher was not present or represented.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegation set out in the Notice of Proceedings letter dated 13 March 2012.

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

Whilst employed as a teacher at Wallisdean Junior School between 1 September 1995 and 1 March 2008, he:

1. Had private meetings with pupils,
 - a. In relation to Pupils A & B during the summer holidays in 2006, by:
 - i. Meeting them in his classroom without the prior knowledge or consent of the Head Teacher or parents;
 - ii. Playing games with them;
 - iii. Giving them money and telling them not to say anything;
 - b. In relation to Pupils C&D in 2006, by
 - i. Meeting them alone in his classroom;
 - ii. Allowing them to help him pack up his classroom;
 - iii. playing music and dancing with them;
 - c. Allowing Pupils E & F to stay in his house overnight;

- d. Going on holiday with Pupils G & H in around 1997;
2. Communicated inappropriately with pupils, by:
- a. Corresponding with pupils on MSN messenger, in particular:
 - i. Pupil E in 2002
 - ii. Pupil I in April 2004,
 - iii. Pupil J, in around 2005
 - iv. Pupil A, during the summer of 2006
 - v. Pupil K, during the summer of 2006;
 - b. Wrote to Pupil A a letter whilst she was at summer school in or around summer 2006;

In conducting himself as outlined in (a)(iii)-(b) above, he failed to comply with a management direction, as contained in the letter from the Head Teacher dated 18 October 2004, about inappropriate communication with pupils;

3. Made inappropriate and unnecessary physical contact with pupils, by:
- a. Allowing pupils to sit on his lap
 - b. Hugging pupils, in particular:
 - i. Pupil L;
 - ii. Pupil M
 - iii. Pupil N.

In conducting himself as outlined in (a) and (b) above he disregarded guidance given by the Head Teacher where he told Mr Kemp to keep physical contact with pupils to a minimum and maintain professional boundaries.

- c. the conduct as set out in 1(a)(ii) above resulted in physical contact;
- d. in conducting himself as outlined in(a)-(c) above, he disregarded guidance by the Head Teacher where he told Mr Kemp to keep physical contact with pupils to a minimum and maintain professional boundaries.

C. Summary of Evidence

Documents

In advance of the hearing the Panel received a bundle of documents numbered 1 – 229. This consisted of:-

Section 1 – Anonymised Pupil List – pages 1-3

Section 2 – Notice of Proceedings and Response – pages 4-11

Section 3 – Teaching Agency Statements – pages 12-25

Section 4 – Teaching Agency Documents – pages 27-229.

Subsequent to circulation of the bundle, but prior to the hearing, the Teacher had responded to a Notice to Admit Facts in which he had indicated whether he admitted or disputed the particulars of the allegation. He had also supplied a handwritten 3-page letter dated 22 May 2012 in which he gave a more detailed response to the allegation and the accompanying documents. These documents from the teacher had not reached all members of the Panel or the Legal Adviser before the day of the hearing, but they were considered by the Panel together with the other documents listed above.

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

Opening Address

The Presenting Officer summarised the evidence in the bundle. She reminded the Panel that the burden of proof was on the Teaching Agency and that the standard of proof was the balance of probabilities.

Mr Kemp had been employed at Wallisdean Junior School between 1 September 1995 and 1 March 2008. He taught Year 6 pupils. He had a duty to operate under safeguarding policies. The National Guidance for Safe Working Practice for the Protection of Children and Staff in Education Settings document had been issued in February 2005. It could be found in the bundle at pages 121-140. Ms Matheson drew attention in particular to sections 5, 7 and 11.

She also drew attention to the Log of MSN Messenger communication between Mr Kemp and Pupil I. This was to be found at pages 33-50 of the bundle and concerned communications in April 2004 which were the subject of one of the Particulars of the Allegation. In respect of that, Mr Kemp had received an oral and written warning from Individual A, his Head Teacher. Sometimes these communications, which were inappropriate in tone, had continued far into the night. Pupil I had changed her screen name to a jumbled version of "I Love Mr Kemp".

Mr Kemp had ignored the advice contained in his Head Teacher's warning and in 2007 a number of other incidents had come to light involving various other pupils whose names appear in the anonymised list. Mr Kemp had accepted that these incidents occurred, although he had made a number of comments which set them in context, both when he was interviewed by police (the record of the interviews which had taken place on 23 July 2007 was to be found at pages 145-199 of the bundle), and in his letter of 22 May 2012.

Another Particular related to private meetings with pupils in the summer holidays of 2006. Mr Kemp had asserted that one of the two meetings alleged, took place not in the holidays but instead on the last day of term. He also denied that these meetings had any sinister intent and in the case of one of them it had not been pre-arranged.

Particular 1c referred to Mr Kemp allowing pupils E and F to stay in his house overnight alone on different occasions. It was not suggested that there was any improper contact.

Particular 1d was a reference to him being on holiday with pupils G and H (who were twins) in around 1997.

The Particulars at 2 had to do with alleged inappropriate communications with pupils between 2002 and 2007 (all of which were admitted by Mr Kemp and comprised

communication on MSN Messenger) and a letter to Pupil A while she was at summer camp in summer 2006. So far as these communications took place after 18 October 2004 they constituted a failure to follow the direction given by the Head Teacher. Mr Kemp said that he had not received the letter of 18 October 2004 but accepted he had been warned.

Particular 3 alleged inappropriate and unnecessary physical contact with pupils. This was admitted by Mr Kemp save that he stated in his letter of 22 May 2012 that there had been no physical contact between himself and Pupils A & B during his meeting with them during summer holiday 2006. Ms Matheson made the point that the inappropriate physical contact was almost always with boys and quite often with boys whom she described as vulnerable. Mr Kemp, while accepting that pupils sometimes perched on his knee had said that he ushered them off. He did not deny hugging them sometimes at the end of lessons; indeed this had been independently observed.

Witnesses

The only witness was Individual A who was Head Teacher of Wallisdean Junior School between 1997 and April 2010. He had made a statement dated 29 September 2011, which was in the Panel's bundle at pages 13-25. The Panel took his statement as read. In expanding upon his statement on being questioned by the Presenting Officer, he added that concerns had first come to light about Mr Kemp in September 2004 when Pupil I's parents came to see him about inappropriate Internet communication between their daughter and Mr Kemp. He had reported the allegation to County Advisers. Police had taken no action. He had met Mr Kemp and given him a written record of the meeting. Subsequently concerns had arisen in 2007 which appeared to Mr Johnson to represent a pattern of behaviour.

Referring to the incident in Particular 1a, in which it was alleged that Mr Kemp had met Pupils A & B during the summer holidays of 2006 without the prior knowledge or consent of the Head Teacher or parents, he said that he would be surprised if Pupil A's father (site manager of the neighbouring infants school) had known where she was. Of particular concern was that Mr Kemp had given Pupils A & B money and asked them not to tell anyone.

It was put to him that Mr Kemp had said that his meeting with Pupils C & D took place on the last day of term when the school was unofficially closed. Individual A's response to that was that this was the first time he had heard Mr Kemp say that since the investigation started in 2007.

When asked about Pupils E & F staying overnight alone in Mr Kemp's house, Individual A said that he understood that Mr Kemp's relationship with Pupil E's mother, who was a widow, had developed only after his relationship with Pupil E who, like other pupils to whom Mr Kemp had become close, had had leading roles in plays which Mr Kemp had produced.

Individual A was also questioned by members of the Panel. It had been noted that in his letter of 22 May 2012, Mr Kemp had referred to Pupil E being the child of his partner of 10 years. Individual A's view was that the 10 years took us to the present day, and that it had not been a 10 year relationship up to the time of the events concerning Pupil E. He referred the Panel to paragraph 31 of his statement in which he mentioned Pupil F's mother, who is a cleaner at the school, becoming concerned when she heard rumours about Mr Kemp circulating, because she had allowed Pupil

F to sleep at Mr Kemp's house on a number of occasions. Individual A's attention was drawn to a statement which Pupil F had made to police, in which he had stated that he could not remember anything unusual happening. Mr Kemp had always acted appropriately. They had slept in separate rooms. Individual A said that Pupils E & F had been in Year 5 at the time of their relationships with Mr Kemp developing. To the best of his knowledge that had been in 1999 and 2000.

The incidents concerning Pupils A, B, C and D had occurred at the end of Year 6 as the pupils were due to leave and transfer to secondary school. According to school risk assessments, there should have been 2 teachers present. Pupils helped tidy up after the school productions. The school productions were a focus of Mr Kemp's interest in the pupils and he had a successful record of selecting vulnerable pupils and giving them lead parts in plays. In that context, Pupil E had, he understood, stayed with Mr Kemp while preparing for a school play.

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.

Summary of the case

Mr Kemp faced a number of allegations of inappropriate relationships and behaviour with pupils over the period between 2002 and 2007, as particularised in the Allegation set out below. No sexual motive was alleged. Mr Kemp did not attend, nor was he represented. He admitted most of the facts in his undated response to a proforma Notice to Admit Facts, which was accompanied by a letter dated 22 May 2012, but he disputed the points identified below.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegation against you proved:

That whilst employed as a teacher at Wallisdean Junior School between 1 September 1995 and 1 March 2008, he:

1. Had private meetings with pupils,
 - a. In relation to Pupils A & B during the summer holidays in 2006, by:
 - i. Meeting them in his classroom without the prior knowledge or consent of the Head Teacher or parents;
 - ii. Playing games with them;
 - iii. Giving them money and telling them not to say anything;
 - b. In relation to Pupils C&D in 2006, by
 - i. Meeting them alone in his classroom;
 - ii. Allowing them to help him pack up his classroom;

- iii. playing music and dancing with them;
 - c. Allowing Pupils E & F to stay in his house overnight;
 - d. Going on holiday with Pupils G & H in around 1997;
- 2. Communicated inappropriately with pupils, by:
 - a. Corresponding with pupils on MSN messenger, in particular:
 - i. Pupil E in 2002
 - ii. Pupil I in April 2004,
 - iii. Pupil J, in around 2007
 - iv. Pupil A, during the summer of 2006
 - v. Pupil K, during the summer of 2006;
 - b. Wrote to Pupil A a letter whilst she was at summer school in or around summer 2006;

In conducting himself as outlined in (a)(iii)-(b) above, he failed to comply with a management direction, as contained in the letter from the Head Teacher dated 18 October 2004, about inappropriate communication with pupils;

- 3. Made inappropriate and unnecessary physical contact with pupils, by:
 - a. Allowing pupils to sit on his lap
 - b. Hugging pupils, in particular:
 - i. Pupil L;
 - ii. Pupil M
 - iii. Pupil N.
 - d. In conducting himself as outlined in (a) and (b) above he disregarded guidance given by the Head Teacher where he told Mr Kemp to keep physical contact with pupils to a minimum and maintain professional boundaries.

All of these particulars were admitted by Mr Kemp in his letter of 22 May 2012 ('your letter'), save for particulars 1(a)(i) and 1(b)(i) in which he took issue with the implication that the meetings were pre-arranged. We understand the point Mr Kemp is making in this regard, but do not consider that it amounts to a denial that the relevant pupils and you met in the classroom, which is what is alleged. In relation to all the other facts which we have found proved, we have made the appropriate findings of fact on the basis of your admissions.

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

- 3 c. the conduct as set out in 1(a)(ii) above resulted in physical contact;
- 3 d. in conducting yourself as outlined in (c) above, you disregarded guidance by the Head Teacher where he told you to keep physical contact with pupils to a minimum and maintain professional boundaries.

These particulars are linked. We accept the denial, which you made in your letter, that there was no physical contact between yourself and Pupils A&B during the activities at 1(a)(ii). It follows that in relation to this particular, you could not have disregarded the guidance mentioned at 3(d).

Findings as to Unacceptable Professional Conduct/Conduct that may bring the profession into disrepute

Having found the facts set out above proved, we have considered whether they amount to unacceptable professional conduct.

We find that some of your actions amount to unacceptable professional conduct as follows:

Particular 1a. While on the balance of probabilities, there was in our view no evidence of you making a deliberate arrangement to meet Pupils A&B in school on this occasion, your giving money to the pupils – for whatever purpose – was inadvisable and capable of misinterpretation. The IRSC Guidance for Safe Working, issued in February 2005, ('the Guidance') is clear about that, and this was Guidance which had been issued to you, and on which your former Head Teacher said you had received training. This behaviour is a clear breach of para 1.3 of the GTC Code of Conduct and Practice (2004 edition) ('the Code') which was in force at the material time, and had the potential also to bring the profession into serious disrepute.

Particular 1c. This particular encompasses two separate occasions on which you allowed junior school age pupils to stay unaccompanied at your home when there was nobody else in the house. There is no evidence of any inappropriate behaviour. Although the evidence of yourself and Individual A is inconsistent, we have concluded that the occasion to which this particular relates so far as Pupil E is concerned, took place when Pupil E was in Year 5 and therefore before you formed a relationship with his mother, as you set out in your police interview. In relation to both pupils it was inappropriate for these sleepovers to have occurred in the circumstances that they did, there being no other adult or child present at the same time. This was in breach of para 1.3 of the Code, and capable of bringing the profession into serious disrepute.

Particular 2 covers inappropriate communications with pupils on MSN Messenger between 2002 and 2007, and also the writing of a letter to Pupil A while she was at a summer camp following the end of Year 6. This type of communication – in particular after the Head Teacher's letter of 18 October 2004 – was in clear breach of a management direction and (so far as communications after the Guidance was issued are concerned) also in breach of that Guidance's explicit discouragement of social contact with pupils. It was also capable of bringing the profession into serious disrepute. We take the view that the style of communication evidenced in the MSN logs and the letter that we have seen were clearly inappropriate.

Particulars 3a b & d. While we accept that there is no evidence that you targeted vulnerable pupils, and we accept that you had care for the pupils with whom you were involved, your observed and admitted physical contact with pupils went far beyond appropriate behaviour, and placed you in clear breach of the Guidance. This was a pattern of behaviour with (mainly) Y6 pupils which had the potential to bring the profession into serious disrepute.

As to the remaining particulars we did not find that they amounted to unacceptable professional conduct for the following reasons:

Despite finding Particular 1b proved, we find that your actions do not amount to unacceptable professional conduct. We accept that the 'meeting' was not pre-arranged. We accept that you were tidying up in your classroom on the last day of term and accepted help from Pupils C & D. What you describe was a continuation of activity which was related to events that had occurred during preparations for the school production. Your account of this has been consistent.

In relation to Particular 1d, there is insufficient evidence of the circumstances in which you were on holiday in the same place as Pupils G & H for us to understand the arrangements, and therefore to make any judgement in respect of your professional conduct.

E. The Applicable Code of Conduct

In respect of what constitutes unacceptable professional conduct, Ms Matheson quite properly drew our attention to the question of whether Mr Kemp's conduct constituted a breach or breaches of the GTC code of Conduct. She sought to make reference to the code that became effective from 1 October 2009 (the 2009 Code). The Legal Adviser queried why reference was not being made to the 2004 version of the code (the 2004 Code) which would have been in force at the time of most of the events contained in the allegation. Following the seeking of formal instructions, Miss Matheson informed us that the Teaching Agency took the view, as had its predecessor the GTC, that for allegations referred to the regulator after its publication, the appropriate code against which to judge a teacher's conduct is the 2009 Code. This of course is subject to the obvious point that in respect of conduct since April this year the document entitled Teachers' Standards is the relevant code.

The Legal Adviser gave us clear advice that we should be concerned with the 2004 code as covering the period of time within which the events in the allegation took place.

In accepting the Legal Adviser's approach, we consider that it is, somewhat unusually, appropriate to explain our reasoning.

Page 6 of the 2004 code makes reference to the statutory provision under which it was made, which provided for the issuing "and from time to time" revising of a code laying down standards of professional conduct and practice for registered teachers. There is further reference to the statutory basis upon which any failure to comply with the code may be taken into account in disciplinary proceedings.

Thus, the legislation clearly envisaged that a code would be devised and published that would lay down the standards of conduct expected of a teacher until such time as any revision of that code amended those standards.

Such revision did take place and led to the publishing of the 2009 code. Page 2 of that code states "This Code sets out expectations of conduct and practice for registered teachers. Its purpose is to guide teachers' everyday judgments and actions...". It is self-evident that a code can only guide teachers' judgments and actions if it is prospective. There is no reference whatsoever in the 2009 code to it having any retrospective effect and it would be difficult to conceive of a way in which this would be possible. To take a simple analogy – if Mr A drives north on road X

today and tomorrow the local council designate road X as a one-way road for cars travelling south only, Mr A cannot tomorrow be pursued for driving the 'wrong way' along that road today.

Whilst it is accepted that the GTC may have had regard to the 2009 code in assessing whether to pursue proceedings against teachers for conduct prior to its coming into force, the conduct of a teacher – or for that matter of a member of any regulated profession – can only properly and lawfully be judged against the published standards in force at the time of such conduct. To do otherwise would seem to verge on a breach of natural justice.

F. Recommendation as to Sanction

Having made findings that some of Mr Kemp's actions amount to unacceptable professional conduct, the Panel has considered whether it is necessary to recommend to the Secretary of State that he makes a prohibition order. Mr Kemp was not present and neither was any representative, and the Panel was not provided with any detailed mitigation.

The Panel regard some of Mr Kemp's actions as serious departures from the relevant teachers' standards, in particular social communication with pupils on MSN messenger and by letter to Pupil A. Not only did these communications serve to blur the necessary boundaries between teacher and pupils – which exist for the protection of both parties - but the Panel regards the language and style of communication as wholly inappropriate for children of any age, but particularly those of primary school age. Other serious departures were allowing pupils to stay over alone at his house, and the panel was also concerned about his practice of allowing pupils to hug him at the end of lessons, and allowing pupils to sit on his lap. This last type of behaviour could also, in the Panel's view, be regarded as an abuse of his position of trust.

The Panel acknowledges that there is no evidence of any sexual intent on the part of Mr Kemp, and it is noteworthy that none of the communications, which the Panel has seen, contain any sexual content. There is also no convincing evidence that vulnerable pupils were targeted or that any pupils suffered identifiable harm. This case is, rather, about Mr Kemp's serious lack of judgment.

Taking into account that Mr Kemp had received an oral and written warning from his Head Teacher about some aspects of his conduct in 2004, and had also been trained on the Guidance issued the following year, but had nevertheless continued his behaviour, the Panel has concluded that the maintenance of public confidence in the profession and the need to declare and uphold standards of conduct and behaviour within the profession requires a recommendation for a prohibition order. It considers that in the circumstances of this case, such a recommendation is necessary and proportionate, despite its impact on the teacher's ability to practise his profession. In reaching this conclusion the panel has balanced the public interest with Mr Kemp's interests.

The Panel does not think this is a case in which it should recommend that the Secretary of State should prevent a future application for review of a prohibition order, should he decide to follow the Panel's advice. This case does not fall within the type of example given in the DfE advice 'The Prohibition of Teachers', as justifying such a recommendation. Furthermore there is evidence that Mr Kemp has been regarded as an excellent teacher, with an unusual ability to bring the best out of low achievers, and that he has enjoyed the admiration of colleagues and parents.

However, Mr Kemp's serious lack of judgment would justify allowing an application for a review only after more than the minimum permitted period of two years has passed. The mitigating factors in this case have been set out above, and the Panel is aware that the burden of demonstrating that he is fit to rejoin the profession will fall on the teacher.

In all the circumstances, it is the Panel's view that it would be proportionate to allow Mr Kemp to apply for a review of any prohibition order after a period of three years, and it so recommends.

G. Secretary of State's Decision and Reasons

I have given careful consideration to this case and to the findings of the panel with regard to the facts and then to the findings of the panel with regard to unacceptable professional conduct. The panel did not find the facts proven in all of the allegations, but they did find the facts proven across a number of the allegations. Similarly the panel did not find that all of the facts found proved, amounted to unacceptable professional conduct, but those that they did find were, in the words of the panel, serious departures from the standards expected.

I have therefore given careful consideration to the panel's recommendation, and I agree that, despite the evidence that Mr Kemp has been an effective teacher in some respects, the balance of the public interest and the interests of Mr Kemp, and the need to ensure that the public can have confidence in the teaching profession, mean that a prohibition order is proportionate and in the public interest.

I have then given careful consideration to the issue of a review period. The panel set out their clear view that Mr Kemp should not be prevented from teaching for all time. However, the panel's judgement is that the findings in this case are of a serious enough nature that they recommend that the period of review should be 3 years, rather than the minimum period allowable of 2 years.

I have considered this recommendation, and for the reasons given relating to the serious lack of judgement shown by Mr Kemp, despite the advice given to him, I agree with the recommendation of the panel.

This means that Mr James Kemp 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 11 June 2015, 3 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 James Kemp remains barred from teaching indefinitely.

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

Mr James Kemp 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: 1 June 2012