



National College for
Teaching & Leadership

Mrs Beverley Jean James: Professional conduct panel outcome

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

May 2016

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

Teacher: Mrs Beverley Jean James
Teacher ref number: 7648022
Teacher date of birth: 6 July 1958
NCTL case reference: 14359
Date of determination: 20 May 2016
Former employer: Thornhill Academy, Dewsbury

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 19-20 May 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mrs Beverley Jean James.

The panel members were Mr Martin Greenslade (lay panellist – in the chair), Mr Alex Osiatynski (teacher panellist) and Ms Marjorie Harris (lay panellist).

The legal adviser to the panel was Miss Eszter Horvath-Papp of Eversheds LLP solicitors.

The presenting officer for the National College was Ms Gudrun Young of 2 Hare Court Chambers.

Mrs James was not present and was not represented at the hearing.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 21 April 2016.

It was alleged that Mrs James was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that, whilst working as an Associate Deputy Headteacher at Thornhill Academy, Dewsbury (the “School”):

1. Between September 2014 and March 2015, on multiple occasions she deliberately altered pupil attendance records in that she made changes to the Lesson Monitoring System which were inaccurate and/or misleading; and
2. In carrying out the actions described at paragraph 1 above, she acted dishonestly.

Mrs James denied the allegations.

C. Preliminary applications

The presenting officer made an application to proceed with the hearing in the absence of Mrs James or her representative. As part of this application, the presenting officer also sought to add to the bundle an email dated 16 May 2016 from Mrs James’ representative, which confirmed that they would not be attending the hearing.

The presenting officer explained that the Notice of Proceedings was sent on 21 April 2016, i.e. only 4 weeks before the date of the hearing, therefore not meeting the 8 week notice requirement set out in paragraph 4.11 of the disciplinary procedures. However, the panel noted that Mrs James’ representative had agreed to allow a shorter notice period and confirmed this in an email dated 5 May 2016 (p.16). The panel also noted that paragraph 4.11 of the procedures allowed the teacher to agree a shorter notice period, and the panel was therefore satisfied that the formalities of the service requirements under paragraph 4.11 had been met.

The panel then went on to consider whether to exercise its discretion to proceed in Mrs James’ absence, pursuant to its power under paragraph 4.29 of the disciplinary procedures. The panel noted that the right to a fair trial under article 6 of the European Convention on Human Rights includes the right to 'participate effectively', but that this right is not absolute and can be waived by the conduct of the defendant, if that waiver is unequivocal, meaning 'clear and unqualified'. The panel also took into consideration the list of factors set out in the case of *R v Jones*, as well as the judgments in the more recent cases of *Tait v Royal College of Veterinary Surgeons* and *GMC v Adeogba & Visvardis*.

The panel was mindful that it should exercise its discretion to proceed in the absence of Mrs James with the utmost care and caution, and the importance of weighing up the

public interest in proceeding, against the interests of Mrs James and the extent of the disadvantage to her if the proceedings were to continue.

In the circumstances, the panel considered that Mrs James had made a number of clear and unequivocal statements that she would not be attending the hearing. This was first indicated by her representative on 12 February 2016 (p.13) and re-confirmed in their email of 16 May 2016. The panel did not consider that an adjournment would result in Mrs James attending a future hearing.

Whilst the panel was mindful of the potential disadvantage to Mrs James of not having the opportunity to present her case, it understood that Mrs James had had the opportunity to review the evidence against her and submit her case, but had chosen to do so in a very limited way, and had expressed her determination that she was not going to attend. The panel was also of the view that it would be able to ask appropriate questions of the NCTL's witness, to ensure that such points as may be favourable to Mrs James could be properly tested.

On the whole, the panel was of the view that this was an exceptional case which warranted the exercise of the panel's discretion to proceed in Mrs James' absence, given her clear indication that she did not intend to attend, and the overwhelming public interest in proceeding with this case within a reasonable time frame.

The panel therefore decided to proceed with the hearing in the absence of Mrs James.

The panel also decided to admit the additional email of 16 May 2016, as the panel considered that it was relevant to the issue of Mrs James' non-attendance at the hearing, and in the panel's view it was fair to do so. The panel paginated this email page 2394.

D. Summary of evidence

Documents

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

Section 1: Chronology and list of key people – pages 2 to 3

Section 2: Notice of Proceedings and Response – pages 5 to 11

Section 3: Documents relating to service – pages 13 to 16

Section 4: NCTL witness statements – pages 19 to 37

Section 5: NCTL documents – pages 39 to 2330

Section 6: Teacher documents – pages 2332 to 2394

The teacher's documents included the additional email dated 16 May 2016 at page 2394, which the panel decided to admit as part of the preliminary applications.

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

Witnesses

The panel heard oral evidence from Witness A. She was called by the NCTL.

No witnesses were called on behalf of Mrs James.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and has reached a decision.

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Mrs James commenced her employment at the School in 1990 as an art teacher. Over time, she gained various responsibilities and in September 2007, the then headteacher delegated to her responsibility for attendance, safeguarding and child protection. In March 2015 a whistleblower reported concerns to Witness A regarding changes made to the School's attendance records by Mrs James. Witness A carried out an investigation and produced a report of her findings. On 15 June 2015, Mrs James attended a disciplinary meeting at the School, where she denied having changed the attendance records. On 10 July 2015 Mrs James resigned from the School.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegations against Mrs James proven, for these reasons:

1. Between September 2014 and March 2015, on multiple occasions she deliberately altered pupil attendance records in that she made changes to the Lesson Monitoring System which were inaccurate and/or misleading

The panel has before it 2394 pages of documents, many of which arose from the investigation undertaken by Witness A. The panel has found the clarity and organisation of Witness A's evidence impressive, and the panel is of the view that she carried out a very comprehensive, fair and forensic investigation.

The "History of Change" reports from September 2014 to March 2015 (pages 74 – 595) show that Mrs James made approximately 600 changes to the School's Information Management System (known as 'SIMS') during that time. The panel does not find credible Mrs James' suggestion that someone else might have made the amendments whilst she left her computer logged-in and unattended. The panel finds convincing Witness A's explanation that she had cross-checked the timing of the alterations against the presence of other staff at the School and was able to eliminate them from her enquiries. In any event, the panel is satisfied that the sheer number of amendments, and the length of time over which they were made, indicate that it cannot have been another individual who consistently used Mrs James' computer over such an extended period of time. Further, Mrs James cannot have made these amendments inadvertently and she must have made them deliberately.

The panel has then considered whether Mrs James' changes to the records were inaccurate and/or misleading, or if they were legitimate, as submitted by Mrs James.

The panel has found very persuasive the evidence collated by Witness A. For example, the circumstances surrounding pupil KB, set out in paragraph 33 of Witness A's statement, clearly demonstrate that the changes made by Mrs James were inaccurate. Mrs James had changed this pupil's attendance code for 12 September 2014 from authorised absence for illness, to being on an educational visit. However, the School's records confirmed that there was only one School trip that day, and pupil KB did not attend that trip, and indeed was not eligible to join the trip.

Witness A's witness statement set out details of changes by Mrs James to eight other pupils' attendance records (in paragraphs 34 to 41) which she had cross-referred against the documentary evidence from the School's electronic sign-in system and the notes from SIMS. This electronic evidence verified that the changed entries were inaccurate. Given that the changes were incorrect, the panel is satisfied that they were also

misleading, as they gave the impression that the pupils' attendances had been better than originally logged.

The panel notes that Mrs James has not put forward any explanation for the changes set out in detail in Witness A's statement and has merely denied this allegation. The panel accepts that there may have been a small number of changes that were legitimate, but is satisfied that the overwhelming majority were inaccurate.

In the circumstances, the panel is satisfied that the documentary evidence speaks for itself, and the panel therefore finds this allegation proven.

2. In carrying out the actions described at paragraph 1 above, she acted dishonestly

The panel notes that Mrs James has denied the allegations and has maintained that any changes made by her to the attendance records have been legitimate.

The panel has carefully considered whether this conduct was dishonest, through applying the two stage test set out in the case of *R v Ghosh*. The panel is of the view that reasonable and honest teachers would regard as dishonest the alteration of attendance records so that they are inaccurate and misleading. The records of Mrs James' disciplinary meeting on 15 June 2015 record the headteacher's concerns that, "...it gives false attendance and punctuality data for the Academy. It affects KS4 outcomes as students needing attendance support to be in School and learning have not received it. Also, students who do require intervention to improve attendance have not/are not receiving it" (p.60). In the panel's view, any teacher would know the importance of the accuracy of attendance data and that altering this so that the records are misleading would lead to the concerns identified by the headteacher. The panel is therefore satisfied that the objective limb of the test has been met.

In terms of the subjective assessment of dishonesty, i.e. whether Mrs James herself knew or ought to have known that her actions were dishonest, the panel notes her denial of the allegations and her assertion that she had, "not falsified information" (p.2390). The panel also notes that her role entailed strategic responsibility for attendance levels, and she would have had a desire to demonstrate an improvement in the School's attendance figures. The panel finds it particularly significant that the overwhelming majority of changes made by Mrs James had a positive impact on the overall impression of attendance levels.

The panel also considers it important to note that there was no evidence that Mrs James discussed the changes she was making with the relevant heads of year. The evidence before the panel was that Mrs James' role was at a strategic level, while it was the responsibility of heads of year to follow up any unauthorised absences and arrange for the register to be updated as appropriate. In the panel's view, there was no reason for Mrs James to alter the attendance records, particularly without any discussion with the

very people whose responsibility it was to follow up on any issues. In the panel's view, it is particularly noteworthy that it was an enquiry from one head of year about changes to his records which prompted the whistleblower to come forward.

In the circumstances, the panel is satisfied that Mrs James knew that her actions were dishonest, and the subjective limb of the test was met.

The panel has therefore found this allegation proven.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found both of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel will refer to as "the Advice".

The panel has also considered the personal and professional elements of the Teachers' Standards, and notes that these include the following statements:

- a teacher is expected to demonstrate consistently high standards of personal and professional conduct...
- teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside School, by:
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions...
- teachers must have proper and professional regard for the ethos, policies and practices of the School in which they teach...
- teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel also notes that the Department for Education's advice on School attendance states that, "central to raising standards in education and ensuring all pupils can fulfil their potential is an assumption so widely understood that it is insufficiently stated – pupils need to attend School regularly to benefit from their education. Missing out on lessons leaves children vulnerable to falling behind. Children with poor attendance tend to achieve less in both primary and secondary School" (p.2302).

The panel considers that deliberately altering pupils' attendance records, so that this masks any non-attendance or illness, undermines the School's ability to identify any persistent absence or other issues which may be highly relevant to safeguarding pupils' well-being. Mrs James' actions ran contrary to her important role as SENCO and the

senior member of staff responsible for inclusion. Her conduct had the potential to have a serious impact on pupils' learning and well-being.

The panel is therefore satisfied that Mrs James' conduct fell significantly short of the standards expected of the profession.

The panel has also considered whether Mrs James' conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice, and found that serious dishonesty was relevant. The panel notes that the Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

In the panel's view, the level of dishonesty involved in Mrs James' actions was serious, as she made a very large number of changes over a period of at least 6 months, demonstrating that she pursued a continuous and consistent course of dishonest conduct, potentially affecting numerous children at the School.

Accordingly, the panel is satisfied that Mrs James is guilty of unacceptable professional conduct.

The panel has also considered whether Mrs James' conduct constitutes conduct that may bring the profession into disrepute. The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct are serious and the conduct displayed would likely have a negative impact on Mrs James' status as a teacher, potentially damaging the public perception.

The panel therefore also finds that Mrs James' actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it is 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 this issue, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. The panel is mindful that 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 has considered the particular public interest considerations set out in the Advice and has found a number of them to be relevant in this case, namely:

- the protection of pupils
- the maintenance of public confidence in the profession
- declaring and upholding proper standards of conduct

The panel's findings against Mrs James involved dishonestly altering the attendance records of pupils over a sustained period of time. In light of that, the panel considers that there is a strong public interest consideration to protect pupils, given the potential impact on the School's ability to identify any educational or safeguarding issues affecting those pupils whose records have been amended. Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mrs James were not treated with the utmost seriousness when regulating the conduct of the profession. Further, the panel is of the view that there is a strong public interest consideration in declaring and upholding proper standards of conduct in the profession, as the conduct found against Mrs James was outside that which could reasonably be tolerated.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order taking into account the effect that this would have on Mrs James.

In carrying out this balancing exercise, the panel has weighed up the public interest considerations both in favour of and against prohibition as well as the interests of Mrs James. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that the panel considers relevant in this case include:

- serious departure from the personal and professional conduct elements of the Teachers' Standards

- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk
- abuse of position or trust
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up

The panel has also gone 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 nature and severity of the behaviour in this case. The panel has found Mrs James actions to have been deliberate, and has seen no evidence to suggest that she was acting under duress. However, the panel is satisfied that Mrs James does have a previously good history and by all accounts has been an excellent teacher. In particular, the panel notes the two glowing character references from previous headteachers of the School (p.2377-2380), as well as Witness A's evidence before the panel that she had nothing but praise for Mrs James as a teacher, as she had good rapport with the children and "really loved" teaching.

Nevertheless, the panel is of the view that the public interest considerations outweigh the interests of Mrs James. The integrity of the attendance records and the important role these play in the safeguarding of children are of fundamental importance to the profession. Mrs James' actions have undermined the confidence not only in the validity of the attendance records, but also in her key role in safeguarding potentially vulnerable children.

In the circumstances, the panel is of the view that prohibition is both proportionate and appropriate, and sees no reason to depart from the guidance set out in the Advice. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel has gone on to consider whether or not it would be appropriate for it to recommend that a review period of the order should be considered. The panel is mindful that the Advice states 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 dishonesty, which the panel has found proven in respect of Mrs James' actions.

However, the panel considers it appropriate to deviate from the guidance in this case. As noted earlier, the panel considers that there is strong evidence of Mrs James' competency as a teacher, and in the panel's view it would be against the public interest to deprive the profession permanently of a teacher who is held in such high regard and who, after dedicating at least 26 years to the profession, still loves teaching.

Further, the panel is mindful that a prohibition order is not intended to be punitive and considers that Mrs James should be given the opportunity to re-enter the profession in the future should she wish to do so, having reflected on her actions and demonstrated an insight into their consequences.

Whilst the panel is concerned that Mrs James' actions were very serious, and she has not yet acknowledged her misconduct, the panel is of the view that, given time, she may be able to rebuild the trust of her former colleagues and the wider community.

In the circumstances, the panel considers that it would be appropriate and proportionate for the prohibition order to be recommended with provision for a review period of five years.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendations of the panel both in respect of sanction and review.

The panel have made findings of fact and found all allegations proven. The panel has also found unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel is satisfied that the conduct of Mrs James involved breaches of the Teachers' Standards.

There are strong public interest considerations in this case, and the panel have found a number of them to be relevant, namely: the protection of pupils; the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct. The panel's findings against Mrs James involved dishonestly altering the attendance records of pupils over a sustained period of time. The panel considers that deliberately altering pupils' records, so that this masks any non-attendance or illness, undermines the School's ability to identify any persistent absence or other issues which may be highly relevant to safeguarding pupils' wellbeing. I agree with the panel's view.

I agree with the panel that there is a strong public interest consideration in declaring and upholding proper standards of conduct in the profession, as the conduct found against Mrs James was outside that which could reasonably be tolerated.

I have taken into account the need to balance the public interest with the interests of Mrs James. I have also taken into account the need to be proportionate. I have read and taken into account the guidance published by the Secretary of State.

The panel has weighed up the public interest considerations both in favour of and against prohibition as well as the interests of Mrs James. The panel has found Mrs James' actions to have been deliberate and has seen no evidence to suggest that she was

acting under duress. The panel has decided that the public interest considerations outweigh the interests of Mrs James. The panel is of the view that prohibition is both proportionate and appropriate.

Taking all of the facts into account I support the recommendation of the panel that Mrs James be prohibited. This seems to me to be proportionate and appropriate.

I have also considered the matter of a review period. The panel has found behaviour, that of serious dishonesty, which would mitigate against a review period being recommended.

I note the panel has considered it appropriate to deviate from the guidance in this case. The panel considers there is strong evidence of Mrs James' competency as a teacher, and in the panel's view it would be against the public interest to deprive the profession permanently of a teacher who is held in such high regard. The panel considers that Mrs James should have the opportunity to re-enter the profession in the future, having reflected on her actions and demonstrated an insight into their consequences.

I agree with the panel's consideration that in time, Mrs James may be able to rebuild the trust of her former colleagues and wider community.

The panel has recommended a review period of 5 years. For the reasons set out above, I agree with the panel's decision.

This means that Mrs Beverley Jean James is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the prohibition order to be set aside, but not until 27 May 2021, 5 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mrs James remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Mrs James 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: 23 May 2016