



National College for
Teaching & Leadership

Ms Romina Albarran: Professional Conduct Panel outcome

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

March 2014

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Ms Romina Albarran

Teacher ref no: 0744166

Teacher date of birth: 2 June 1983

NCTL Case ref no: 0010627

Date of Determination: 24 March 2014

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 24 March 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Ms Romina Albarran.

The Panel members were Mr Mark Tweedle (Teacher Panellist– in the Chair), Mr John Elliott (Lay Panellist) and Mary Speakman (Teacher Panellist).

The Legal Adviser to the Panel was Mrs Luisa Gibbons of Eversheds LLP Solicitors.

The Presenting Officer for the National College was stated to be Mr Ben Bentley in the Notice of Hearing but Ms Louisa Atkin of Browne Jacobson LLP Solicitors signed the Statement of Agreed Facts and Presenting Officer Representations.

The meeting took place in private and was not recorded, save for the announced decision.

The Presenting Officer was not present.

Ms Romina Albarran was not present and was not represented.

B. Allegations

The panel considered the allegations set out in the Notice of Meeting dated 3 March 2014.

It was alleged that Ms Albarran was guilty of having been convicted of the following relevant offences, in that:

On 9 September 2013 she was convicted at Berkshire Magistrates' Court of the offence of possessing a controlled drug – Class A (Cocaine), contrary to section 5(2) of the Misuse of Drugs Act 1971. She committed this offence on 14 August 2013. She was ordered to pay a fine of £25, costs of £50 and a victim surcharge of £20. An order was made for the forfeiture and destruction of the drugs that had been in her possession.

On 9 September 2013 she was convicted at Berkshire Magistrates' Court of the offence of possessing a controlled drug – Class A (Heroin), contrary to section 5(2) of the Misuse of Drugs Act 1971. She committed this offence on 14 August 2013. She was ordered to pay a fine of £25. An order was made for the forfeiture and destruction of the drugs that had been in her possession.

On 20 May 2009 she was convicted at Feltham Magistrates' Court of the offence of driving a motor vehicle with excess alcohol, contrary to section 5(1) of the Road Traffic Act 1988. She committed this offence on 1 May 2009. She was ordered to pay a fine of £180 and costs of £70. Her driving licence was endorsed and she was disqualified for driving for a period of 18 months.

Ms Albarran admitted all of the allegations and has admitted that they amount to convictions of relevant offences.

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 Referral, response and Notice of Meeting | Pages 3 – 8b |
| Section 3: Statement of Agreed Facts and Presenting Officer Representations | |

Section 4: National College for Teaching and Leadership Documents

Pages 14 – 22

Section 5: Teacher Documents

Pages 23 - 38

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

Witnesses

Convened as a meeting, the Panel did not hear any oral evidence.

E. 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 and that no member has a conflict of interest.

Summary of Evidence

Whilst undertaking her PGCE teacher training, Ms Albarran was convicted on 20 May 2009 of driving a motor vehicle with excess alcohol, an offence committed on 1 May 2009.

Having gone on to qualify as a teacher, Ms Albarran left her position as a secondary school language teacher on 17 June 2013. On 14 August 2013, she was found to be in possession of Class A drugs: Cocaine and Heroin and was convicted on 9 September 2013 of possession of both controlled drugs.

The panel first considered whether it had jurisdiction to consider this case. There were two issues:

- 1) Ms Albarran has stated that she was a PGCE trainee teacher at the time of the matters alleged in Particular 3; and
- 2) Ms Albarran has stated that she was not employed as a teacher at the time of the matters alleged in Particulars 1 and 2, having left her position as a teacher.

Having received legal advice, the Panel noted that s141A and 141B, inserted into the Education Act 2002 by means of section 8 of the Education Act 2011, states that a

person may be investigated by the Secretary of State and a prohibition order can be placed upon him or her if:

The person is employed or engaged to carry out teaching work at:

- a) a school in England,
- b) a sixth form college in England,
- c) relevant youth accommodation in England, or
- d) a children's home in England.

The panel considers that it does have jurisdiction in this case. It was noted that Ms Albarran has not disputed the panel's jurisdiction to hear this case.

The panel does not accept that the legal meaning of the provisions is plain and therefore that it has to resolve the ambiguity as to the point in time at which the phrase "is employed or engaged" relates. The panel has been advised that in such circumstances, it is the meaning intended by Parliament in passing the legislation that it should objectively assess. The panel has done this by reference to the words used and the context in which they are used. The panel has sought to achieve a balanced view and reach a commonsense judgement.

Whilst the panel recognises that normally it would be expected that the legal meaning would be the literal interpretation of the provision, it considers that such a meaning would:

- not meet the legislative purpose or its mischief,
- give rise to absurdities, impracticalities and irrationalities.

The panel considered that the fact that someone was not engaged in teaching at the time of the matters alleged does not preclude them from returning to a teaching role in the future. Consequently, not to be able to explore an allegation that has been made against an individual would not be in the public interest. The panel does not consider that this would have been Parliament's intention.

Further, the panel considers that Parliament would have intended the regime to operate in a manner that was both certain and practical. Taking a literal interpretation would introduce uncertainty as to when someone would be under the jurisdiction of the National College for Teaching and Leadership. It would allow an individual theoretically to dip in and out of the jurisdiction of the National College.

The Panel also noted 141B (1)(b) refers to the Secretary of State's ability to investigate a case "where a person to whom this section applies...has been convicted (at any time) of a relevant offence". The panel considered that this suggests that Parliament would have

intended the provisions to apply to those teachers convicted at any time of an offence, even if they were not teaching or in a teaching post at the time of the offence.

The panel therefore considers that Parliament would have intended the phrase “is employed or engaged” to include individuals such as Ms Albarran who had resigned from her teaching position at the time of alleged conduct, but who may return to teaching at any time in the future. The panel also considers Parliament would have intended the phrase to include individuals who were not employed as a teacher at the time of the alleged conduct but subsequently become so employed.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against Ms Albarran proven, for these reasons:

1. On 9 September 2013 she was convicted at Berkshire Magistrates’ Court of the offence of possessing a controlled drug – Class A (Cocaine), contrary to section 5(2) of the Misuse of Drugs Act 1971. She committed this offence on 14 August 2013. She was ordered to pay a fine of £25, costs of £50 and a victim surcharge of £20. An order was made for the forfeiture and destruction of the drugs that had been in her possession.

The panel has in its bundle a disclosure print of a PNC record which confirms that Ms Albarran was convicted of this offence. The Panel has also seen a letter dated 19 September 2013 from the Disclosure Officer of Thames Valley Police notifying this conviction to the College. This allegation has also been admitted and is therefore found proved.

2. On 9 September 2013 she was convicted at Berkshire Magistrates’ Court of the offence of possessing a controlled drug – Class A (Heroin), contrary to section 5(2) of the Misuse of Drugs Act 1971. She committed this offence on 14 August 2013. She was ordered to pay a fine of £25. An order was made for the forfeiture and destruction of the drugs that had been in her possession.

The panel has in its bundle a disclosure print of a PNC record which confirms that Ms Albarran was convicted of this offence. The Panel has also seen a letter dated 21 October 2013 from the Disclosure Officer of Thames Valley Police confirming that Ms Albarran was found guilty of this offence. This allegation has also been admitted and is therefore found proved.

3. On 20 May 2009 she was convicted at Feltham Magistrates’ Court of the offence of driving a motor vehicle with excess alcohol, contrary to section 5(1) of the Road Traffic Act 1988. She committed this offence on 1 May 2009. She was ordered to

pay a fine of £180 and costs of £70. Her driving licence was endorsed and she was disqualified for driving for a period of 18 months.

The Panel has in its bundle a memorandum of an entry in the register of the Feltham Magistrates' Court confirming the conviction. A disclosure print of a PNC record also confirms the fact of this conviction. This allegation has also been admitted and is therefore found proved.

Findings as to convictions of relevant offences

In considering whether the allegations that the panel has found proven amount to convictions of relevant offences, the panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'Guidance'.

The panel has taken into account the written evidence submitted by Ms Albarran including her admission that the allegations amount to convictions of relevant offences; her statement that her actions were out of character and that she had been with the wrong person, in the wrong place, at the wrong time; and her character references. The panel noted the evidence produced by the Disclosure Officer of Thames Valley Police that Ms Albarran had been in the passenger seat and began to get out of the car while one of the attending officers was dealing with the driver. She was seen to throw something underneath the car which was found to be a cigarette packet containing eight wraps of white powder. In her police interview, she stated that the drugs were crack cocaine and heroin for her own personal use.

The panel is satisfied that the conduct of Ms Albarran in relation to the facts it has found proved, were contrary to the standards of personal and professional conduct expected of a teacher, with reference to the Teachers' Standards. In particular,

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs;

The panel noted that the individual's actions were relevant to teaching, working with children and/or working in an education setting. Teachers are role models to those they teach and are expected to uphold the law. Possession of Class A drugs is a serious offence and in the view of the panel is not compatible with a person's ongoing suitability to teach.

The panel also noted that the behaviour involved in committing the offence of driving with excess alcohol showed a disregard for the safety of members of the public.

The panel has taken account of how the teaching profession is viewed by others. The panel considered that Ms Albarran's behaviour in committing the offences would affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.

The panel noted from the Guidance at page 8 that it is likely that possession of class A drugs will be considered "a relevant offence", regardless of whether it led to a term of imprisonment.

The panel carefully reviewed the available evidence and is of the view that the nature, gravity and the circumstances in which the offences were committed amount to convictions of relevant offences.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of convictions of relevant offences, 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 whether to recommend to the Secretary of State that a Prohibition Order should be made, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is 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 has considered the particular public interest considerations set out in the Guidance and having done so has found all them to be relevant in this case, namely:

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

In light of the panel's findings against Ms Albarran, which involved possession of Class A drugs namely, heroin and cocaine, there is a strong public interest consideration in protecting children from exposure to an inappropriate role model.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Albarran were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present, as the conduct found against Ms Albarran was fundamentally incompatible with her role as a teacher.

The panel took further account of the Guidance, 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 are relevant are:

- serious departure from the personal and professional conduct elements of the teachers' standards;
- actions or behaviours that undermine fundamental British values, democracy and law, promote political and/or religious extremism, or demonstrate deliberate intolerance and/or lack of respect of the rights, faith and beliefs of others;
- a deep-seated attitude that leads to harmful behaviour; and
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

With regard to the question of a deep-seated attitude, the Panel were concerned that Ms Albarran was found in possession of a quantity of two different Class A drugs which she told the police were for her personal use. The panel considered this to be indicative of an involvement in drugs which went beyond experimentation or one off usage. Ms Albarran states that her actions were out of character. Those assurances would have been more persuasive had she produced some evidence of abstaining from drug use or of undertaking drug rehabilitation.

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 Ms Albarran. In forming a judgement in this respect, the panel took particular account of the mitigation evidence submitted by Ms Albarran. The Panel accepted Ms Albarran's assurances that she was of previous good character and that she had been an effective classroom practitioner. The panel considered those assurances would have been more persuasive had professional references been provided. Of the four character references submitted, none were from those able to attest to her work in schools. Although she referred to the stress and anxiety which had led to her leaving her previous teaching post, Ms Albarran has not explained the circumstances that led her to be in possession of cocaine and heroin, save for being with the wrong person, in the wrong place, at the wrong time. There was no evidence that Ms Albarran was acting under duress and in the view of the panel, her actions were deliberate. Given the quantity and nature of the drugs involved, the panel did not accept that the incident was out of character.

The panel is of the view that Prohibition is both proportionate and appropriate. We have decided that the public interest considerations outweigh the interests of Ms Albarran. 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 recommend a review period. The Panel were mindful that the Guidance advises 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 two years.

The Guidance indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes Class A drug abuse or supply. The panel notes that although Ms Albarran has expressed regret for her actions, she has not explained the reasons for her actions or shown insight into their potential impact on young people and her future employability as a teacher. The Panel considers that this was a serious departure from professional standards with the potential to significantly undermine public confidence in the profession. As such, the panel considers a Prohibition Order without a review period is both proportionate and appropriate.

Decision and reasons on behalf of the Secretary of State

I have carefully considered the findings and recommendations of the panel in this case.

Ms Albarran has been convicted of three offences (driving a motor vehicle with excess alcohol, possession of class A drug (cocaine) and possession of class A drug (heroin)). Ms Albarran has admitted the allegations and that they amount to convictions of relevant offences.

The panel have taken proper account of how the profession is viewed by others and have determined that the offences would affect public confidence in the profession. The panel have therefore judged that the offences amount to convictions of relevant offences.

The panel have properly considered the public interest considerations set out in the prohibition guidance and in light of the findings of fact have decided there is a strong public interest consideration in protecting children from exposure to an inappropriate role model. They have judged that Ms Albarran's behaviour is fundamentally incompatible with her role as a teacher.

The panel were particularly concerned that, although Ms Albarran states her actions were out of character, she has produced no evidence to show she is free from drug use or that she is undertaking drug rehabilitation. Although Ms Albarran has produced four character witnesses, none of the references attest to her work in schools. There is no evidence that Ms Albarran was acting under duress.

In all the circumstances I agree with the panel's recommendation that a Prohibition Order is both a proportionate and appropriate sanction.

In considering whether a review period is appropriate, the panel have properly taken account of the prohibition guidance. Class A drug abuse is a behaviour that might militate against a review period being allowed. Whilst Ms Albarran expressed regret for her behaviour she showed no insight into the potential impact on young people. As such, I agree that the order should be without opportunity for review.

This means that Ms Romina Albarran 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 her, I have decided that Ms Romina Albarran shall not be entitled to apply for restoration of her eligibility to teach.

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

Ms Romina Albarran has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this Order.

NAME OF DECISION MAKER: Paul Heathcote

A handwritten signature in black ink, appearing to read 'P Heathcote', with a large, sweeping flourish at the end.

Date: 26 March 2014

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