

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Ms Diane Haselden
Teacher ref no: 72/56729
TA Case ref no: 8425
Date of Determination: 20 June 2012
Former Employer: Nicol Mere Primary School, Wigan

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 20 June 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Ms Diane Haselden.

The Panel members were Chris Kiernan (Lay Panellist – in the Chair); Mr Robert Cawley (Professional Panellist); and Mrs Kathy Thomson (Professional Panellist).

The Legal Adviser to the Panel was Mr Michael Williams of Counsel.

The Presenting Officer for the Teaching Agency was Dr Francis Graydon of Browne Jacobsen LLP, Solicitors.

Ms Haselden was present and represented by Ms Sarah Gill of the National Union of Teachers.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegation set out in the Notice of Proceedings dated 16 March 2012.

It was alleged that Ms Diane Haselden was guilty of unacceptable professional conduct, in that whilst employed at Nicol Mere Primary School, Wigan between 2009 and 2010:

1. her school laptop was used to view material of an inappropriate and illegal nature;
2. she failed to follow the school’s Agreement for Long Term Loan of a Laptop; and
3. she stored unencrypted sensitive information on her school laptop despite instruction not to do so.

At the outset of the hearing, Ms Haselden admitted particulars 2 and 3 of the allegation. In relation to particular 1, she admitted that the computer was used to view material of an inappropriate and illegal nature, but denied that it was she who viewed the material. She denied that her actions amounted to unacceptable professional conduct.

C. Summary of Evidence

Documents

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

Section 1	Notice of Proceedings and teacher's response	pages 1 - 8
Section 2	Witness statements	pages 9 - 14
Section 3	Teaching Agency documents	pages 15 - 106
Section 4	Teacher's documents	pages 107 - 108

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

Background

At the time of the alleged conduct Ms Haselden was employed at Nicol Mere Primary School, Wigan. She had been employed in that school since 1980.

Ms Haselden was provided with a laptop computer to use for work associated with her employment. She was permitted to take that computer home in the evenings and at weekends for that purpose.

In common with other computers at the school, Ms Haselden's computer incorporated security software, which caused the computer to be scanned for inappropriate downloads each time it was re-connected to the school network. On or about 2 December 2010, the security system identified that Ms Haselden's computer had been used to access to inappropriate material. It was seized for examination.

The matter was reported to the police. The laptop computer was forensically examined and a large number of pornographic images (in excess of 6,000) were recovered from the computer hard drive. The images had been deleted and whilst still present on the hard drive, could not be accessed by a user.

When those images were recovered they were found to include extreme pornographic images, including images of bestiality and the rape of what appeared to be young children. An examination of the browser history revealed the user used six pornographic sites at various times on 12, 13, 17, 19, 21 and 26 November 2010. On at least one occasion Ms Haselden's email address was used in an attempt to log on to a pornographic site.

An examination of computer's search history showed that there had been a search for a pornographic site called zootube365.com as far back as 16 June 2009.

The forensic examination also revealed that the computer had not been encrypted, had been used to store personal information about pupils (such as photographs and videos of school events, individual school reports and class lists) and personal documents such as a wedding planner; and also included a user account for Ms Haselden's daughter.

When interviewed by the school's Head Teacher, Ms Haselden said that she had not accessed the pornographic websites nor had she given anyone permission to do so. She said that she had an idea as to who may have accessed the sites but was not prepared to name that person. She denied that she had given the password to her computer to any other person but conceded that she was accustomed to leave the machine on after she had finished with it.

When interviewed by the police, Ms Haselden said that although she lives alone, lots of people visited her house and any one of them may have used her computer. Ultimately, she said that a man called Individual A would often visit her and stay overnight, sleeping on the sofa. She told the police that she did not know how to contact that man.

Brief summary of evidence given

Witness A, Head Teacher of Nicol Mere Primary School ('the school') confirmed the truth of the statement signed by him on 10 February 2012 and gave evidence in accordance with that statement.

On 8 December 2012, the Head of Audit and Risk Management Services at Wigan City Council notified Witness A that inappropriate material had been found on a laptop computer issued to Ms Haselden. On six different occasions in November 2010 the user of the computer had visited six extreme pornographic websites. It was subsequently established that the material accessed included images of bestiality and child rape.

Witness A was also informed that the laptop computer was not encrypted in accordance with the schools ICT policy and that sensitive personal data including the names of pupils and personal information relating to them was stored on that computer.

Witness A confirmed that Ms Haselden had signed agreements governing the acceptable use of school laptop computers on 16 January 2007 and a more comprehensive agreement on 10 September 2010. He said that a reminder had been sent to all staff around April 2010 reminding them that the more comprehensive agreement should have been signed and returned by that time.

Witness A interviewed Ms Haselden. In that interview, she confirmed that she had signed a copy of the school's Agreement for the Long Term Loan of a Laptop Computer, acknowledging that she would use the laptop only for professional purposes, that it should not be used by family members, that files containing

personal data relating to staff or students would be encrypted and that the computer would not be used for the purpose of downloading any offensive, obscene, pornographic or indecent images. Ms Haselden admitted that the computer was not encrypted, that her daughter Individual B had used the computer to download data from

'iTunes' (although that was said to have occurred prior to her signing the agreement) and that she was in the habit of leaving her laptop computer on after she had finished using it for professional purposes. She denied that she had downloaded the pornographic images, saying that it must have been done by a visitor to her home.

In her evidence to the Panel, Ms Haselden maintained that position. She said that she did not have sufficient knowledge of the operation of a computer to enable her either to encrypt the laptop computer or to reset the power options so that the computer would automatically go into the standby mode after 10 minutes. She said that she had known Individual A since they attended High School together, knew little about him but allowed him to stay at her home on occasions. She said that she would often retire to her bedroom leaving him in the lounge to sleep on the sofa; and that on at least one of the occasions that the computer had been used to download pornography she was out at band practise. She had never given him permission to use her computer and had not seen him doing so. Neither had she 'surfed' the internet with him.

D. Decision and Reasons

The Panel announced its decision and reasons as follows:

Ms Haselden

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.

The Panel considered the allegation set out in the Notice of Proceedings dated 16 March 2012.

It was alleged that you are guilty of unacceptable professional conduct, in that whilst employed at Nicol Mere Primary School, Wigan between 2009 and 2010:

4. your school laptop was used to view material of an inappropriate and illegal nature;
5. you failed to follow the school's Agreement for Long Term Loan of a Laptop; and
6. you stored unencrypted sensitive information on your school laptop despite instruction not to do so.

At the outset of the hearing you admitted particulars 2 and 3 of the allegation. In relation to particular 1, you admitted that the computer was used to view material of

an inappropriate and illegal nature, but denied that it was you who viewed the material. You denied that the matters which you had admitted amounted to unacceptable professional conduct.

The Panel heard evidence from Witness A, Head Teacher of Nicol Mere Primary School that on 8 December 2012, the Head of Audit and Risk Management Services at Wigan City Council notified him that inappropriate material had been found on a laptop computer issued to you. On six separate occasions in November 2010 a user of the computer had visited six extreme pornographic websites. The material accessed included images of bestiality and child rape.

Witness A was also informed that the laptop computer was not encrypted in accordance with the schools ICT policy and that sensitive personal data, including the names of pupils and personal information relating to them, was stored on that computer.

Witness A confirmed that you had signed agreements governing the acceptable use of school laptop computers on 16 January 2007 and a more comprehensive agreement on 10 September 2010. He said that a reminder had been sent to all staff around April 2010 reminding them that the more comprehensive agreement should have been signed and returned by that time.

In an interview with Witness A, you confirmed that on 19 September 2010, you had signed a copy of the school's Agreement for the Long Term Loan of a Laptop Computer. By so doing, you acknowledged that you would use the laptop only for professional purposes, that it should not be used by family members, that files containing personal data relating to staff or students would be encrypted and that the computer would not be used for the purpose of downloading any offensive, obscene, pornographic or indecent images, or in any other way that might bring the school into disrepute. In contravention of that agreement, you admitted that the computer was not encrypted, that your daughter Individual B had used the computer to download data from 'iTunes' (although you said that had occurred prior to signing the agreement) and that you were in the habit of leaving your laptop computer on after you had finished using it for professional purposes. You denied that you had downloaded the pornographic images, saying that it must have been done by a visitor to your home.

When you were interviewed by the police, you said that although you live alone, lots of people visited your house and any one of them may have used the computer. Ultimately, you said that a man called Individual A would often visit and stay overnight, sleeping on the sofa. You told the police that she did not know how to contact that man.

You maintained that position in your evidence to the Panel. You said that you did not have sufficient knowledge of the operation of a computer to enable you either to encrypt the laptop computer or to reset the power options so that the computer would automatically go into the standby mode after 10 minutes. You said that you had known Individual A since you attended High School, knew little about him but allowed him to stay at your home on occasions. You said that you would often retire to your bedroom leaving him in the lounge to sleep on the sofa and that on at least one of the occasions that the computer had been used to download pornography you

were out at band practise. You had never given him permission to use your computer; neither had you 'surfed' the internet with him.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegation against you proved, for these reasons:

Particular 1

So far as the illegality aspect of particular 1 is concerned, possession of indecent photographs of children under the age of 18 is an offence contrary to the Protection of Children Act 1978 and section 160 of the Criminal Justice Act 1988; possession of extreme pornographic material – a term that encompassed images of bestiality – is an offence contrary to the Criminal Justice and Immigration Act 2008. Accordingly, the Panel is satisfied that the material viewed on your computer was illegal. It was also inappropriate.

It was not in dispute that the computer in question had been used to download such material. Accordingly, the Panel is satisfied that the school laptop was used to 'view material of an inappropriate and illegal nature'.

The issue so far as that is concerned is whether or not it was you who effected or allowed those downloads.

In that regard, the Panel has had regard to the plausibility or otherwise of the explanation offered by you for the presence of the pornographic material on the laptop computer. Of course, it is easy to say 'someone else must have downloaded the material' but having had regard to all of the evidence in the case, the Panel must form a view as to your credibility in that regard.

The Panel notes that the search history for the evening of 18 June 2009 shows that between 20.02.12 and 20.44.49, sequential searches were conducted for 'btinternet', 'zootube' and 'peter scott artist autobiography'. In your evidence, you acknowledged that, probably, it was you who conducted the first and last search. You also said in evidence that you had not seen Individual A or anyone else using your computer without your permission. In all of the circumstances, the Panel finds it improbable that someone could have used the computer without your knowledge in the short time frame in which the three searches took place.

Moreover, the Panel found your evidence regarding who else may have accessed your computer to be evasive and, hence, lacking in credibility. It cannot accept that had someone else downloaded the images without your knowledge, you would have been frank about the visits from Individual A from the outset and personally made far greater efforts to locate him so as to question him about the provenance of those images.

In all of the circumstances, the Panel finds Allegation 1 proved and is satisfied that it was you who downloaded the offensive and inappropriate images.

Particulars 2 and 3

At the outset of the hearing, you admitted Particulars 2 and 3 of the allegation. When interviewed by your Head Teacher, Witness A, you admitted that you had failed to follow the school's Agreement for Long Term Loan of a Laptop and that you stored unencrypted sensitive information on the laptop despite the prohibition on so doing contained within that agreement. Although you may not have had sufficient knowledge to encrypt the computer yourself, it was incumbent upon you to have that encryption installed by the ICT Manager or the school's approved agent.

Accordingly, the Panel finds Particulars 2 and 3 proved.

Finding as to Unacceptable Professional Conduct

Principle 1 of the Code of Conduct and Practice for Registered Teachers (2009) ('the Code') requires registrants to 'take all reasonable steps to ensure the safety and well being of children and young people under their supervision'. The Panel notes that using a computer at school that has been used to download pornography of the vilest type is totally inappropriate and raised the spectre of pupils being subjected to the images either by your own error or through their own efforts to access your computer.

Principle 8 of the Code requires registered teachers to 'demonstrate honesty and integrity in management and administrative duties, including in the use of school property ...' and 'maintain reasonable standards in their own behaviour that enable them to maintain an effective learning environment and also to uphold public trust and confidence in the profession.'

By acting as you did, you failed to follow the school's policy on the use of your laptop computer and demonstrated a serious lack of professional judgement that had the very real potential not only to damage your own professional reputation but also the reputation of the school and the profession as a whole. Extreme pornographic images aside, the computer entrusted to you was used to store documents personal to you; was used by other persons (including your daughter); and was used to store sensitive personal data, including the names of pupils and personal information relating to them, in an unencrypted form. That was in contravention of the usage agreements signed by you on 16 January 2007 (which required that the computer be used only for 'professional purposes') and 10 September 2010.

In all of the circumstances, the Panel is satisfied that your conduct fell well short of the standard expected of the profession and, hence, amounted to 'unacceptable professional conduct'.

Panel's Recommendation to the Secretary of State

The Panel heard advice from the Legal Adviser that the primary object of imposing a sanction in proceedings such as these is not to be punitive but to protect pupils and maintain the standing of the profession and the confidence of the public in the profession. The impact of an order on the teacher is also relevant, because the Panel

must act proportionately but, as the primary objectives concern the wider public interest, such impact has been said not to be “a primary consideration”

In deciding whether to recommend the imposition of a prohibition order, the Panel has applied the principle of proportionality, weighing the interests of the public with those of the teacher.

The Panel considers this to be a case where a Prohibition Order should be imposed. Downloading such obscenities is not a victimless offence because quite often the women and children involved have been trafficked or forced into involvement in making the images and have to be protected from further sexual exploitation. The downloading of material of this sort contributes to the demand for such images and the further exploitation of such women and children.

By acting as she did, Ms Haselden failed to follow the school’s policy on the use of her laptop computer and demonstrated a serious lack of professional judgement that had the very real potential not only to damage her own professional reputation but also the reputation of the school and the profession as a whole. Using a computer at school that has been used to download pornography of the most offensive and illegal type is totally inappropriate and raises the spectre of pupils being subjected to the images, either by Ms Hasleden’s own error or through their own efforts to access the computer.

The Panel has carefully considered the testimonial as to Ms Haselden’s character and had regard to the mitigation advanced by Ms Gill on her behalf. However, the Panel is of the view that neither the testimonial nor the representations made disclose any exceptional considerations which serve to reduce the nature of her offending and its potential consequences. Neither is it a significant consideration that Ms Haselden has no intention of working as a teacher in the future.

This case involves a serious departure from the personal conduct expected of a teacher. Whilst there has been no direct harm to children, nonetheless there was a potential for that to have occurred.

In all of the circumstances, the Panel is satisfied that Ms Haselden’s conduct over a period of time was fundamentally incompatible with being a teacher.

In coming to its decision, the Panel has had regard to the fact that the public interest includes the retention of an experienced and otherwise competent teacher. However, in this case the Panel is satisfied that the public interest, including the maintenance of proper standards of conduct and behaviour, can be met only by the imposition of a prohibition order.

Given the extreme nature of the offending behaviour, the Panel is of the view that only a Prohibition Order without limit of time will adequately mark the opprobrium with which the public views conduct of this type and send out a sufficiently strong signal to the profession as to the unacceptability of such behavior.

Secretary of State's Decision and Reasons

I have given careful consideration to the recommendation of the Panel in this case, both in terms of its findings of fact and unacceptable professional conduct and also with regard to its recommendation of prohibition and its recommendation that there should be no review period.

This case concerns the viewing of the most extreme and illegal pornography onto a school computer. The Panel have heard the evidence and given it careful consideration.

The Panel have recommended that on the basis of their finding that it is both proportionate and in the public interest to impose a prohibition order. I support that finding for the reasons given.

The Panel have also recommended that there be no review period. In the light of the extreme nature of the material viewed I also support this recommendation.

This means that Ms Diane Haselden 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 allegation found proved against her, I have decided that Ms Diane Haselden 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 Diane Haselden 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: Alan Meyrick
Date: 21 June 2012**