

NATIONAL COLLEGE FOR TEACHING AND LEADERSHIP

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr Andrew Charles Hillary

Teacher ref no: 9045327

Teacher date of birth: 12 April 1962

TA Case ref no: 9776

Date of Determination: 8 April 2013

Former Employer: Eltham College

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership convened on 8 April 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3HH to consider the case of Mr Andrew Charles Hillary.

The Panel members were Dr Robert Cawley (Teacher Panellist– in the Chair), Cll Gail Goodman (Teacher Panellist) and Mr Bill Nelson (Lay Panellist).

The Legal Adviser to the Panel was Stephen Murfitt of Blake Laphorn Solicitors.

The Presenting Officer for the National College for Teaching and Leadership was Ms Laura Hackney of Browne Jacobson Solicitors.

Mr Andrew Charles Hillary was not present and was not represented.

The Meeting took place in private and was recorded. The decision as to facts and unacceptable professional conduct/conduct which may bring the profession into disrepute was announced in public.

B. Allegations

The Panel considered the allegations set out in the Notice of Referral dated 10 January 2013.

It was alleged that Mr Andrew Charles Hillary was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed at Eltham College:

- 1) Made indecent photographs and/or pseudo-photographs of children on or before 02/08/2012;

- 2) Possessed indecent photographs and/or pseudo-photographs of children on or before 02/08/2012;
- 3) On 25/06/2012 in appropriately permitted a class of year 7 students to view a horror film certified 15.

Mr Hillary admitted the facts of the allegations set out in the Notice of Referral dated the 10 January 2013. Mr Hillary further confirmed that the admitted facts amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

Mr Hillary made an application for the allegations to be considered at a Meeting. The request was granted by the Teaching Agency on the on the 1 March 2013.

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	Pages 4 – 8a
Section 3	Teaching Agency Statements of Agreed Facts/Representations	Pages 10 - 14
Section 4	Teaching Agency Documents	Pages 16 - 58
Section 5	Teacher's Documents	Pages 60

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

Brief summary of evidence given

A Statement of Agreed Facts had been signed by Mr Hillary on the 20 February 2013 and by the Presenting Officer on the 27 February 2013. The Statement of Facts confirmed that Mr Hillary admitted all of the alleged facts. Furthermore Mr Hillary confirmed that the admitted facts amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

E. Decision and Reasons

The Panel announced its decision and reasons as follows:

Mr Hillary was employed at Eltham College Grove Park Road in London from 1991 to 1994 returning to the College in 1998. On the 6th August 2012 he was arrested in Scotland whilst on a school trip and resigned his post on the 13 August 2012. Mr Hillary was a teacher in the Design and Technology Department.

It is alleged against Mr Hillary that he made, and was in possession of indecent photographs of children, and that on the 25 June 2012 permitted a class of Year 7 students to view a horror film certified 15.

Findings of fact

The Notice of Referral dated the 10 January 2013 makes an allegation that Mr Hillary is guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The particulars of the allegations are that Mr Hillary:

1. Made indecent photographs and/or pseudo-photographs of children on or before 2 August 2012;
2. Possessed indecent photographs or pseudo-photographs of a child on 2 August 2012; and
3. On 25 June 2012 inappropriately permitted a class of year 7 students to view a horror film certified 15.

This is a case when on the 21 January 2013 Mr Hillary returned a Notice of Referral Form to the Teaching Agency admitting the allegations set out in the Notice of Referral. Mr Hillary further confirmed that the admitted facts amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute. He requested that the allegations be considered without a hearing and that request was granted and confirmed by letter from the Teaching Agency dated the 1st March 2013.

The Panel have in their hearing bundle at pages 10 to 12 a Statement of Agreed Facts signed by Mr Hillary on the 20 February 2013 and by the Presenting Officer on the 27 February 2013.

The Statement of Agreed Facts confirmed that when the police searched Mr Hillary's home they found 100,000 indecent child images and videos ranging from levels 1-5 on the Copine Scale. In a Police interview Mr Hillary said that the photographs were for his own sexual gratification and this was a sex interest that had been going on for many years.

In the week commencing the 11 June 2012 Mr Hillary admitted that he played a horror film entitled 'The Awakening' to a group of Year 7 pupils. The film is a certificate 15 film and Mr Hillary admitted that he did not have the approval from any

teacher or parent to show the film. At least one parent (page 52 of our bundle) complained to the Headteacher.

The Panel are satisfied having regard to the admissions made by Mr Hillary, and the Statement of Agreed Facts, that each of the allegations set out in the Notice of Referral are proved.

Findings as to Unacceptable Professional Conduct and or Conduct that may bring the profession into disrepute.

In the Statement of Agreed Facts Mr Hillary admitted that his conduct amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute. The Panel were not satisfied that the showing of a horror film to a class of year 7 students amounted to unacceptable professional conduct, but that such conduct that may bring the profession into disrepute.

The Panel is satisfied that the conduct of Mr Hillary in relation to the facts that we have found proved involved a breach of Teachers Standards. We consider by reference to Part two Mr Hillary is in breach of the following standards.

- Upholding public trust in the profession and maintaining high standards of ethics and behaviour, within and outside the school, by:
 - Treating pupils with dignity, building relationships rooted in mutual respect, and all times observing proper boundaries.
 - Having regard to the need to safeguard pupils' well-being, in accordance with statutory provisions.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

We are satisfied that the conduct of Mr Hillary fell short of the standard expected of the profession.

Accordingly we are satisfied that Mr Hillary is guilty of unacceptable professional conduct and 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 whether to recommend to the Secretary of State that a Prohibition order should be made we have to consider whether it is a proportionate measure, and if 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 a punitive effect.

We have considered the public interest and in particular:

- The protection of children;
- The maintenance of public confidence in the profession;
- Declaring and upholding proper standards of conduct.

We have considered the advice on Teachers Misconduct in relation to the Prohibition of Teachers and have concluded that the following is relevant:

- Serious departure from the personal and professional conduct elements of latest teacher standards, as published by, or on behalf of, the Secretary of State;
- Misconduct seriously affecting the well being of pupils;
- Abuse of position/trust (particularly involving a vulnerable pupil) or violation of the rights of pupils.

The Panel's findings against Mr Hillary involve serious findings of making and possessing indecent photographs of children and therefore there is a strong public interest consideration for the protection of children. Similarly the Panel considers that public confidence in the profession could be seriously weakened if such conduct, as we have found proved, were not treated with utmost seriousness when regulating the conduct of the profession. Furthermore the Panel considered there are strong public interest considerations in declaring proper standards of conduct in the profession which were present in the conduct found against Mr Hillary.

Notwithstanding the public interest considerations that were clearly present, the Panel had to carefully consider whether or not it would be proportionate to impose a Prohibition Order. In forming that judgement the Panel took into account such mitigation that had been provided by Mr Hillary. The Panel noted that the discovery of these matters caused 'a very dark cloud (has) just lifted a bit' and that he was now receiving corrective therapy, although no details were before the Panel.

In carrying out the balancing exercise we have decided that the public interest considerations outweigh the interests of Mr Hillary. Accordingly a consideration of the public interest requires us to make 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 decide to recommend that a review period of the order should be considered. The Panel were mindful that the advice given is that a Prohibition Order applies for life, but there may be circumstances in any given case that may make it appropriate for a review period of not less than two years to be recommended, in order for the teacher to apply to set aside the order.

The advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. The Panel concluded that it would be proportionate in all the circumstances for the Prohibition Order to be recommended without a provision for a review period.

Secretary of State's Decision and Reasons

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

This is a very serious case in which Mr Hillary has admitted possession of a significant number of indecent images and videos of children. His behaviour in so doing falls seriously short of that expected of a teacher. It is a clear breach of the standards.

Taking into account the public interest and the need to be proportionate, I accept the recommendation of the panel that Mr Hillary is prohibited from teaching.

I have also considered the issue of a review period. There is little evidence in this case of any meaningful mitigation and in any case this misconduct is so serious that the advice is clear. I support the recommendation that there be no review period.

This means that Mr Andrew Charles Hillary 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 him, I have decided that Mr Andrew Charles Hillary shall not be entitled to apply for restoration of his eligibility to teach.

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

Mr Andrew Charles Hillary has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he she is given notice of this Order.

NAME OF DECISION MAKER: Alan Meyrick

DATE: 9 April 2013