



National College for
Teaching & Leadership

Mr James McGill: Professional Conduct Panel outcome

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

December 2013

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

Teacher:	Mr James McGill
Teacher ref no:	9039653
Teacher date of birth:	18 November 1960
NCTL Case ref no:	9877
Date of Determination:	3 December 2013
Former employer:	Parklands High School

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 2 and 3 December 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr James McGill.

The Panel members were Mr Ian Hughes (Lay Panellist – in the Chair) Ms Kathy Thomson (Teacher Panellist) and Mr Stan Szaroleta (Lay Panellist).

The Legal Adviser to the Panel was Isabelle Mitchell of Eversheds Solicitors.

The Presenting Officer for the National College was Louisa Atkin of Browne Jacobson Solicitors.

Mr James McGill was present and was 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 allegations set out in the Notice of Proceedings dated 29 July 2013.

It was alleged that Mr James McGill was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that, whilst employed at Parklands High School during the 2011/12 academic year, he:

1. Falsified coursework;
 - a. Which affected the attainment of pupils in respect of their science GCSE;
 - b. And in doing so acted dishonestly, in that he deliberately submitted coursework to the OCR which he knew was not the work of the candidates whose work was due to be moderated;
2. Acted dishonestly, in that he submitted marks for the A220 Additional Science coursework to the OCR, knowing that those marks were not reflective of the marks the students deserved to receive for their coursework.

In response to the Notice of Proceedings, Mr James McGill has admitted the facts of allegations 1a and 1b, but denies the facts of allegation 2.

In respect of the admitted facts, Mr James McGill admits that those facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. This admission in respect of unacceptable professional conduct and/or conduct that may bring the profession into disrepute does not apply to allegation 2.

C. Preliminary applications

Application to admit further evidence

Mr McGill's representative applied for an additional document relevant to mitigation to be admitted into evidence, that document being a letter from EdStaff Limited, dated 28 November 2013. This document had not been served in accordance with paragraphs 4.18 to 4.22 of the Procedures, relating to the service and inspection of documents.

The Panel sought representations from the Presenting Officer in relation to the application. The Presenting Officer confirmed that the National College had no objection to the document being admitted into evidence.

The Legal Advisor provided the Panel with legal advice.

The Panel exercised their discretion under 4.24 of the Procedures and accepted the additional document into evidence and added it to the bundle of papers at page 254.

There were no further preliminary applications.

D. Summary of evidence

Documents

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

Section 1: Anonymised Pupil List and Chronology (Pages 2 to 4)

Section 2: Notice of Proceedings and Response (Pages 6 to 11)

Section 3: National College for Teaching and Leadership Witness Statements (Page 13 to 18)

Section 4: National College for Teaching and Leadership Documents (Pages 20 to 222)

Section 5: Teacher's Documents (Pages 224 to 254)

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

Witnesses

The Presenting Officer and Mr McGill's representative made opening statements.

The Presenting Officer called Witness A. Witness A was responsible for conducting the internal investigation on behalf of the school relating to Mr McGill's disciplinary proceedings. Witness A was also Mr McGill's line manager for the academic year 2011/12.

The Presenting Officer called Witness B. In September 2012, Witness B was involved with the re-marking of the A220 Additional Science coursework submitted by the year 11 GCSE students.

Ms Sarah Gill, the teacher's representative, called Mr James McGill.

The Presenting Officer and Mr McGill's representative made closing statements.

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.

Summary of Evidence

Mr James McGill was employed as a Science Teacher at Parklands High School from 2003 and was promoted to Head of the Science Department in 2006.

During the academic year 2011/12, Mr McGill taught chemistry to the year 11 GCSE students and was also responsible for the A220 Additional Science coursework for the top band year 11 GCSE students, in which there were 26 students.

At the end of March 2012, the year 11 students submitted their coursework to Mr McGill. Mr McGill says that he saved copies of the coursework to his pen drive, marked the coursework electronically and recorded the marks in his mark book. The lowest, average and highest marks were then internally moderated by Individual C, on an anonymised basis.

On 15 May 2012, Mr McGill submitted the coursework marks to the OCR. It is alleged that Mr McGill submitted those marks knowing that they were not reflective of the marks the students deserved to receive for their coursework.

On 23 May 2012, the OCR wrote to Parklands High School requesting ten samples of the year 11 coursework to be submitted by Monday 28 May 2012. Mr McGill intended to submit the coursework on Friday 25 May 2012, but was off work unwell. On Monday 28 May 2012, Mr McGill was preparing to submit the coursework, but could not find the original pen drive containing copies of the year 11 coursework. Mr McGill admits that he looked on another pen drive to find the coursework, and he found a folder of old coursework on the same topic. Mr McGill says that the school had that morning been notified that Ofsted would be visiting on 30 and 31 May 2012. At the time Mr McGill received the news, he was still looking for the pen drive which had gone missing. In a panic, Mr McGill admits that he submitted ten samples of this old coursework to the OCR represented as belonging to the 2011/12 candidates; this was not the same coursework submitted to him by the 2011/12 year 11 students.

OCR raised concerns about the sample coursework submitted by Mr McGill. An internal disciplinary investigation was instigated by the school, following which Mr McGill was dismissed. OCR requested that the school re-mark the coursework of all candidates whose work had been submitted in respect of the A220 Additional Science unit. Only 23 of the 26 pieces of original coursework could be located. In or around September 2012, these 23 pieces of coursework were re-marked by Individual C and Witness B. The marks submitted to the OCR by Mr McGill differed significantly from those given as part of the re-marking exercise. Mr McGill however submits that the coursework that was re-marked was missing the hand drawn graphs, attracting up to 8 marks more, and in all but one case, the students' evaluation, attracting between 6-8 marks more.

Findings of Fact

Our findings of fact are as follows:

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

1.a Falsified coursework; which affected the attainment of pupils in respect of their science GCSE

You have admitted this particular and admitted that you falsified the sample coursework submitted to the OCR, which affected the attainment of pupils in respect of their science GCSE. The Panel accepts this admission and considers that the evidence in the bundle of papers and the evidence heard in oral evidence supports this admission. Therefore this particular is found proved.

1.b Falsified coursework; And in doing so acted dishonestly, in that you deliberately submitted coursework to the OCR which you knew was not the work of the candidates whose work was due to be moderated

You have admitted this particular and admitted that you falsified the sample coursework submitted to the OCR, and in doing so acted dishonestly. The Panel accepts this admission and considers that the evidence in the bundle of papers and the evidence heard in oral evidence supports this admission. The Panellists considered the two stage test in R v Ghosh and found dishonesty proven.

We have found the following particulars of the allegations against you not proven, for these reasons:

2. Acted dishonestly, in that you submitted marks for the A220 Additional Science coursework to the OCR, knowing that those marks were not reflective of the marks the students deserved to receive for their coursework

The Presenting Officer has sought to prove that the A220 Additional Science coursework that was re-marked by Individual C and Witness B received far lower marks than those awarded by Mr McGill and submitted to the OCR. In presenting the evidence before the Panel, the Presenting Officer has highlighted the evidence in the bundle of papers which supports that National College's case. In particular, the Presenting Officer has referred to the substantial discrepancies between the marks awarded by Mr McGill when compared to those awarded by Individual C and Witness B. The Presenting Officer has also referred to written confirmations from some students that the coursework which was re-marked, copies of which appear in the bundle of papers, were the totality of the material submitted to Mr McGill.

We have taken account of the conflicting evidence in the papers, in that some students also provided written confirmation that the coursework used for re-mark purposes was not the totality of the coursework they submitted. We have also taken account of the fact that a number of these confirmations from students were obtained 14 months after their coursework was submitted.

We have heard contrary evidence from Mr McGill, who says that the coursework which was re-marked was not the final and complete copies submitted by the students, and therefore inevitably there would be a discrepancy in the marks awarded. Mr McGill explained in evidence that whilst students submitted parts of their coursework to him by email, all graphs would have been hand drawn and contained in a separate paper folder. Mr McGill also explained that, following the coursework deadline, he would spend a considerable amount of time chasing up students for certain elements of the coursework that had not been included, for example, the evaluation section. Mr McGill explained that these additional elements would often follow by separate email after the submission date. We found Mr McGill to be an honest and credible witness, and accepted his evidence that not every student would submit their final coursework in one email or necessarily in electronic format at all.

Mr McGill provided an explanation for one student where the hand drawn graph was missing from their coursework, as this would not have been submitted electronically. Taking account of this explanation, there was a discrepancy of two marks between the marks awarded by Mr McGill compared to those awarded during the re-mark exercise. Both Witness B and Witness A gave oral evidence confirming that a two mark discrepancy between markers would be an acceptable level.

Witness B stated in evidence that he would be very surprised if the coursework used for re-marking purposes (and as contained in the bundle of papers) was the totality of the work submitted by these students. Witness B recognised one particular student who was studious, and said he would be very disappointed and surprised if this was all she had submitted as her coursework. In some cases there was no graph, evaluation or results.

Mr McGill also stated in evidence that a student would have to do practically no work to produce the coursework contained in the bundle of papers, and yet this coursework represented a whole year's work, resulting from a lesson a week dedicated to coursework. This was confirmed in Witness B's evidence.

The Presenting Officer suggested that it was not conceivable that all students would achieve between 22 and 30 marks for their coursework. However, Mr McGill explained in evidence that with appropriate guidance and encouragement it would be possible to achieve these coursework grades in a top band class. We found this explanation credible. Witness B, knowing this group of students, confirmed that if pushed, these marks were achievable.

We recognise that there were discrepancies between the marks awarded by Mr McGill and those awarded during the re-mark exercise. However, having reviewed the contents of the coursework which was used for re-marking purposes, we are not convinced that this amounted to the full and comprehensive content of the students' coursework.

We consider that it was up the National College to prove, on the balance of probabilities, that Mr McGill submitted marks that were not reflective of the marks the students

deserved to receive for their coursework. Based on the evidence seen and heard, we do not consider that this allegation has been proven.

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

Mr James McGill admits that his conduct in respect of allegations 1a and 1b amounts to unacceptable professional conduct. However, we as the Panel must make our own determination.

In considering the allegations we have found proven, we have had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'Guidance'.

The Guidance states that unacceptable professional conduct and conduct that may bring the profession into disrepute is misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher and that this should be judged with reference to the latest standards published by the Secretary of State in June 2013.

We have considered the relevant standards, and in particular we consider that the following standards are relevant:

“A teacher is expected to demonstrate consistently high standards of personal and professional conduct... Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.”

We have also had regard to the General Teaching Council Code of Conduct and Practice for Registered Teachers in place at the relevant time.

We have used our knowledge and experience of the teaching profession to assess Mr James McGill's fitness and suitability to be a teacher and have taken into account how the teaching profession is viewed by others and the influence that teachers may have on pupils, parents and others in the community.

Having found allegations 1a and 1b proven, we are satisfied that Mr McGill's conduct fell significantly short of the standards expected of a teacher.

Mr McGill was aware of his professional obligation to submit accurate samples of the coursework to the OCR in respect of the examination. Mr McGill knowingly and deliberately submitted coursework which he was aware belonged to different students. Mr McGill acknowledges that these actions were wrong. We therefore consider that Mr McGill's behaviour was in breach of his professional duties and obligations, and contrary to the Teaching Standards.

We consider that Mr McGill's behaviour amounts to serious misconduct in light of the fact that he was deliberately dishonest and given the impact that this had on the students' attainment of their GCSE Science grade. We have not heard conclusive evidence to confirm what grades the students ultimately achieved, but this incident will have had some level of impact.

We therefore find that Mr James McGill's actions in deliberately falsifying coursework submitted to the OCR, which he knew was not the work of the candidates whose work was due to be moderated, amounts to 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, the Panel has to consider whether it is a 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 Teacher Misconduct – Prohibition of Teachers Advice and having done so has found a number of them to be relevant in this case, namely the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct. The Panel also considered that a public interest consideration exists in maintaining the morale of the teaching profession and has taken this into account in its deliberations. The Panel did not consider that a public interest existed in protecting children and other members of the public.

The Panel has found that Mr James McGill deliberately, and dishonestly, submitted false coursework to the OCR. The system of examination and assessment is at the heart of the teaching profession; it is the system by which the education of pupils is judged. Therefore, the integrity of that system is extremely important. Without confidence in the system, the whole assessment process is undermined.

Therefore, the Panel considers that there is a strong public interest consideration in maintaining the public's confidence in the integrity of the system of assessment. Behaviour which undermines that system could not reasonably be tolerated or implicitly condoned.

Further, the Panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was present. The conduct found against Mr McGill was outside that which could reasonably be expected of a teacher, particularly in a position as Head of Department.

Notwithstanding the 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 Mr McGill. In forming a judgement in this respect, the Panel took particular account of the mitigation evidence that was presented to it.

The Panel heard submissions that Mr McGill had an unblemished record and had not been subject to any criminal or disciplinary proceedings prior to this incident. The Panel was also referred to character statements demonstrating Mr McGill's previous good character, in particular from the retired Head Teacher from Parklands High School. In evidence, Witness B said that he held Mr McGill in high regard; furthermore, the Ofsted report, following the inspection at Parklands High School on 30 – 31 May 2012, also praised the work in the Science Department, for which Mr McGill was responsible.

The Panel was also mindful of the fact that the evidence has shown that Mr McGill's decision to submit falsified sample coursework to the OCR was a one-off lapse of judgement. The Panel recognises that Mr McGill was under pressure, both at work and at home, during this time.

In carrying out the balancing exercise the Panel has considered the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr McGill. The Panel took further account of the Teacher Misconduct – Prohibition of Teachers 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 are the following:

- serious departure from the personal and professional conduct elements of the latest teachers' standards
- dishonesty (especially where there have been serious consequences, it has been repeated and/or covered up)

The Panel considers that Mr McGill's behaviour was a serious departure from the Teaching Standards. Mr McGill's behaviour was in contravention of the Teaching Standards and any attempt to abuse the system of assessment must be taken seriously.

The allegation found against Mr McGill was also one of dishonesty. There is also evidence that this dishonesty was covered up. It took a period of approximately six weeks before Mr McGill admitted to the wrongdoing. The Panel has seen evidence that in his meeting with the Head Teacher, Mr McGill was adamant that there had been an administrative error in respect of the coursework. The Panel has taken into the account

the impact that this will have had on the students, who would not have received their Science GCSE in July 2012.

Even though there were behaviours that would point to a Prohibition Order being appropriate, the Panel went 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. There was no evidence that the teacher's actions were not deliberate and although the Panel heard evidence that Mr McGill was suffering from stress and pressures, both at work and at home, at the time of the incident, the Panel did not consider that Mr McGill was acting under duress. In fact, the Panel found that Mr McGill's actions were deliberate. However, the Panel found that Mr McGill did have a previously good history and the Panel accepts that the incident was out of character.

Having carried out this balancing exercise, 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 Mr McGill. The Panel considered that maintaining public confidence in the integrity and purity of the system of assessment was a significant factor in forming that opinion.

Accordingly, 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 decide to recommend that a review period of the order should be considered. The Panel was mindful that the Teacher Misconduct – Prohibition of Teachers Advice 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 Teacher Misconduct – Prohibition of Teachers Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of those behaviours includes fraud or serious dishonesty. The Panel has found that Mr McGill has been responsible for dishonestly submitting false coursework to the OCR, and covering up the dishonesty for a period of approximately six weeks thereafter. The Panel considers that the dishonesty was serious given the impact that this had on the students in question, who would not have received their Science GCSE in July 2012.

However, the Panel recognised that Mr McGill's actions were a one-off lapse in judgement, which he has admitted to and which he regrets. The Panel also considered it was unlikely that Mr McGill would repeat this type of behaviour in the future. The Panel took account of the fact that Mr McGill is clearly a good teacher, who has learnt his lesson. The Panel recognised the importance of maintaining public confidence and upholding standards, but felt that it was not in the interests of both the profession and the public to deny a teacher of that calibre the opportunity to apply for the Prohibition Order to be reviewed for longer than was necessary.

In the particular circumstances of this case and in view of Mr McGill's good teaching record, and given that this was a one-off lapse of judgement, the Panel felt that the findings indicated a situation in which a review period would be appropriate. The Panel has considered the decision by the OCR to bar Mr McGill from any involvement in OCR examinations and assessment for a period of two years, when it was in their gift to bar him for a longer period. The Panel considers that it would be proportionate in all the circumstances for the Prohibition Order to be recommended with a review period of two years. The Panel felt this sanction would maintain public confidence in the profession and uphold standards whilst providing the opportunity for a good teacher, who had learned from and deeply regretted his mistake, to apply for the Prohibition Order to be reviewed after a proportionate period of time.

Decision and reasons on behalf of the Secretary of State

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

The Panel have found proven that Mr McGill falsified coursework affecting the attainments of pupils and that in doing so he acted dishonestly. Mr McGill admitted the facts of this particular.

The Panel have determined that Mr McGill's behaviour fell significantly short of the standards expected of a teacher and that behaviour amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute.

The system of examination and assessment is at the heart of the profession and therefore any attempt to abuse that system must be taken very seriously. There is evidence of dishonesty and that the dishonesty was covered up for a period of time.

Having taken full account of the public interest considerations in this case I agree with the Panel that a Prohibition Order is both appropriate and proportionate.

The Panel have recognised Mr McGill's actions as a one off lapse and consider that he is unlikely to repeat this behaviour in the future. They also took account of his good teaching record. OCR have banned Mr McGill from any involvement in OCR examinations or assessments for two years and I agree with the Panel's recommendation that Mr McGill should have the opportunity to apply for his Prohibition Order to be set aside after a minimum period of two years has elapsed.

This means that Mr James McGill 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 December 2015, 2 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 McGill remains barred from teaching indefinitely.

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

Mr James McGill 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 'P. Heathcote', with a large, sweeping flourish at the end.

NAME OF DECISION MAKER: Paul Heathcote

Date: 4 December 2013

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