

NATIONAL COLLEGE FOR TEACHING AND LEADERSHIP

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr Matthew Cresswell

Teacher ref no: 10/36538

Teacher date of birth: 05 August 1988

TA Case ref no: 9407

Date of Determination: 10 May 2013

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership convened on 10th May 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Matthew Cresswell.

The Panel members were:

- Mr Nick Andrew (Lay Panellist– in the Chair);
- Ms Alison Robb-Webb (Teacher Panellist); and
- Mr Tony Woodward (Teacher Panellist).

The Legal Adviser to the Panel was Mr Michael Williams, Barrister.

The Presenting Officer for the National College for Teaching and Leadership was Ms Rowena Rix of Kingsley Napely Solicitors.

Mr Cresswell was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegation set out in the Notice of Proceedings dated 22nd February 2013.

It was alleged that Mr Cresswell was guilty of having been convicted of a relevant offence, in that:

On 4th May 2012, he was convicted of the following offences:

- a. 7 counts of making an indecent photograph of a child, contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978; and

- b. 1 count of having in his possession 7 indecent photographs of a child, contrary to sections 160(1), (2A) and (3) of the Criminal Justice Act 1988.

Mr Cresswell did not respond to the Notice. Accordingly, the Panel proceeded on the basis that the allegation was denied.

C. Preliminary Applications

Proof of Service and Proceeding in the Absence of the Teacher

Ms Rix submitted that the Notice of Proceedings (“the Notice”) dated 22nd February 2013 (at pages 4 to 6) complied with paragraph 4.10 of the Disciplinary Procedures for the Regulation of the Teaching Profession (“the Disciplinary Procedures”) and had been served in accordance with regulation 19 of The Teachers’ Disciplinary (England) Regulations 2012. She noted that the Notice had been sent to Mr Cresswell’s last known address, that being the address identified in the minutes of a multi-agency strategy meeting held on 15th June 2012. Ms Rix told the Panel that a process server had also been instructed to attempt delivery at the address shown on the Memorandum of Conviction. However, that was found to be a commercial address and there was no record of Mr Cresswell at that address.

She submitted further that, if the Panel determined that the Notice had been correctly served, then it should proceed in the absence of the teacher in accordance with paragraphs 4.26 to 4.28 of the Disciplinary Procedures. She said that Mr Cresswell had not responded to any communication from the Teaching Agency/National College and, accordingly, that an adjournment would serve no useful purpose.

The Panel announced its decision and reasons for that decision as follows:

In a letter dated 22nd February 2013, sent by post to Mr Cresswell’s last known address, Mr Cresswell was given notice of these proceedings in the form required by paragraph 4.10 of the Disciplinary Procedures, including the day, time and venue for this hearing.

Although the Notice was not delivered, the Panel is satisfied that service complied with regulation 19 of The Teachers’ Disciplinary (England) Regulations 2012. Accordingly, the Panel went on to consider whether to proceed in the absence of the teacher, pursuant to paragraph 4.28 of the Disciplinary Procedures.

In so doing, the Panel had at the forefront of its mind that the discretion to proceed in the absence of a teacher is one which should be exercised with the utmost care and caution, that the crucial question is whether the teacher has voluntarily waived his right to be present or represented at these proceedings, and that it must strike a careful balance between fairness to the teacher and the wider public interest that cases of this type should be progressed expeditiously. The Panel has had regard to all of the circumstances of the case and to the factors set out by the Legal Adviser in his advice.

The Panel has heard that Mr Creswell has failed to engage with any inquiry. There has been no correspondence or contact from the outset of the Teaching Agency/National College investigation and he did not respond to the Notice. No reason for Mr Creswell's absence has been communicated to either the Presenting Officer or the Teaching Agency/National College. Ms Rix informed the panel that the Notice had been sent to Mr Creswell's last known address, that being the address identified in the minutes of a multi-agency strategy meeting held on 15th June 2012. Ms Rix told the Panel that a process server had also been instructed to attempt delivery at the address shown on the Memorandum of Conviction. However, that was found to be a commercial address and there was no record of Mr Creswell at that address.

Teachers have a responsibility to ensure that they notify the National College of a change of address and, quite properly, cannot avoid disciplinary proceedings simply by failing to do that.

In those circumstances, the Panel has no reason to believe that Mr Creswell would attend at any future date, were it to adjourn this matter today. The Panel is satisfied that Mr Creswell has, in effect, disassociated himself from these proceedings and, accordingly, that his absence today is voluntary.

In such circumstances, the Panel has determined to proceed in Mr Creswell's absence. This is a case where the public interest in proceeding without further delay outweighs Mr Creswell's own interests.

D. Summary of Evidence

Documents

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

Section 1	Chronology	pages 1 - 2
Section 2	Notice of Proceedings & Response pro-forma	pages 3 - 9
Section 3	National College Witness Statements	pages 10 - 13
Section 4	National College Documents	pages 14 – 29
Section 5	Teacher Documents	page 30

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

Brief summary of evidence

The Panel received a certified copy of a Memorandum of an Entry in the Register of the Nottingham and Newark Magistrates' Court, which showed that Mr Creswell entered guilty pleas to the charges set out within the allegation on 4th May 2012. He was sentenced on 7th August 2012, as follows:

1. Community Order, including participation in Internet Sex Offenders Treatment Programme and supervision for a period of 2 years.
2. Sexual Offences Prevention Order for a period of 5 years.
3. Notification requirement to register with the police for a period of 5 years.

The charges related to images that were downloaded by Mr Creswell in June 2011. The seven images are described as "level 1". That is a reference to five point scale, established by the Sentencing Advisory Panel and adopted in 2002, by which indecent images of children are "graded" for the purposes of criminal proceeding. Level 1 is the lowest of the five grades of image and refers to "nudity or erotic posing with no sexual activity".

When questioned by the Police, Mr Creswell is said to have admitted downloading the images and to having a sexual interest in boys aged 10 and 11.

At the time the offences were committed, Mr Creswell was employed, on a temporary contract, as a classroom teacher. He was dismissed immediately after the offences came to light.

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 Members confirm that each has read all the documents provided in the bundle in advance of the hearing.

Findings of fact

The Panel received a certified copy of a Memorandum of an Entry in the Register of the Nottingham and Newark Magistrates' Court, which showed that on 4th May 2012, Mr Creswell entered guilty pleas to the charges set out within the allegation. He was sentenced on 7th August 2012, as follows:

1. Community Order, including participation in Internet Sex Offenders Treatment Programme and supervision for a period of 2 years.
2. Sexual Offences Prevention Order for a period of 5 years.
3. Notification requirement to register with the police for a period of 5 years.

In the absence of any challenge to the provenance of the certified Memorandum, the Panel has treated it as conclusive evidence of the matters contained within it. Accordingly, it finds the following factual particulars of the allegation **proved**:

On 4th May 2012, Mr Creswell was convicted of the following offences:

- c. 7 counts of making an indecent photograph of a child, contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978; and

- d. 1 count of having in his possession 7 indecent photographs of a child, contrary to sections 160(1), (2A) and (3) of the Criminal Justice Act 1988.

Findings as to Conviction of a Relevant Offence

The criminal charges related to images that were downloaded by Mr Creswell in June 2011. The seven images are described as “level 1”. That is a reference to a five point scale, established by the Sentencing Advisory Panel and adopted in 2002, by which indecent images of children could be “graded” for the purposes of criminal proceedings. Level 1 is the lowest grade of image and refers to “nudity or erotic posing with no sexual activity”.

When questioned by the Police, Mr Creswell is said to have admitted downloading the images and to having a sexual interest in boys aged 10 and 11. At the time, Mr Creswell was employed, on a temporary contract, as a classroom teacher at Toot Hill School, Nottinghamshire.

In deciding whether the conviction is for a ‘relevant offence’, the Panel has had regard to the criteria set out in Section 5 of the latest guidance entitled ‘The Prohibition of Teachers’ (which came into effect on 2 April 2013). The Panel notes that whilst offences of the type committed by Mr Creswell do not feature expressly in the list of offences that are likely to be considered ‘relevant’, they may never the less fall into the category of ‘serious sexual misconduct’. In any event, it also notes that the list is not an exhaustive one and that the decision is one for the judgement of the Panel, having considered all of the circumstances of the case.

In considering whether the conviction is likely to impact on Mr Creswell’s suitability to be a teacher, the Panel has had regard to the *Teachers’ Standards*, (“the Standards”) issued by, or on behalf of, the Secretary of State. Those standards require teachers to demonstrate consistently high standards of personal and professional conduct. They are expected to uphold public trust in the profession and maintain high standards of ethics and behaviour, within and without the School.

The preamble to the Standards which came into effect in 2012 but which, nonetheless, the Panel is entitled to take into account, provides, inter alia, that ‘Teachers make the education of their pupils their first concern ...’. Part Two of the Standards provides, inter alia, that “Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside the school”. They are required to treat pupils with dignity and have regard for the need to safeguard pupils’ well-being.

By downloading pornographic images of children in furtherance of his sexual interest in boys, Mr Creswell totally disregarded those principles. Making or possession of an indecent photograph or pseudo-photograph of a child is illegal and regarded in UK society as morally unacceptable. For these reasons any involvement in child pornography by a teacher raises the question whether the public interest demands that he be prevented from having contact with children. Whilst the courts properly distinguish between degrees of seriousness, any conviction for child pornography offences by a teacher is a matter of grave concern because it involves such a

fundamental breach of the trust that parents should be able to place in those who have care of their children and inevitably brings the profession into disrepute.

In all of the circumstances, the Panel is satisfied that the convictions which have been found proved are convictions for 'relevant offences' likely to impact on Mr Cresswell's suitability to be a teacher.

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 has taken it that prior to 2011, Mr Cresswell was of good character (albeit that he had, by that time, taught for only one year), that he admitted his offending behaviour at an early stage of the police investigation and that he entered early guilty pleas before the court. However, that mitigation, such as it is, is far outweighed by considerations of the protection of pupils, maintenance of public confidence in the profession and the upholding of proper standards of conduct and behaviour.

The Panel considers this to be a case where a Prohibition Order should be imposed. Downloading pornographic images of children is not a victimless offence.

By acting as he did, Mr Cresswell demonstrated a serious lack of professional judgement and lack of respect for the dignity of children that had the very real potential not only to damage his own professional reputation but also the reputation of the school and the profession as a whole.

Mr Cresswell's offending behaviour was, as he admitted to the police, in furtherance of his sexual interest in ten and eleven year old boys. Parents of a boy of that age would be justifiably concerned at placing their trust in a teacher with such an interest. Given that, in all of the circumstances, the Panel is satisfied that Mr Cresswell's conduct 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 a qualified teacher. However, in this case the Panel is satisfied that the public interest, including the protection of pupils and the maintenance of proper standards of conduct and behaviour, can be met only by the imposition of a Prohibition Order.

Given the nature of the offending behaviour and the sexual interest to which Mr Cresswell has admitted, 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 behaviour.

Secretary of State's Decision and Reasons

I have carefully considered the Panel's findings and recommendations.

Mr Cresswell has been convicted of offences relating to making and having in his possession indecent photographs of a child. The Panel have found the allegations proved and determined that the convictions relate to a relevant offence.

Mr Cresswell has demonstrated a serious lack of professional judgement and lack of respect for the dignity of children that had the very real potential not only to damage his own professional reputation but also the reputation of the school and the profession as a whole.

I agree with the Panel's recommendation that a Prohibition Order should be imposed.

Given the nature of Mr Cresswell's convictions I agree that the Prohibition Order should be without the opportunity for review and therefore without limit of time.

This means that Mr Matthew Cresswell 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 Matthew Cresswell 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 Matthew Cresswell 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.

NAME OF DECISION MAKER Paul Heathcote
Date 10 May 2013