



National College for
Teaching & Leadership

Jane Anne Nichol: Professional Conduct Panel outcome

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

February 2014

Contents

| | |
|--|----|
| A. Introduction | 3 |
| B. Allegations | 3 |
| C. Summary of evidence | 4 |
| D. Legal Advice | 4 |
| E. Decision and reasons | 6 |
| F. Panel's recommendation to the Secretary of State | 9 |
| Decision and reasons on behalf of the Secretary of State | 11 |

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

| | |
|-------------------------------|------------------------|
| Teacher: | Jane Anne Nichol |
| Teacher ref no: | 93/41665 |
| Teacher date of birth: | 18 July 1961 |
| NCTL Case ref no: | 10297 |
| Date of Determination: | 17 February 2014 |
| Former employer: | Monkseaton High School |

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership convened in a private meeting on Monday 17 February 2014 at 53-55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mrs Jane Anne Nichol.

The Panel Members were Dr Robert Cawley (Teacher Panellist in the Chair), Ms Caroline Tobbell (Teacher Panellist) and Mr Michael Sanderson (Lay Panellist).

The Legal Adviser to the Panel was Mr Paddy Roche of Morgan Cole LLP Solicitors.

The meeting took place in private and the announced decision was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Meeting dated 4 February 2014. It was alleged that Mrs Jane Anne Nichol was guilty of Unacceptable Professional Conduct and/or Conduct that may bring the profession into disrepute.

Whilst employed at Monkseaton High School she:-

1. During the 2011/12 Academic Year, caused Students to be required to re-do assessments, by;
 - a. Failing to provide Students with the opportunity to complete their controlled assessments in appropriate conditions in that she;
 - i. Failed to monitor and/or enforce proper time limits;

- ii. Allowed Students to have access to their preparatory work during the assessment;
 - iii. Failed to check the use of Planning Sheets and/or additional resources.
 - b. Failing to take steps to ensure that the work of Students was appropriately stored once completed.
- 2. Failed to maintain appropriate professional boundaries with Students, in that she:
 - a. Allowed Pupil A to drive her vehicle, despite the fact that he was under the legal age limit for driving;
 - b. Drove home with Pupil A during School time without permission from School Management.
- 3. Breached the terms of her suspension by communicating with parents;
 - a. On one occasion prior to 1 June 2012;
 - b. On one occasion or more after 1 June 2012, after she had received a letter reminding her that she was not to make contact with parents.

C. Summary of Evidence

Documents

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

| | | |
|-----------|---|-------------------|
| Section 1 | Anonymised Pupil List and Chronology | Pages 2 to 3. |
| Section 2 | Notice of Referral and Response | Pages 5 to 9b. |
| Section 3 | Statement of Agreed Facts/Representations | Pages 11 to 17. |
| Section 4 | NCTL Documents | Pages 19 to 123. |
| Section 5 | Teacher's Documents | Pages 125 to 136. |

D. Legal Advice

At the outset of the Meeting the Legal Adviser provided the following advice to the Panel:-

1. Under Paragraph 4.89 of the Disciplinary Procedures for the Regulation of the Teaching Profession the Panel may decide at any stage of the Meeting that the case should be considered at a hearing, if satisfied that this would be in the public interest and/or in the interest of justice.
2. The procedure at the Meeting will be determined by the Chair of the Panel.
3. Under the Disciplinary Procedures for the Regulation of the Teaching Profession the decision making process has three stages:
 - i. The Panel must first decide whether it is satisfied as to the facts of the case as set out in the Particulars of the allegation;
 - ii. The Panel must decide whether those facts it finds to be proved amount to Unacceptable Professional Conduct / Conduct that may bring the profession into disrepute; and
 - iii. If Unacceptable Professional Conduct / Conduct that may bring the profession into disrepute is found then the Panel may consider the previous history and character of the Teacher and any mitigating circumstances present in the case papers before deciding whether or not to recommend to the Secretary of State that a Prohibition Order is appropriate.
4. At the end of the second stage the Panel must publicly announce its findings on the first two stages before proceeding, if appropriate, to the third stage.
5. The burden of proving the allegations rests with the Presenting Officer not with the Respondent Teacher and the standard of proof applied in these proceedings is the civil standard “on the balance of probabilities”.
6. “Unacceptable Professional Conduct” is misconduct of a serious nature falling significantly short of the standard of behaviour expected of a Teacher and conduct that may bring the profession into disrepute should be judged by the Panel in a similar way.
7. Whether any of the facts found to be proved by the Panel amount to Unacceptable Professional Conduct or Conduct that may bring the profession into disrepute is a matter for the Panel’s judgement applying the definitions outlined.
8. The Panel may have regard to the latest Teachers’ Standards as published by or on behalf of the Secretary of State.
9. Should the final stage be reached in this matter then the Panel’s attention will be drawn to “The Prohibition of Teachers – DfE Advice on factors relating to the decision leading to the Prohibition of Teachers from the teaching profession” in deciding whether to recommend to the Secretary of State that a Prohibition Order

is appropriate. The Panel is reminded that the Guidance provided in this document was revised in January 2014.

10. The Panel should give reasons for its decisions and recommendations at each stage.

E. Panel's 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.

This case concerns an allegation that as a consequence of failings on the part of Mrs Nichol while employed as a Teacher at Monkseaton High School a number of Students were required to re-do controlled work assessments as she had not ensured that they had been undertaken in appropriate conditions in accordance with the Guidance provided by the relevant Exam Board.

In particular it is alleged that she failed to monitor or enforce proper time limits. Although she says that she used her Teacher Planner to record the time spent by students she accepts that the assessments were administered in a haphazard way. In particular some students appear to have been working on their controlled assessments while others in the same class room were undertaking normal work. Mrs Nichol allowed the students to rest on their course books while carrying out the controlled assessments. Thus pupils potentially had access to their books during the assessments. It is additionally alleged that Mrs Nichol failed to check planning sheets which were taken in to the controlled assessments by students and there was generally a lack of appropriate systems and monitoring on her part. Other teachers identified a number of similar passages in the students' work which meant that the assessments had to be repeated.

Secondly, in relation to Year 10 controlled assessments twelve pieces of work went missing and it appears that the work taken in by Mrs Nichol was not appropriately and securely stored in accordance with the required procedures.

It is further alleged that Mrs Nichol allowed Student A, who at the time was aged 14, to drive her car and that on one occasion she drove home Student A during school time without seeking permission or notifying any member of the School Management Team.

In relation to allowing Student A to drive her vehicle Mrs Nichol in due course accepted a caution from the local Police for child neglect.

Finally, following her suspension from Monkseaton High School and whilst an investigation was carried out into the matters set out above, Mrs Nichol is said to have spoken to parents of some of the children concerned in direct breach of warnings given both verbally and in correspondence.

In response to the allegations - which are admitted by Mrs Nichol - she says that she had not received any external training in relation to the new procedures for controlled assessments and was dependent upon information supplied by colleagues in her department. She says there was no available secure storage provision within her class room for safe storage of the assessment papers. She accepts that she drove Student A home without permission and that she allowed him to drive her vehicle and ultimately accepted a Police caution on 5 November 2012 for child neglect.

In relation to the unauthorised communications with parents she says that she did not discuss any of the issues of concern with them and thought, following her resignation letter to the School that she was, in effect, released from the prohibition imposed against speaking to any parents.

She says that at the time of these events she was in generally poor health, that she has always been truthful in relation to the matters alleged against her and was suffering from work related stress and struggling with her work load. She says in relation to the controlled assessment processes they were still "new and relatively unclear to me". She expresses regret for her actions and says that she still continues to see her GP for stress, depression and anxiety.

She has signed a Statement of Agreed Facts which is contained in the case papers at Pages 11 to 15 and in which she admits all of the Particulars.

Findings of Fact

Our findings of fact are as follows:-

We have found the following particulars of the allegation against Mrs Jane Anne Nichol proved:-

1. During the 2011/12 Academic Year, caused Students to be required to re-do assessments, by:
 - a. Failing to provide Students with the opportunity to complete their controlled assessments in appropriate conditions in that she;
 - i. Failed to monitor and/or enforce proper time limits;
 - ii. Allowed Students to have access to their preparatory work during the assessment;

- iii. Failed to check the use of Planning Sheets and/or additional resources.
 - b. Failing to take steps to ensure that the work of Students was appropriate stored once completed.
- 2. Failed to maintain appropriate professional boundaries with Students, in that she;
 - a. Allowed Student A to drive her vehicle, despite the fact that he was under the legal age limit for driving;
 - b. Drove home with Student A during School time without permission from School Management.

And our reasons are that we have relied upon Mrs Nichol's admission in her Response to the Notice of Referral Form (Page 9 of the case papers) which is supported by the notes/witness statements of Person A (pp 20-25) and Person B (pp26-27) together with the responses given by Mrs Nichol in her interviews which are exhibited at pp 38 – 52 and pp 60 – 75 and the signed Statement of Agreed Facts.

We have found the following particulars of the allegation against Mrs Jane Anne Nichol not proved:-

- 3. Breached the terms of her suspension by communicating with parents;
 - a. On one occasion prior to 1 June 2012;
 - b. On one occasion or more after 1 June 2012, after she had received a letter reminding her that she was not to make contact with parents.

We note in relation to Particular 3a that the evidence indicates only that in her conversation with Student A's parents that she spoke to them after they had approached her. There is no evidence other than from Mrs Nichol herself as to what was said. It appears that she does not accept discussing any matters with Student A's parents which related to the School's investigation into her alleged misconduct.

Similarly there is no evidence in the case papers which indicates what was discussed subsequent to the submission of Mrs Nichols' letter of resignation which is dated 5 November 2012 and we are not helped in relation to that matter by the Statement of Agreed Facts. Again whether or not any conversation that occurred covered matters which were relevant to the School's investigation is not clear. The particular alleges that she "breached the terms of her suspension by communicating with parents" but the suspension letter was specific that she was not to "discuss this matter" which we take to mean the allegations of misconduct under investigation. We find no evidence in the case papers that any such conversation did in fact take place.

Findings as to Unacceptable Professional Conduct/Conduct that brings the profession into disrepute

Unacceptable Professional Conduct is defined as “misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher.” The misconduct in this case has all occurred in the education setting.

In relation to Particular 1 there were clearly a number of serious issues in relation to Mrs Nichol’s management of the controlled assessments which ultimately resulted in a significant number of students having to re-do the work. Inevitably much reliance has to be vested in teachers to ensure that assessments are rigorously and carefully administered. Mrs Nichol’s failings had a direct adverse impact on her students. We find that she failed the important standard of promoting good progress and outcomes by pupils (Standard 2) and the particular requirement under Standard 6 to “know and understand how to assess the relevant subject and curriculum areas, including statutory assessment requirements.”

In relation to Particular 2 we find that Mrs Nichol showed poor judgement in allowing Student A, who was then aged 14, to drive her vehicle. We note that she accepted a Police Caution for this incident which was both illegal and must also have posed a risk to other persons in the area. In so doing she clearly fell below the standards of conduct and safeguarding that the public expect members of the profession to display. We find this incident and her decision to permit her pupil to drive her vehicle difficult to understand.

Similarly her decision to take Student A out of school without obtaining consent or even notifying the school of her intention to do so gives further cause for concern. As a consequence the School would have been unaware of the student’s absence and we consider her decision to remove Student A was wholly unprofessional and totally inappropriate. It seems clear that in relation to both limbs of Particular 2 she has failed to observe the professional boundaries and distance which must attend the Teacher/pupil relationship.

For all these reasons we judge that this is a case of Unacceptable Professional Conduct.”

F. Panel’s Recommendations to the Secretary of State

We have found that the evidence in this case discloses significant professional failings in management of the controlled assessments and poor judgement in relation to Mrs Nichol’s failure to maintain appropriate professional boundaries with Student A.

We believe that her failure to observe the procedures for management of the controlled assessments could have had rather more serious consequences if her shortcomings had not been discovered by the School. We were also very concerned about her poor judgement in allowing Student A to drive her car and in the circumstances of taking Student A out of School without permission or apparently considering the consequences of doing so.

We have concluded that the evidence in this case does represent a serious departure from the professional and personal conduct elements of the Teacher's Standards. Clearly her misconduct had the potential to affect the education of her pupils and did in fact result in some of the students having to undertake their assessments afresh. We also consider that she held a position of trust in relation to the pupils who were working on their controlled assessments and thus that she breached that position of trust.

We recognise that Prohibition Orders are made in the public interest which includes 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 reaching our recommendation we have also taken account of the personal mitigation presented on behalf of Mrs Nichol and in particular the references and reports in the Teacher's section of the case papers. Those reports include a letter dated 13 December 2013 from her General Practitioner, a further letter from her father who is also a retired Medical Practitioner and a full and impressive reference from Person C who has considerable experience in the teaching profession and has known Mrs Nichol since 1994.

We are able to accept that the events covered by this case occurred at a difficult emotional time for the Teacher. She was being treated for stress and depression and was also concerned about her physical health. We further accept that she has a long and previously good record as a Teacher.

We have given very serious and careful consideration as to whether we should recommend the imposition of a Prohibition Order in this case.

We considered particularly whether the finding of Unacceptable Professional Conduct in itself, having been made against her, might be a proportionate outcome given the mitigation that we have identified. However we are very aware of our duty towards pupils whom Mrs Nichol may teach in the future and our duty to maintain public confidence in the profession. We have concluded that, notwithstanding the mitigation identified above, this is a case where our public duty requires that we should recommend the making of a Prohibition Order.

We are particularly concerned that Mrs Nichol should not again fall short in her professional responsibilities and especially her duty of care towards pupils in the future. We concede that her shortcomings in relation to the controlled assessments may not

have been deliberate. However it is clear that her decision to allow Student A to drive her car and her decision to take him out of School without notice or consent were intentional and the stress and ill health issues identified above cannot adequately explain those decisions.

This conduct clearly is at variance with the teaching record spoken to by Hazel Stewart in her reference. However we feel our duty to the public requires that a Prohibition Order be imposed in this case but with the provision that Mrs Nichol should be allowed to make an Application to set aside the Prohibition Order after the minimum period of two years has elapsed. We anticipate that any Panel hearing a "Set Aside Application" at that time will want to be assured that she has been restored to good health both mental and physical and that careful attention will be paid to any medical evidence as to her wellbeing that she can provide at that stage.

It is our view that the failings disclosed in this case are of sufficient gravity that they can only be marked by a Prohibition Order being imposed and thus taking into account the nature and severity of her behaviour we can give effect to the considerable mitigation that is presented by allowing an Application for set aside to be made after only two years.

Decision and reasons on behalf of the Secretary of State

I have given careful consideration to the Panel's findings and recommendations in this case. The Panel have found proven allegations relating to the management of controlled assessments and the failure to maintain appropriate professional boundaries and have judged that those facts amount to unacceptable professional conduct.

In considering whether a Prohibition Order should be imposed the Panel have given full consideration as to whether to do so would be appropriate and proportionate and in the public interest. They expressed concern about the potential impact of her failure to observe procedures in respect of controlled assessments. The consequences could have been more serious had the school not intervened when they did. The Panel were very concerned about Ms Nichol's poor judgement in allowing Student A to drive her car and taking him out of school without permission.

The Panel considered whether there were sufficient mitigating factors to militate against a Prohibition Order being imposed. They gave due consideration to a report from her general practitioner and a positive reference from someone who has known Ms Nichol for some time and who has considerable experience in the teaching profession.

Having considered these factors the Panel have properly balanced them against their duty towards pupils and to maintain public confidence in the profession.

Taking all these factors into account I agree with the Panel's recommendation that a Prohibition Order is an appropriate sanction.

The Panel then went on to consider whether a review period would be appropriate. They have conceded that her shortcomings in relation to controlled assessments may not have been deliberate. They have a strong reference and information regarding Ms Nichol's health at the time of the incidents.

In the circumstances I agree with the Panel's judgement that Ms Nichol should be allowed to apply to have the order set aside after a minimum period of 2 years has elapsed.

This means that Ms Jane Anne Nichol is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the Prohibition Order to be set aside, **but not until 25 February 2016, 2 years from the date of this order at the earliest**. If she does apply, a Panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Ms Jane Anne Nichol remains barred from teaching indefinitely.

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

Ms Jane Anne Nichol 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, stylized flourish at the end.

Date: 19 February 2014

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