

NATIONAL COLLEGE FOR TEACHING AND LEADERSHIP

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr Graham Hogg

Teacher ref no: 1383064

Teacher date of birth: 22 May 1979

TA Case ref no: 9629

Date of Determination: 25 April 2013

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership convened on 25 April 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Graham Hogg.

The Panel members were Mr William Brown OBE (Lay Panellist – in the Chair), Ms Margaret Simpson (Teacher Panellist) and Ms Sheba Joseph (Teacher Panellist).

The Legal Adviser to the Panel was Mr Graham Miles of Morgan Cole LLP solicitors.

The Presenting Officer for the National College for Teaching and Leadership was Ms Laura Hackney of Browne Jacobsen LLP solicitors.

Mr Hogg was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 18 February 2013.

It was alleged that Mr Graham Hogg had been convicted of relevant offences, namely:

1. On 4 September 2012 he was convicted of the offence of production of a controlled drug, namely Cannabis, at Bradford Crown Court. He committed this offence on 12 September 2011. He was sentenced to imprisonment for a period of 12 months, suspended for 24 months and had a 150 hours unpaid work requirement. The drugs and paraphernalia were also forfeited and destroyed.
2. On 16 September 2005, he was convicted of the offence of attempting/obtaining pecuniary advantage by deception. He committed this offence between 1 September 2003 and 18th October 2004. He was sentenced to 6 months imprisonment.

The allegations were not admitted.

C. Preliminary Applications

Jurisdiction/ Proof of Service and Proceeding in the Absence of the Teacher

The Presenting Officer submitted an additional document in the form of a copy of a LinkedIn profile for Graham Hogg of Halifax, West Yorkshire. Ms Hackney drew attention to the section headed 'experience' and the reference to Mr Hogg's work in delivering nutrition and exercise classes in primary and secondary schools in and around West Yorkshire since February 2012. Ms Hackney said that the remainder of the profile matched that of the description in the transcript of the Crown Court sentencing hearing on 4 September 2012. Ms Hackney also confirmed that Mr Hogg's Probation Officer had confirmed to her that Mr Hogg had been working as a teacher. The Presenting Officer submitted that this information demonstrated that Mr Hogg had been engaged in 'teaching work' and that he was a teacher within the meaning of the **Teachers' Disciplinary (England) Regulations 2012** ('the 2012 regulations') so that there was jurisdiction to hear the case despite the absence of evidence as to the particular school or schools by which he had been employed or engaged.

As to service, Ms Hackney said that the Notice of Proceedings had been sent to Mr Hogg on 18 February 2013. On 15 March 2013, an email was received from Mr Hogg's Probation Officer, who confirmed that he had spoken to Mr Hogg. This indicated that Mr Hogg was aware the proceedings and had decided not to participate.

Before the Panel considered its decision, the Legal Adviser declared the following advice:

Under Regulation 5 of the 2012 Regulations, the National College has jurisdiction to hear an allegation that a teacher has been convicted at any time of relevant offence. Regulation 2 defines 'teacher' as 'a person who is employed or engaged to carry out teaching work' at a school, sixth form college, relevant youth accommodation, children's home or Academy in England. Although expressed in the present tense, the Panel may interpret Regulation 2 as extending to a person who is not currently employed or engaged as a teacher, but was previously so employed or engaged. The jurisdiction to hear the case, therefore, depends on whether the Panel is satisfied, on the balance of probabilities, that Mr Hogg has been employed or engaged as a teacher. If the Panel is so satisfied then there is jurisdiction to deal with the case.

If the Panel is satisfied about the issue of jurisdiction, it has to be satisfied that the Notice of Proceedings has been properly served. Under Rule 4.10 of the Teacher Misconduct – Disciplinary Procedures for the Regulation of the Teaching Profession the Notice of Proceedings must be sent to the teacher at least 8 weeks before the hearing date. In this case the Notice of Proceedings was sent to Mr Hogg on 18 February 2013, which was more than 8 weeks prior to today. The panel is entitled to conclude that there has been compliance with Rule 4.10.

Under Rule 4.28, the Panel has discretion to proceed with the hearing in the absence of the teacher or adjourn the hearing. In exercising this discretion, the Panel has to proceed with great care and caution and with close regard to the overall fairness of the proceedings. The Committee should have regard to the guidance contained in the cases of **R -v- Jones [2003] 1 AC 1** and **Tait -v- Royal College of Veterinary Surgeons [2003] UKPC 34**. In particular, the Panel should take into account the following:

- The risk of reaching the wrong conclusion as a result of not being able to hear from Mr Hogg
- The fact that Mr Hogg may be at risk of losing his livelihood
- The nature and circumstances of the behaviour of Mr Hogg in absenting himself and, in particular, whether the behaviour is voluntary and, if so, whether he has plainly waived his right to be present.
- The Panel should consider whether an adjournment would resolve the matter and, if so, the likely length of such an adjournment
- The general public interest in the proper regulation of the profession and the protection of the public and the need for hearings to take place within a reasonable time
- The Panel should give reasons for its decision.

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

Jurisdiction

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

“We are satisfied, on the balance of probabilities, that we have jurisdiction to hear Mr Hogg’s case. The Presenting Officer relies upon the fact that Mr Hogg told the police when he was arrested that he was a teacher. This is further confirmed in the PNC record. In addition, the Presenting Officer has confirmed that she has spoken to Mr Hogg’s Probation Officer who confirmed that he was a teacher. We have also been provided with a LinkedIn profile and we are satisfied that it is more likely than not that this relates to Mr Hogg. This confirms that Mr Hogg has delivered nutrition and exercise classes in Primary and Secondary Schools. We accept the Presenting Officer’s submission that this represents ‘teaching work’ within the meaning of Regulation 3 (1) (a) and/or (b) of the Teachers’ Disciplinary (England) Regulations 2012 and that Mr Hogg has, therefore, been employed or engaged in teaching work as specified in Regulation 2.”

Proceeding in absence

“We are satisfied that the Notice of Proceedings has been properly served. Mr Hogg is aware of the hearing, as confirmed by the communication with his Probation Officer, but has chosen not to attend. We are satisfied that Mr Hogg has voluntarily

waived his right to attend. No application for an adjournment has been made and no purpose would be served by an adjournment. There is a public interest in cases proceeding reasonably promptly. We have, therefore, decided to proceed with the case in the absence of Mr Hogg”

D. Summary of Evidence

Documents

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

Section 1: Chronology, with page numbers from 1 to 2

Section 2: Notice of Proceedings and Response, with page numbers from 3 to 9

Section 3: National College for Teaching & Leadership documents, with page numbers from 10 to 25

In addition, the Panel agreed to accept a copy of a LinkedIn profile, which was added to the bundle as pages 27 to 29.

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

Brief summary of evidence given

The Presenting Officer referred to the certificate of conviction from Bradford Crown Court relating to the offence of attempting to obtain a pecuniary advantage by deception. This confirmed that Mr Hogg was convicted on 26 July 2005 and was sentenced to 6 months imprisonment on 16 September 2005. The letter from West Yorkshire Police dated 11 December 2012 confirmed that this offence related to Mr Hogg and an associate insuring a previously damaged motor vehicle which they then reported as stolen in order to make a fraudulent insurance claim.

The Presenting Officer also referred to the certificate of conviction from Bradford Crown Court relating to the offence of production of cannabis. This confirmed that Mr Hogg was convicted on 7 August 2012 and was sentenced on 4 September 2012 to 12 months imprisonment suspended for 2 years and was required to perform 150 hours unpaid work. An order was also made for the destruction of all drugs and paraphernalia seized.

The Presenting Officer referred to the definition of relevant offence and submitted that both convictions were for offences which were relevant to Mr Hogg’s fitness to be a teacher and, therefore, amounted to relevant offences.

E. Panel’s Decision and Reasons (Facts and Relevant Offence)

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.

Between 1 September 2003 and 18 October 2004, Mr Hogg and a friend insured a previously damaged motor vehicle which was then reported as stolen in order to make a fraudulent insurance claim.

On 25 July 2005 Mr Hogg was convicted of the offence of attempting to obtain a pecuniary advantage by deception.

On 16 September 2005 Mr Hogg was sentenced to 6 months imprisonment.

On 20 September 2011, the police attended Mr Hogg's property. Mr Hogg admitted to smoking Cannabis and that Cannabis plants were growing in the house. A total of 24 plants were found.

On 7 August 2012, Mr Hogg was convicted of the production of a Class B drug.

On 4 September 2012, Mr Hogg was sentenced to 12 months imprisonment, suspended for 24 months, and was made subject to a 140 hour unpaid work requirement. An Order for the destruction and forfeiture of all drugs and paraphernalia was also made.

Findings of fact

Our findings of fact are as follows:

1. On 4 September 2012 he was convicted of the offence of production of a controlled drug, namely Cannabis, at Bradford Crown Court. He committed this offence on 12 September 2011. He was sentenced to imprisonment for a period of 12 months, suspended for 24 months and had a 150 hours unpaid work requirement. The drugs and paraphernalia were also forfeited and destroyed.
2. On 16 September 2005, he was convicted of the offence of attempting/obtaining pecuniary advantage by deception. He committed this offence between 1 September 2003 and 18th October 2004. He was sentenced to 6 months imprisonment.

We have found the facts of both allegations proven based on certificates of conviction.

Findings as to Conviction of a Relevant Offence

We are satisfied that the conviction for production of a controlled drug was a relevant offence. This was a serious offence, given the volume of plants and that Mr Hogg was growing them himself. The seriousness is reflected in the Judge's comments and the sentence imposed. Part Two of the latest Teachers' Standards expect teachers to uphold public trust and confidence in the profession by maintaining high standards of

ethics and behaviour, within and outside school. The Panel believe that Mr Hogg's behaviour fell short of this standard.

We are satisfied that the conviction for attempting to obtain a pecuniary advantage by deception was a relevant offence. It is not clear that Mr Hogg was working as a teacher at the time of this offence. This was, however, a serious offence of calculated dishonesty for which a custodial sentence was imposed and is relevant to his fitness to be a teacher. A teacher is expected to demonstrate consistently high standards of personal and professional conduct'.

F. Summary of evidence (Sanction)

The Presenting Officer confirmed that, aside from the two convictions, there was no information as to previous history. Ms Hackney submitted that teachers are expected to be role models. The convictions indicated that Mr Hogg has fallen well short of being a role model. The first conviction in time involved calculated dishonesty. The second conviction was for a serious drug offence. The Panel needed to consider the three elements of public interest, namely the protection of the public, the maintenance of public confidence in the teaching profession and the declaration and upholding of proper standards of conduct. In her submission, all three elements were relevant in this case.

Panel's Recommendation to the Secretary of State

'We have considered all of the evidence presented very carefully.

In the absence of any information from Mr Hogg, we have taken into account the comments made by the sentencing judge on 4 September 2012.

Both offences were serious departures from the personal and professional conduct elements of the latest Teachers' Standards. The conviction in 2005 involved serious dishonesty. Having been convicted and served a sentence of imprisonment, Mr Hogg committed a further serious criminal offence in 2011. This disrespect for the law is not compatible with being a teacher and a role model for pupils. The risk of further offending cannot be discounted. Accordingly, we feel that in order to protect the public interest a Prohibition Order is necessary.

We considered whether to recommend a period of time after which Mr Hogg should be able to apply for the Prohibition Order to be set aside. We have decided to recommend that Mr Hogg not be permitted to apply for the order to be set aside until after a period of 10 years. We recommend this period based on the seriousness of the convictions and the timeframe of the offences. We consider this to be a proportionate period.

Secretary of State's Decision and Reasons

I have given full consideration to the panel's findings and recommendations in this case.

The panel have found that the two convictions before them amount to convictions of relevant offences. Mr Hogg has not engaged with the disciplinary process and both offences are serious in their nature.

I agree the panel's recommendation that prohibition is an appropriate sanction in this case.

In view of both the seriousness and timeframes of the two convictions I agree with the panel's submission that Mr Hogg should not be allowed to apply for the order to be reviewed until at least 10 years have passed.

This means that Mr Graham Hogg 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 3 May 2023, 10 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 Graham Hogg remains barred from teaching indefinitely.

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

Mr Graham Hogg 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: 25 April 2013