

NATIONAL COLLEGE FOR TEACHING AND LEADERSHIP

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

Teacher: **Ms Deborah Berryman**

Teacher ref no: **88/43604**

Teacher date of birth: **30 September 1965**

TA Case ref no: **9395**

Date of Determination: **17 June 2013**

Former Employer: **Torpoint Community College, Torpoint, Cornwall**

A. Introduction

A Professional Conduct Panel ("the Panel") of the National College for Teaching and Leadership ("The National College") convened on 17 June 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Ms Deborah Berryman.

The Panel members were Mr Stewart McKane (Teacher Panellist – and the Chair), Ms Mel Gunstone (Lay Panellist) and Ms Mahfia Choudhury (Lay Panellist).

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

The Presenting Officer for the National College for Teaching and Leadership was Ms Louisa Atkin of Brown Jacobson LLP Solicitors.

Ms Deborah Berryman 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 5 April 2013.

It was alleged that Ms Deborah Berryman was guilty of unacceptable professional conduct/conduct that may bring the profession into disrepute in that:-

1. Whilst employed at Torpoint Community College during 2003 she engaged in an inappropriate relationship with Student A, including that she:-
 - a. engaged in sexual contact with him on one occasion or more between May 2003 and July 2003, when Student A was a sixth form student;

- b. engaged in sexual contact with him on one occasion or more in the summer holidays, between July 2003 and September 2003, after Student A had left the school.

Ms Berryman in her written response to the Notice of Proceedings, denied particular 1a, but admitted particular 1b.

She denied that her conduct constituted unacceptable professional conduct and/or conduct which may bring the profession into disrepute.

C. Preliminary Applications

Proof of Service/Proceeding in the absence of the teacher

In the absence of Ms Berryman at the hearing the Presenting Officer applied to proceed with the case. She referred the Panel to the Notice of Proceedings at pages 5 – 7 in the case papers which were sent to the teacher's home address on 5 April 2013. She said that the Notice of Proceedings contained the information required by the Regulations and had been sent to the teacher at least eight weeks before the hearing date. The teacher had responded to the Notice of Proceedings and in her Notice of Response indicated that she did not intend to attend the hearing or to be represented. She was not seeking an adjournment of the case. In addition, the Panel was shown an email from the teacher sent on 3 June 2013 in which she confirmed that she would not be attending the hearing on 17 and 18 June. The Presenting Officer submitted that the teacher had effectively waived her right to be present and asked the Panel to proceed in her absence.

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

"We are asked to consider proceeding with this case in the absence of the Teacher Ms Deborah Berryman.

We have been advised by the Presenting Officer that the Notice of Proceedings was sent to Ms Berryman on 5 April 2013. It is exhibited at Pages 5 to 7 of the case papers. We have viewed the Notice of Proceedings and it contains all the information required by paragraph 4.10 of the National College Disciplinary Procedures. We are therefore satisfied that the Notice has been properly served. Ms Berryman has responded to it by returning the Response Form completed and dated 29 April 2013. (p 8-10).

We are therefore advised that we have discretion to proceed in Ms Berryman's absence in accordance with paragraph 4.26.

In exercising that discretion we understand that we must proceed with great care and caution and with close regard to the overall fairness of the proceedings. Fairness to Ms Berryman is of prime importance but fairness to the National College and the requirement for the proper regulation of the profession should also be taken into account.

We have also been advised to have regard to the guidance given in the cases of *R v Jones* and *Tait v Royal College of Veterinary Surgeons*.

In particular we have considered the following:-

- The seriousness of the case against Ms Berryman and the fact that she may be at risk of losing her livelihood.
- The risk of reaching the wrong conclusion about the reason for her absence today.
- The risk of reaching the wrong conclusion on the merits of the case as a result of not hearing Ms Berryman's version of events in person and the extent of the disadvantage to the absent teacher if we were to proceed.
- The nature and circumstances of Ms Berryman's behaviour in absenting herself and in particular whether the behaviour is voluntary and so whether she has plainly waived her right to be present.
- Whether an adjournment would resolve the matter and the likely length of such an adjournment.
- Whether Ms Berryman, although absent, wishes to be present or represented but is unable to be present and whether she is seeking an adjournment.
- Considerations in relation to the general public interest and the proper regulation of the profession and the protection of the public and the need for National College hearings to take place within a reasonable time.

In her response form at page 8 Ms Berryman indicates she does not intend to appear at the hearing and she does not intend to be represented. We have also seen an Email from the teacher sent to Ms O'Rourke at the National College dated 3 June 2013 confirming that she will not be attending the hearing. It is therefore not a surprise that she is absent today. She is not asking for an adjournment. In other respects she has engaged with the National College in the preparation for this hearing and we have a number of documents in the case papers from Ms Berryman which set out her response to the allegation particulars.

We conclude therefore that Ms Berryman has no intention of attending the hearing and has effectively waived her right to be present. We have therefore decided to proceed with the hearing today. The events under consideration occurred many years ago and we consider it is in the public interest and the interests of both the teacher herself and Student A who has attended today to give evidence that this case should not be delayed.

In making this decision we have every intention of exercising caution and care in examining the evidence adduced by the National College and the absent teacher in relation to this allegation."

Request for and/or Consideration of Private Hearing

The Presenting Officer applied for Student A's evidence to be given in private session in view of the nature of his evidence.

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

"We are asked by the Presenting Officer to direct that Student A be allowed to give his evidence in private session in accordance with the provisions of paragraph 4.56. We have already decided that Student A should be treated as a Vulnerable Witness because of the nature of the evidence that he gives in this case.

We are also told that his wife is present and he would like her to stay in the hearing as a support for him. We acknowledge that he will be dealing with sensitive matters in his evidence although we recognise that a significant period of time has elapsed since the events with which he will be dealing. Student A is now in his late 20's.

We have to judge whether it is necessary in the interests of justice or to protect the interests of Student A by directing that this part of the hearing be held in private. We have been told that it is very important to Student A that his wife should be with him in the hearing room when he is questioned about these matters. He already has the protection of being anonymised and we are aware that the Panel's decision will be made public.

Most hearings before the National College disciplinary panel are held in public and the public have an important and legitimate interest in proceedings before this Panel. We are concerned to ensure that Student A is able to give candid and comprehensive evidence in this case such that he does not feel constrained in any way when answering questions. We do not however, in the circumstances outlined to us, consider it is necessary to go into private session and have decided that the case will be heard in public. If, during the course of Student A's evidence we determine that there may be any reason to revisit this decision we will so indicate. We understand we have a continuing discretion to do so in appropriate circumstances and will bear that obligation in mind as the case proceeds."

D. Summary of Evidence

Documents

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

- Section 1 Anonymised pupil list
- Section 2 Notice of Proceedings and Response
- Section 3 Witness statements
- Section 4 NCTL documents
- Section 5 Teacher documents

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 made her opening address and called the following witness:

Student A. He gave evidence as follows:-

- He adopted his witness statement at pages 12 – 14.
- He said that he had slept in the spare bedroom at Ms Berryman's home, she came across the hallway, climbed into bed and they had sexual relations.
- It would have happened definitely in term time.
- He thought the relationship had started in or around May not long after a school expedition.
- While he was in school the relationship carried on.
- At the time he was doing revision for history exams.
- They used to leave Ms Berryman's house at different times so they did not arrive at school at the same time.
- After he finished in the sixth form the relationship carried on.
- The relationship was a distraction - he should have focused more on his studies.
- He did not remember any contact by text with Ms Berryman in 2004.
- He thought there was no contact after the relationship had ended in 2003.

On questioning by the Panel he said as follows:-

- Ms Berryman had her favourites and he was one of that group.
- She had laid on extra revision classes running up to the exams which he went to.
- He thought his exams had started in early or late June 2003.
- He said that the phone number which featured on the text message printout from June 2004, (page 100 of the case papers) was his mobile phone number.
- He could not remember any text messages passing between himself and Ms Berryman in June 2004.

- The distance from Ms Berryman's home in Saltash to Torpoint was about fifteen miles.
- He used to go to school on his motorbike and she would leave in her car.

The Presenting Officer made her closing submissions to the Panel.

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.

The case concerns allegations that Ms Deborah Berryman, whilst employed as a head of department at Torpoint Community College, Torpoint, Cornwall had an inappropriate relationship with Student A in 2003. The relationship is said to have continued over a period of approximately 4 months until it was ended by Student A. It is alleged that Student A frequently stayed overnight at Ms Berryman's home where sexual intercourse often took place.

It is specifically alleged that the relationship started, and sexual intercourse with Student A occurred, when he was still a pupil at the School and continued after he had left the School having completed his exams.

Ms Berryman acknowledges that there was a relationship but asserts that it began only when Student A had left the School and the exams were over. She describes it as a "brief liaison" and that she - not Student A - ended the relationship. She says that she did not realise that even though Student A had left the School he was still considered to be a student.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegation against Deborah Berryman proven:

1. Whilst employed at Torpoint Community College during 2003 she engaged in an inappropriate relationship with Student A , including that she:-
 - a. engaged in sexual contact with him on one occasion or more between May 2003 and July 2003, when Student A was a sixth form student;

Our reasons are that we heard evidence from Student A in person. There were some elements of Student A's evidence that we questioned notably his assertion that there was no contact with Ms Berryman at all in 2004 – which seemed to be at odds with

the telephone text message records itemised at p100-101 of the case papers and a diary entry made by Ms Berryman on p99. Nonetheless we felt that Student A gave broadly reliable evidence about his relationship with Ms Berryman and how it started. He told us that he went to Ms Berryman's house at her invitation not long after a school expedition. He was clear that after drinking some wine with Ms Berryman he stayed in her house overnight. He went to the spare bedroom and he described how she came across the hallway, climbed into the bed with him and they had sexual relations.

Thereafter he stayed at her home two or three times per week (paragraph 6 of his witness statement on page 13).

He further told us in his evidence that the relationship definitely started in term time, it was in the study period before his exams and that in the mornings they left her home at different times so that they did not arrive at school at the same time. He went on his motorbike – Ms Berryman went in her car. They did not want others “putting two and two together.” Ms Berryman told him not to discuss their relationship and to keep it quiet. We therefore believed him when he told us that the relationship commenced in school term time.

By contrast the teacher asserts in her representations that the relationship was a brief liaison only and did not start until the term had finished. However in all of the papers lodged by Ms Berryman she gives no indication at all as to how the relationship started. We, thus find this particular proved.

- a. engaged in sexual contact with him on one occasion or more in the summer holidays, between July 2003 and September 2003, after Student A had left the school.

And our reasons are that Ms Berryman has admitted this particular which is supported by the evidence of Student A and other documents in the case papers.

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

In making this judgement we have applied the definition of Unacceptable Professional Conduct/Conduct that may bring the profession into disrepute as “misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher.”

In our judgement this is a case of Unacceptable Professional Conduct/Conduct that may bring the profession into disrepute. We have found as a fact that the relationship with Student A commenced when he was still a student at the School and continued over approximately 4 months. Ms Berryman had sexual intercourse with Student A at a time when the teacher/pupil relationship subsisted. As such she was in a position of trust towards Student A and we consider that her involvement in allowing a sexual relationship to develop with Student A was a betrayal of that trust. We believe that the public would conclude as we do that she plainly failed to observe the boundaries that should attend such a professional relationship.

We believe the fact that this relationship commenced when Student A was still at the school and preparing for his exams is the most serious feature of the case. However even had we felt able to accept Ms Berryman's account of events we consider that such a relationship with a pupil who had very recently left would still have represented an abuse of her position as his former teacher and thus constitutes conduct that may bring the profession into disrepute. We note, even now, Ms Berryman seems unable to recognise the inappropriate nature of the limited relationship that she herself acknowledges did occur.

Panel's Recommendation to the Secretary of State

Our finding of Unacceptable Professional Conduct/Conduct that may bring the Profession into disrepute means that we have found that this is a case of serious sexual misconduct. We acknowledge that there is no evidence of a pattern of behaviour, the sexual relationship with Student A was consensual and we have no evidence that Ms Berryman presents a risk to other pupils she may teach in the future. There is evidence available that Ms Berryman is a good and highly regarded teacher.

She has, however, contested this case in relation to Student A's account of the relationship in claiming that the relationship did not start until he had left the school. Her response to the case and her observations in the case papers that she did not realise that even though Student A had left the school he was still considered to be a student cause us concern. We believe that Ms Berryman demonstrates little insight into the gravity of her conduct and the fundamental breach of trust it represents. However we also note that when the relationship was subsisting with Student A she did appear concerned that her professional career was potentially being put at risk. Hence her advice to Student A to keep it quiet.

We have given consideration to Ms Berryman's teaching record and the fact that there is no indication that she has behaved in an unprofessional manner either in the years before this relationship or the 10 years that have subsequently elapsed. However we cannot overlook that Ms Berryman's relationship with Student A continued for approximately 4 months and her involvement in it was clearly deliberate.

In those circumstances our duty to the public requires that a Prohibition Order should be imposed in this case principally to maintain public confidence in the profession and to uphold the collective reputation of teachers. We believe that Ms Berryman has shown both poor judgement and a lack of candour in this serious breach of trust and in her response to the case against her.

In view of her general teaching record and the fact that this conduct appears not to have caused substantial emotional damage to Student A we recommend that Ms Berryman should be allowed to apply for a review of the Prohibition Order once 3 years have elapsed as it is our view – so far as we are able to judge in her absence – that she has something to offer the profession. We believe that would be a proportionate disposal of this case and takes account of the mitigating features we have identified.

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 the facts proven and judged that those facts amount to unacceptable professional conduct/conduct that may bring the profession into disrepute.

The Panel have found proven that Ms Berryman engaged in a consensual sexual relationship with student A over a period of 4 months. Ms Berryman was in a position of trust towards Student A and in allowing a sexual relationship to develop with Student A she betrayed that trust. She has clearly failed to observe the boundaries expected.

In the circumstances I agree the Panel's recommendation that a Prohibition Order is both appropriate and proportionate.

In deciding upon whether a review period was appropriate the Panel have taken account of her previous and subsequent good teaching record but have balanced this against her lack of candour and poor judgement. I agree that a review period of a minimum of 3 years is therefore appropriate

This means that Ms Deborah Berryman 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 June 2016, 3 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 Deborah Berryman remains barred from teaching indefinitely.

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

Ms Deborah Berryman 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

DATE: 19 June 2013

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