

NATIONAL COLLEGE FOR TEACHING AND LEADERSHIP

PROFESSIONAL CONDUCT PANEL DECISION AND RECOMMENDATIONS AND DECISION ON BEHALF OF THE SECRETARY OF STATE

Teacher: Ms Maxine Jackson

Teacher Ref: 7277360

NCTL Case Ref: 0009734

DOB: 20th September 1953

Date of Determination: 11th July 2013

Former Employer: Chapel-en-le-Frith Primary School

A. INTRODUCTION

A Professional Conduct Panel ("the Panel") of the Teaching Agency convened on Thursday, 11th July 2013 at 53-55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Ms Maxine Jackson.

The Panel Members were: Professor Ian Hughes (Lay Panellist - in the chair); Cllr Gail Goodman (Teacher Panellist) and Michael Lesser (Teacher Panellist).

The Legal Adviser to the Panel was Mr Robin Havard of Morgan Cole LLP, Solicitors.

The Presenting Officer for the National College for Teaching and Leadership ("NCTL") was Mr Ben Bentley.

Ms Jackson was neither present nor 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 17th April 2013.

It was alleged that Ms Maxine Jackson was guilty of unacceptable professional conduct, in that she:

1. Downloaded inappropriate photographs on your school laptop and stored them in the same electronic folder as pupil photographs;

2. Inappropriately used the school's report format, logo and images of school children to create a "spoof" report for an adult friend;
3.
 - (a) used a school laptop to create or recreate letters relating to health appointments and report;
 - (b) were dishonest in relation to your conduct at 3.a. in that you did this to gain sick pay during periods of absence from work.

As Ms Jackson had not responded to the Notice of Proceedings, and as she was not present, the Panel approached the hearing on the basis that all allegations were denied.

C. PRELIMINARY APPLICATIONS

Proceeding in absence

Ms Jackson was neither present nor represented.

The Presenting Officer requested the Panel to proceed in the absence of Ms Jackson. Notice of Proceedings had been sent to Ms Jackson by letter of 17th April 2013. The address to which the Notice was sent is the one registered with the College. There is no response from Ms Jackson to the letter of 17th April 2013. Consequently, on 16th May 2013, the NCTL sent a further Notice of Proceedings via recorded delivery to Ms Jackson and the Presenting Officer was able to hand to the Panel a document in which there appeared to be the signature of Ms Jackson acknowledging receipt.

Legal Advice

Paragraph 4.10 of the Disciplinary Procedures of the College stipulates that the Teaching Agency will send Notice of Proceedings to Ms Jackson at least 8 weeks before the hearing date. Notice of Proceedings had been sent to Ms Jackson by letter of 17th April 2013 and therefore the advice to the Panel was that the College had complied with Paragraph 4.10. Furthermore, the Panel had heard that, by recorded delivery on 16th May 2013, the Notice of Proceedings had been sent again to Ms Jackson who appeared to have signed acknowledging safe receipt.

In accordance with Paragraph 4.28 of the Disciplinary Procedures, the Panel can either proceed in the absence of the teacher or adjourn. This discretion should be exercised with great care and caution and with regard to the overall fairness of the proceedings. It was appropriate for the Panel to have regard to the guidance given in the cases of *R v Jones* and *Tait v Royal College of Veterinary Surgeons*. In particular, the Panel should take into account the following:

- the seriousness of the case against Ms Jackson and the fact that she may be at risk of losing her livelihood or having it restricted;
- the risk of reaching the wrong conclusion about the reason for Ms Jackson's absence;
- the risk of reaching the wrong conclusion on the merits of the case as a result of not hearing Ms Jackson's version of events;

- the nature and circumstances of her behaviour in absenting herself and in particular whether the behaviour was voluntary and so whether she had plainly waived her right to be present;
- whether an adjournment would resolve the matter and the likely length of such an adjournment;
- whether Ms Jackson, though absent, wished to be present or represented but was unable to be present and whether she was seeking an adjournment. In this case, it appeared clear that Ms Jackson did not wish to be present and there was no indication that she was seeking an adjournment. It is also worth noting that Ms Jackson failed to attend the school's disciplinary hearing although suggested that ill-health was the reason for that non-attendance. However, a letter from Individual A to the School dated 12th March 2012 confirmed that, in his opinion, Ms Jackson was fit to attend the disciplinary hearing at the School. There were then failures by Ms Jackson to attend subsequent appointments with Occupational Health and significant efforts were made by the School to arrange meetings for the convenience of Ms Jackson. No medical evidence had been produced in advance of this hearing;
- the Panel should balance against those considerations the general public interest and the proper regulation of the profession and the protection of the public and the need for hearings of the National College to take place within a reasonable time.

Decision

The Panel is aware of the provisions of Rule 4.10 and is satisfied that proper service by letter of 17th April 2013 has taken place. There is then further service of the proceedings by recorded delivery on 16th May 2013.

The Panel is also satisfied that it would be appropriate to proceed in the absence of Ms Jackson. The Panel has considered the representations of Mr Bentley and all the factors highlighted by the Legal Adviser set out in R v Jones and carefully and conscientiously considered each of them.

Ms Jackson has not engaged in the process and there is no evidence that she would attend if the matter were to be delayed.

These are serious matters and therefore it is in the interests of the College to proceed.

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 1 to 2);

Section 2: Notice of Proceedings and Response (pages 3 to 9);

Section 3: Witness Statements (pages 10 to 16);

Section 4: National College for Teaching and Leadership documents (pages 17 to 211);

The letter of 16th May 2013 sent by recorded delivery and the electronic proof of delivery were handed to the Panel by the Presenting Officer (pages 212 to 213).

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

No further documents were produced in evidence by either party.

Brief Summary of Evidence

Please note that this is intended to be a summary and does not reflect the complete evidence given.

The Panel heard from the Assistant Director of Finance (Audit) of Derbyshire County Council, Witness B, whose written witness statement was taken as read.

Witness B confirmed that the Special Review Report prepared by her and the Principal Auditor and IT Manager, Individual C, was based on an examination of the laptops and documentation together with an interview with Ms Jackson where contemporaneous notes were taken, each page of which were then signed by Ms Jackson to confirm that she was satisfied as to the accuracy of the notes.

Witness B confirmed that Ms Jackson was aware of her responsibility to adhere to the School policies with regard to information and technology and data protection.

Witness B confirmed that it was totally inappropriate to use the laptops of the School in this way and Ms Jackson was fully aware that she should not have done what she did, describing the inappropriate photographs being found on the laptop and the "spoof" report as "stupid".

However, in relation to the letters recreated as if from the hospitals, Ms Jackson did not consider what she had done as being wrong. However, it caused Witness B grave concern that the letters were recovered from deleted files and also, despite initial assurances that Ms Jackson would provide her consent for enquiries to be made of the various hospitals to validate the appointments, she then refused to respond to letters requesting her to provide such consent.

The Panel heard evidence from the Head Teacher, Witness D, whose written statement was taken as read.

Witness D confirmed that the inappropriate photographs found on the laptop were completely unprofessional as was the preparation of the

"spoof" report which, had parents or the public become aware of it, would have been highly damaging to the reputation of the School.

It was confirmed that the photographs of children which were in the same folder as the inappropriate photographs were photographs of children from Ms Jackson's class. The photographs of the children in the "spoof" report were of children at the School.

Witness D outlined the numerous attempts made by the School to arrange for Ms Jackson to attend meetings to discuss the issues or to provide her written response.

Witness D confirmed that on the School laptop, there was a folder with letter-headings of hospitals and also barcodes. Furthermore, the letters recreated by Ms Jackson were in Word format.

Witness D said there had been concerns about the performance of Ms Jackson as a teacher and also her record of attendance both before and after his appointment as Head Teacher.

Whilst initially, those areas of concern had been addressed positively by Ms Jackson, her performance had then started to slip again. This is despite the considerable level of support provided by the School to Ms Jackson.

E. LEGAL ADVICE

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

1. Under the Disciplinary Procedures for the regulation of the teaching profession the decision-making process has three stages:
 - (i) The Panel must be satisfied as to the facts of the case;
 - (ii) The Panel must be satisfied that those facts amount to unacceptable professional conduct; and
 - (iii) If unacceptable professional conduct is found, then the Panel must consider the previous history and character of the teacher and any mitigating circumstances before deciding whether or not to recommend to the Secretary of State that a Prohibition Order is appropriate.
2. The burden of proving the allegations rests with the Presenting Officer, not with Ms Jackson.
3. The standard of proof that applies in these proceedings is the Civil Standard, namely "on the balance of probabilities". This means that before finding a factual allegation proved, the Panel must be satisfied that an event is more likely to have happened than not.

4. In relation to any hearsay evidence in this matter, this is admissible in College proceedings. The Panel should bear in mind, however, that it has not heard direct oral evidence nor had the opportunity to assess the credibility of the witness or test the evidence in questioning, to include the evidence of Ms Jackson. The Panel should consider treating hearsay evidence with caution and consider carefully what weight it considers can be attached to it.
5. It has been alleged that Ms Jackson acted dishonestly. In these proceedings, the appropriate test for dishonesty is that which is contained in *Twinsectra Ltd v Yardley & Others (2002) UKHL12*. It is necessary for the Presenting Officer to establish that Ms Jackson had acted dishonestly by the ordinary standards of reasonable and honest people and that she herself was aware that, by those standards, she had acted dishonestly. However, Ms Jackson should not escape a finding of dishonesty because she sets her own standards of honesty and does not regard as dishonest what she knows would offend the normally accepted standards of honest conduct.
6. "Unacceptable professional conduct" is defined in "the Prohibition of Teachers - DfE advice on factors relating to decision leading to the prohibition of teachers from the teaching profession" as "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 facts the Panel find proved amount to unacceptable professional conduct are matters for the judgment of the Panel itself, applying these definitions. They are not matters of proof.
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 decisions 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.
10. The Panel should give reasons for its decisions and recommendations at each stage.

F. 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.

Brief Summary of the Case

Ms Jackson has worked as a full time class teacher at Chapel-en-le-Frith Church of England VC Primary School since 1992.

For the past 5 years, Ms Jackson has taught in either Year 1 or Year 2, teaching the full primary curriculum.

These proceedings relate to the misuse of school laptops despite her acknowledgement and awareness of the acceptable use of school laptops policy.

It is alleged that Ms Jackson downloaded inappropriate photographs onto her school laptop, storing them in the same electronic folder as pupil photographs and also used school software to create a "spoof" report for an adult friend.

In the course of the disciplinary process once this misuse had been discovered, it was also discovered that Ms Jackson had created letters relating to health appointments and reports which she then deployed in an attempt to gain sick pay during periods of absence from work.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegation(s) against Ms Jackson proven, for these reasons:

1. Downloaded inappropriate photographs on your school laptop and stored them in the same electronic folder as pupil photographs

All allegations were investigated by Derbyshire County Council, the matter having been referred to it by the school.

In particular, the investigation was conducted by the Assistant Director of Finance (Audit), Witness B, and the Principal Auditor and IT Manager, Individual C. At the conclusion of that investigation, the Council produced a report entitled "Special Investigation Review" dated 25 January 2012.

Witness B attended to give evidence. The Panel found Witness B to be a credible, reasoned and thoughtful witness. Furthermore, the Panel was satisfied that the process followed by Witness B and Individual C in carrying out its investigation and the preparation of the report was clear, thorough and fair, and that the report is an accurate account of the events which took place.

Furthermore, the Panel accepts as accurate the account of what was said by Ms Jackson when interviewed by Witness B and Individual C. Contemporaneous notes were taken and we were told, and accept, that Ms Jackson signed each page of them to confirm that she was content as to their accuracy.

On 13 May 2010, Ms Jackson signed a document confirming that, in relation to the use of school laptops, she would comply with the school's Information and Technology Policy, its Data Protection Policy and that she would use the school laptop for school purposes only and that no personal data would be stored on it.

On 6 July 2011, photographs were found on a folder on Ms Jackson's school laptop which could be accessed by a link on its desktop which included not only photographs of children from Ms Jackson's class but also some private photographs to include a photograph of a man's genitalia and the torso of a man. The Panel finds such photographs to be wholly inappropriate and therefore finds this allegation to be proved.

2. Inappropriately used the school's report format, logo and images of school children to create a "spoof" report for an adult friend

This allegation is admitted and is found proved. Ms Jackson had adopted the template which the school used for end of term reports to create a report about someone outside the school. Not only did the report have the details of the school as its heading and include images of a person not associated with the school, but it also contained photographs of children from the school. Again this was in breach of the school policies for example in relation to Data Protection but was, in any event, highly inappropriate.

3(a). Used a school laptop to create or recreate letters relating to health appointments and report

In her interview with Witness B and Individual C ("the interview"), Ms Jackson accepted that she had used the school laptop to recreate letters relating to health appointments and report.

Ms Jackson recreated letters of appointment dated 22 December 2009, 16 April 2011 (which presumably should have been 2010) and 16 December 2010 putting the letter heading of Tameside Hospital which were addressed to her, inviting her to appointments on 22 January 2010, and 22 April 2010 and 14 January 2011 respectively. There was a similar letter of 14 January 2011 from Bridgewater Hospital to her with details of another appointment on 19 January 2011. The Panel accepts the evidence of the Head Teacher Witness D, that Ms Jackson did not attend school on those dates but was paid on the basis of the reason given for her absence i.e. to attend a hospital appointment.

3(b). Were dishonest in relation to your conduct at 3.a. in that you did this to gain sick pay during periods of absence from work

The Panel considered very carefully whether both the objective and subjective tests had been satisfied when concluding whether Ms Jackson had acted dishonestly when recreating the letters from the hospitals.

For the following reasons, the Panel finds Ms Jackson to have been dishonest:

Ms Jackson stated that the original letters from the hospitals had been destroyed by her dog. As a result, she considered that she would recreate the letters so that she would have them on record if the appointments needed to be verified. The Panel did not find such an explanation to be credible not only with regard to how the original letters were destroyed but also as the appointments could so easily have been verified at any time by the hospitals;

A folder was found on Ms Jackson's laptop which contained letter headings of Tameside and Bridgewater Hospitals together with barcodes;

The process by which a member of staff would obtain leave to attend a medical appointment was to attend the administrator's office with the letter of appointment from the hospital. The administrator would then fill out a form on the basis of that letter and would submit the form to the Head Teacher for signature, handing the letter from the hospital back to the teacher. Consequently, the school would not keep a copy of the letter and Ms Jackson would have been very familiar with the procedure;

At the interview, Ms Jackson confirmed that she would provide her written consent to the hospitals providing confirmation of the appointments to the Council. However, despite two letters being sent to Ms Jackson with a form of consent for her signature and return, she failed to return that form. Such a process would have been entirely straightforward and, taking account of the seriousness of the position, the Panel finds it very suspicious that Ms Jackson failed to cooperate;

Despite the fact that Ms Jackson indicated she intended to keep the letters for verification, the letters were actually found to have been deleted when the laptop was being interrogated.

For all these reasons, the Panel is satisfied on the balance of probabilities that by the standards of reasonable and ordinary people, Ms Jackson had acted dishonestly. Furthermore, the Panel is satisfied that Ms Jackson knew that, by those standards, she had acted dishonestly.

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

Having found the facts of all particulars of the allegation proved, the Panel further finds that Ms Jackson's actions and behaviour amount to unacceptable professional conduct and conduct that may bring the profession into disrepute in that it amounts to misconduct of a serious nature, falling significantly short of the standards expected of a teacher.

By reference to the document entitled Teachers' Standards, and in particular Part Two, the Panel finds that Ms Jackson failed to demonstrate consistently high standards of personal and professional conduct. In particular, Ms Jackson's behaviour placed at risk the upholding of public trust in the profession and maintaining high standards of ethics and behaviour in the profession.

Ms Jackson failed to have proper and professional regard for the ethos, policies and practices of the school and failed to act within the statutory frameworks which set out her professional duties and responsibilities.

Panel's recommendations to the Secretary of State

Unfortunately, Ms Jackson has not engaged with this process and therefore the Panel had not been provided with any material in advance of the hearing with regard to mitigation, whether in the form of relevant testimonials or medical evidence as, irrespective of the Panel's findings in relation to the letters created by Ms Jackson, Witness D made reference to Ms Jackson receiving hospital treatment and the Panel has read the letters sent by Ms Jackson to the School.

There was little evidence of insight on the part of Ms Jackson. Whilst Ms Jackson indicated that placing photographs on the laptop of an inappropriate nature and preparing the "spoof" report were "stupid" there was little apparent expression of remorse and no recognition of the misconduct relating to the creation of the letters purporting to be from the hospitals.

As for Ms Jackson's ability as a teacher, again the evidence of Witness D was not entirely positive, indicating that there had been concerns regarding Ms Jackson's performance since he was appointed Head Teacher some six years ago.

The allegations which have been found proved are, in the view of the Panel, very serious. It is the Panel's firm recommendation to the Secretary of State that it would be both proportionate and in the public interest to impose a Prohibition Order in respect of Ms Jackson. This is in order to protect the welfare of children. It should be noted that the inappropriate photographs, for example, could have been very easily accessed by the children in Ms Jackson's class. Furthermore, there was evidence that the private use of the school laptops had been ongoing since at least November 2008.

The recommendation is also proportionate as there is a need for maintaining public confidence in the profession. Had the "spoof" report found its way into the public domain, it would have been highly damaging to the reputation of the school.

Ms Jackson has been found to have been dishonest. Furthermore, this was not an isolated incident of dishonesty as the letters recreated by Ms Jackson as if from hospitals cover a period of some twelve months and

were created in order to justify a financial benefit to which she was not entitled and which was a cost to the school.

Finally, the actions of Ms Jackson were found to be deliberate.

In considering whether Ms Jackson should be entitled to a review of the Order if the Secretary is minded to follow its recommendation, the Panel considers it would be proportionate for Ms Jackson to be in a position to apply for a review after a period of five years from the date of imposition of the Order.

Secretary of State's Decision and Reasons

I have carefully considered the findings and recommendations of the panel in this case. I have noted that Ms Jackson has not engaged with these proceedings.

The facts found proven are very serious. The inappropriate photographs that Ms Jackson stored on her school laptop could easily have been accessed by children in her class. Ms Jackson had been using her school laptop in a way that did not comply with the school's technology policy for some time.

In addition the panel have found that Ms Jackson acted dishonestly over a period of twelve months in re-creating hospital letters to account for paid sickness absence.

Taking account of all the circumstances, I agree that a prohibition order is appropriate, proportionate and in the public interest.

Turning to a minimum period for review, I have noted that Ms Jackson did not engage with proceedings and that the head teacher's evidence regarding Ms Jackson's performance was not entirely positive. I concur with the panel's recommendation that Ms Jackson should not have an opportunity for her prohibition order to be reviewed until a period of at least 5 years has elapsed.

This means that Ms Maxine Jackson 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 **22 July 2018**, 5 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 Maxine Jackson remains barred from teaching indefinitely.

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

Ms Maxine Jackson 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: 12 July 2013

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