



National College for
Teaching & Leadership

Mr Gavin Strachan: Professional Conduct Panel outcome

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

January 2015

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

Teacher: Mr Gavin Strachan

Teacher ref no: 99/37494

Teacher date of birth: 19/09/1975

NCTL Case ref no: 10857

Date of Determination: 14 January 2015

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 14 January 2015 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Gavin Strachan.

The Panel members were Ms Sheba Joseph (Teacher Panellist – in the Chair), Mr Martin Greenslade (Lay Panellist) and Mr Phillip Riggon (Teacher Panellist).

The Legal Adviser to the Panel was Mrs Fiona Walker of Eversheds LLP Solicitors.

The Presenting Officer for the National College was Ms Lucy Coulson of Browne Jacobson LLP Solicitors.

Mr Gavin Strachan 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 29 September 2014.

It was alleged that Mr Strachan was guilty of conduct that may bring the profession into disrepute, in that:

1. On 23 July 2013 he was cautioned for the criminal offence of indecently exposing himself to a 63 year old woman. He committed the offence on 14 July 2013;
2. and, in doing so, his conduct was sexually motivated.

The Teacher has not admitted the allegations and has not admitted that they amount to conduct that may bring the profession into disrepute.

C. Preliminary applications

There was a preliminary application by the Presenting Officer to proceed in the absence of Mr Strachan.

The Panel determined that the NCTL has complied with the service requirements of Regulation 19 a to c of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations").

The Panel noted that the Notice of Proceedings was sent on 29 September 2014 by first class post. Prior to that, Mr Strachan had responded to the Notice of Referral in a response dated 4 July 2014. However, no response was received by Mr Strachan to the Notice of Proceedings sent in September. A chasing letter was sent by the College on 7 November 2014 and this was signed for on 10 November 2014. A further e-mail was sent by the College on 18 November 2014 and that e-mail was sent to the e-mail address provided by Mr Strachan in the response to the Notice of Referral Form. That e-mail included copies of the Notice of Proceedings and the letters sent by the College. Again, no response was received by Mr Strachan.

The Panel was satisfied that the teacher has been provided with the requisite length of notice of at least 8 weeks in accordance with paragraph 4.11 of the Procedures and that the Notice of Proceedings contained the necessary details set out in paragraph 4.12 of the Procedures. The Panel found that the teacher has deliberately waived his right to participate in this hearing. The Panel found, on the balance of probabilities, that the teacher has received the documents and has chosen not to respond. There was no indication that an adjournment might result in Mr Strachan attending voluntarily. The Panel also noted that these are serious matters and there is a public interest in the hearing taking place within a reasonable time of the events to which it relates. In light of

these factors the Panel decided that the hearing should proceed in the absence of the teacher.

The Panel also considered whether it has jurisdiction to hear the case. It was noted by the Panel that the Police made information available to the NCTL, stating that around the time when Mr Strachan was questioned in July 2013, the Police were informed that he was a teacher. The Police therefore notified the College, teacher being a notifiable occupation. The panel noted however that the caution which was issued to Mr Strachan states: "Occupation: Financial – Accounts Clerk".

Mr Strachan had not responded to the Notice of Proceedings Form in which it was asked whether he was currently working as a teacher. The Panel noted however that Mr Strachan does have a teacher reference number and the Panel saw his GTCE Registration document and employment history which showed which schools he had been employed at.

The Panel was directed to Regulation 7 of The Teachers' Disciplinary (England) Regulations 2012 ("the Regulations") which states that a professional conduct panel must consider cases referred to it by the Secretary of State. Regulation 5 is the provision that covers the referral by the Secretary of State to the Panel, and cases only fall under the consideration of the Secretary of State if they involve a teacher. A teacher is defined in Regulation 2 as a person who is employed or engaged to carry out teaching work at a) a school in England; b) a sixth form college in England; c) relevant youth accommodation in England; d) a children's home in England; or e) when s53 of the Education Act 2011 is fully in force, a 16 to 19 Academy. Teaching work is defined in Regulation 3 as a) planning and preparing lessons and courses for pupils; b) delivering lessons to pupils; assessing the development, progress and attainment of pupils; and reporting on the development, progress and attainment of pupils. "Delivering" includes delivering lessons through distance learning or computer aided techniques. These activities specified are not teaching work for the purposes of the Regulations, if the person carrying out the activity does so (other than for the purposes of induction), subject to the direction and supervision of a qualified teacher, or other person nominated by the head teacher to provide such direction and supervision.

The Panel was directed to consider as a question of fact whether Mr Strachan was a teacher within the definition of the Regulations and that it was for the College to prove on the balance of probabilities. The Panel considered that Mr Strachan would fall within the definition of teacher. He has a teaching reference number and the College has provided evidence to the Panel of the schools which he has worked at. The Panel therefore decided on the balance of probabilities that there was sufficient information before it at this time that Mr Strachan is a teacher within the definition of Regulation 2 in order to proceed with the case.

The Panel also determined to admit further relevant documents pursuant to Rules 4.18 and 4.19, following an application by the Presenting Officer. The documents were

numbered 24-28 and included documents relevant to service of the Notice of Proceedings and also a copy of the teacher's GTCE registration documents and list of previous employers.

D. Summary of evidence

Documents

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

Section 1: Chronology

Section 2: Notice of Proceedings

Section 3: NCTL Witness statements

Section 4: NCTL Documents

Section 5: Teacher Documents (none provided)

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

Witnesses

The Panel did not hear any oral evidence.

E. 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.

Summary of Evidence

Mr Strachan indecently exposed himself to a 63 year old woman on 14 July 2013. He was arrested by police on the same day and later accepted a caution for the offence of indecent exposure on 23 July 2013. This matter was referred to the NCTL by the police who became aware that Mr Strachan was a qualified teacher.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:

It was alleged that you are guilty of conduct that may bring the profession into disrepute, in that:

- 1. On 23 July 2013 you were cautioned for the criminal offence of indecently exposing yourself to a 63 year old woman. You committed the offence on 14 July 2013;**
- 2. and, in doing so, your conduct was sexually motivated.**

The Panel considered the events which took place on 14 July 2013 and the witness statement of the victim at Pages 8-9 of the Hearing Bundle. The Panel accept the victim's account of the events which took place.

The Panel noted, in particular, the victim's evidence that Mr Strachan was looking in her direction as she passed him and as he exposed himself to her. She observed that he continued to look at her after she had passed him and moved some 50 metres away.

The victim's events are supported by the evidence of a police caution (which is at Page 11 of the Hearing Bundle) for the offence of Exposure contrary to the Sexual Offences Act 2003. The Panel noted that the caution was signed by Mr Strachan and he admitted to the conduct. In signing the police caution, Mr Strachan also confirmed that he understood that he may be placed on the sex offenders' register. Whilst the Panel has seen no evidence that Mr Strachan is now on the sex offenders' register, the fact that Mr Strachan agreed to the same is further evidence of the sexual motivation behind his conduct .

The Panel considered the evidence of the victim, whilst accepting that it is hearsay evidence, that she was shocked and scared and no longer feels safe walking down the same path.

The Panel therefore find the facts of the allegation to be proved.

Findings as to conduct that may bring the profession into disrepute

In considering the allegation that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'Guidance'.

The Panel is satisfied that the conduct of Mr Strachan in relation to the facts found proven, involved breaches of the Teachers' Standards. The Panel considers that by reference to Part Two, Mr Strachan is in breach of the following standards:

Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by showing tolerance of and respect for the rights of others.

The Panel is satisfied that the conduct of Mr Strachan fell significantly short of the standards expected of the profession.

The Panel has also considered whether Mr Strachan's conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the Guidance and we have found that the offence of sexual activity is relevant, given the Panel's finding on the sexual motivation of Mr Strachan's conduct. The Guidance indicates that where behaviours associated with such an offence exist, a Panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct, and conduct which may bring the profession into disrepute is judged in a similar way.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The Panel has taken account of the uniquely influential role that teachers can hold in pupil's lives and that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct are serious, involving sexual activity, and the conduct displayed is likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The Panel therefore finds that Mr Strachan's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the Panel's findings in respect of conduct that may bring the profession into disrepute, it is necessary for the Panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the Panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have a punitive effect.

The Panel has considered the particular public interest considerations set out in the Teacher Misconduct – Prohibition of Teachers Advice and having done so has found a

number of them to be relevant in this case, namely the protection of pupils, the protection of other members of the public, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr Strachan, which involved findings that he had indecently exposed himself to a 63 year old woman and that his conduct was sexually motivated, there is a strong public interest consideration in the protection of pupils and the public. Similarly, the Panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Strachan were not treated with the utmost seriousness when regulating the conduct of the profession.

Notwithstanding the clear public interest considerations that were present, the Panel considered carefully whether or not it would be proportionate to impose a prohibition order taking into account the effect that this would have on Mr Strachan.

In carrying out the balancing exercise the Panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Strachan. The Panel took further account of the Guidance, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the teachers' standards
- misconduct seriously affecting the education and/or well being of pupils, and particularly where there is a continuing risk
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position.

Even though there were behaviours that would point to a prohibition order being appropriate, the Panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. In light of the Panel's findings, there was no evidence that Mr Strachan's actions were not deliberate and there was no evidence to suggest that he was acting under duress. In fact, the Panel found the teacher's actions to be calculated and sexually motivated. Mr Strachan has not provided the Panel with any evidence that he is of previously good character.

The Panel is of the view that prohibition is both proportionate and appropriate. We have decided that the public interest considerations outweigh the interests of Mr Strachan. The sexual motivation in Mr Strachan's conduct is of concern to the Panel and the Panel considers there is a serious risk of potential harm to pupils and the public. The Panel has also taken into account the evidence before it from the police investigation that the incident which is the subject of these allegations is possibly not the only occasion when

Mr Strachan has engaged in conduct of this nature. These factors have been a significant factor in forming the Panel's opinion. Accordingly, the Panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The Panel went on to consider whether or not it would be appropriate for it to decide to recommend that a review period of the order should be considered. The Panel was mindful that the Teacher Misconduct – Prohibition of Teachers Advice advises that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than two years.

The Teacher Misconduct – Prohibition of Teachers Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes serious sexual misconduct, e.g. where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons. The Panel has found that Mr Strachan has been responsible for serious sexual misconduct which caused harm to his victim as set out in her witness statement. Mr Strachan accepted a police caution for his behaviour and thereby admitted to the conduct. The Panel has seen no evidence that Mr Strachan has shown any remorse or insight into his actions.

The Panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have given careful consideration to the findings and recommendations of the panel in this case.

The panel have found the allegations proven and have determined that those facts amount to conduct that may bring the profession into disrepute.

Mr Strachan's behaviour involved receiving a caution for indecent exposure and the panel have judged his behaviour to be sexually motivated.

They have considered the interests of both the public and the teacher. Having found a number of public interest considerations to be relevant to this case they went on to consider the interests of Mr Strachan. They found no evidence that Mr Strachan's actions were not deliberate and there was no evidence to suggest that he was acting under duress. In fact, the Panel found the teacher's actions to be calculated and sexually motivated. Mr Strachan has not provided the Panel with any evidence that he is of

previously good character. In the circumstances I agree with the panel's recommendation that a prohibition order is an appropriate and proportionate sanction.

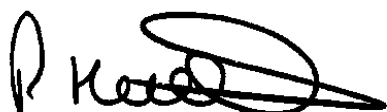
In deciding whether to recommend a review period the panel have referenced the Secretary of State's advice 'Teacher misconduct: the prohibition of teachers'. The advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes serious sexual misconduct, e.g. where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons. The Panel has found that Mr Strachan has been responsible for serious sexual misconduct which caused harm to his victim as set out in her witness statement and has seen no evidence that Mr Strachan has shown any remorse or insight into his actions.

I agree that the order should be without the provision for an application to have it set aside.

This means that Mr Gavin Strachan 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 Gavin Strachan shall not be entitled to apply for restoration his eligibility to teach.

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

Mr Gavin Strachan 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.

A handwritten signature in black ink, appearing to read 'P Heathcote', with a large, stylized flourish at the end.

NAME OF DECISION MAKER: Paul Heathcote

Date: 16 January 2015

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