

NATIONAL COLLEGE FOR TEACHING AND LEADERSHIP

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

Teacher: Mr Richard Keen

Teacher ref no: 1065693

Teacher date of birth: 20th February 1988

NCTL Case ref no: 9353

Date of Determination: 6th June 2013

Former Employer: Not relevant

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership convened on 5th and 6th June 2013 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Richard Keen.

The Panel members were Mr Martin Greenslade, Lay Panellist – in the Chair, Ms Gail Goodman, Teacher Panellist and Mr Michael Lesser, Teacher Panellist.

The Legal Adviser to the Panel was Mr Angus Macpherson of Counsel.

The Presenting Officer for the National College for Teaching and Leadership was Ms Sarah Harris of Kingsley Napley.

Mr Richard Keen was not present. The meeting was held in public and recorded.

B. Allegations

The Panel considered the allegation set out in the Notice of Proceedings dated 28th March 2013 as amended on 5th June 2013:

It was alleged that Mr Richard Keen was guilty of unacceptable professional conduct and / or conduct that may bring the profession into disrepute in that:

1. He failed to maintain appropriate boundaries with a child, Child A, in that he:
 - a. Massaged him on several occasions in his bedroom during 2010 – 2011;
2. He failed to comply with the DCSF “Guidance for Safer Working Practices for Adults who work with Children and Young People” in his dealings with this child; and

3. As a result of 1-2 he undermined the relationship of trust that existed between his employer and himself.

Mr Keen did not formally admit the facts of the allegation or that those facts amounted to unacceptable professional conduct and / or conduct which may bring the profession into disrepute.

C. Preliminary Applications

Proof of Service

The Presenting Officer referred the Panel to the Notice of Proceedings which was sent to Mr Keen on 28th March 2013. E-mail correspondence from Mr Keen confirmed that he had received the Notice. In that correspondence, Mr Keen says that he is content for the matter to proceed in his absence. He is aware that he has the right not only to attend but also to put in a written statement. He indicated that he would do so initially, but last night indicated that he would not be doing so.

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

The Panel decided that service of the Notice of Proceedings had been effected in accordance with the Disciplinary Procedures for the regulation of the teaching profession.

Proceeding in the Absence of the Teacher

The Presenting Officer urged that the Panel proceed in Mr Keen's absence. Mr Keen had indicated that he would not be attending the hearing and that he had no objection to the matter proceeding in his absence.

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

The Panel decided that it would proceed in the absence of Mr Keen. It noted that Mr Keen does not object to the matter proceeding in his absence. It finds that Mr Keen has voluntarily waived his right to attend the hearing. The Panel does not consider that if it adjourned the hearing to another day, Mr Keen would attend.

Submission of Late/Additional Documents

Ms Harris requested that the document: Guidance for Safer Working Practice for Adults who work with Children and Young People be added to the bundle. It had been circulated in advance including to Mr Keen.

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

The Panel decided to add the document to the bundle.

Application to Amend Allegations

Ms Harris asked that the description of the child be “Child A” rather than “Pupil A” as it was never suggested that Mr Keen was the child’s teacher.

The Legal Adviser drew the attention of the panel to the introduction of the word “potentially” to the allegation. That was not consistent with the Education Act 2002.

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

In view of the fact that the amendments would not cause prejudice to Mr Keen, it will allow them as reflected in the amended allegation.

D. Summary of Evidence

Documents

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

Section 1	Date	Page No.
Chronology	Undated	Pages 1-3
Anonymised pupil list		Page 4
Section 2 Notice of Proceedings and Response		
Notice of Proceedings	28 th March 2013	Pages 5-8
Response Pro Forma		Page 9-11
Section 3 NCTL Witness Statements		
Witness B	28 th March 2013	Pages 12-17
Section 4 NCTL Documents		
Guidance for Safer Working Practice for Adults who work with Children and Young People	November 2007	Pages 18 – 244 A document of 31 pages
Section 4 Teacher Documents		
Letter from the Football Association		Page 245

In addition, as mentioned, the Panel agreed to accept the document Guidance for Safer Working Practice for Adults who work with Children and Young People

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

Opening Statement

The Presenting Officer

Ms Harris indicated that there was no intention to call Child A to give evidence. The NCTL had made a decision in this regard. The intention of the NCTL is to rely upon the admitted behaviour on the part of Mr Keen. She did not rely upon the hearsay evidence of the interview of Child A contained in the exhibit to Witness B's witness statement except in so far as it was consistent with Mr Keen's admissions.

The Panel indicated that it would proceed notwithstanding that the hearsay evidence of Child A includes matters which go beyond the allegation. It will dismiss from its collective mind the material contained in the last paragraph of page 42 of the bundle, which is a summary by an unknown person of the interview of Child A.

Ms Harris continued her opening which reflected the witness statement of Witness B, Head Teacher of Gladstone Primary School set out below. She referred to the document, Guidance for Safer Working Practice for Adults who work with Children and Young People, in particular section 7.

On 11th July 2011 Mr Keen was interviewed by the police. In the interview he admitted massaging Child A over a period of about 12 months, normally in his (Child A's) bedroom.

The Panel will need to decide, if the facts are proved, whether this amounts to unacceptable professional conduct or conduct which may bring the profession into disrepute. It was ill judged, misguided and reckless. He had received appropriate training. It was his responsibility to make sure that his conduct did not bring the profession into disrepute. There was an on-going lack of insight. She relied on Part 2 of the Teacher's Standards issued by the Department of Education in May 2012. The expectation of a teacher is that he would demonstrate high standards in his private life. Mr Keen had crossed safeguarding boundaries by behaving as he did with Child A.

When the Panel found the facts proved and that Mr Keen's conduct was likely to bring the profession into disrepute, Ms Harris addressed the Panel on whether the Panel should make a recommendation to the Secretary of State for Prohibition. She referred to two aggravating features. Mr Keen's behaviour was repetitive and he showed no insight. When interviewed in the disciplinary hearing, he stated that he could not understand that his behaviour could be seen as inappropriate and that he still could not see a problem. Further he had not engaged in any meaningful way or showed any remorse. The mitigating features were his inexperience and perhaps his naivety.

Brief summary of evidence given

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

The Panel heard evidence from the following witnesses.

Witness B, Head Teacher of Gladstone Primary School

Her witness statement dated 20th March 2013 was taken as read.

She explained that Mr Richard Keen was appointed to a permanent teaching post at Gladstone Primary School on 2nd June 2011 to start on 1st September 2011. In June 2011, he was working at the school as a supply teacher. This was his first teaching post. At the time he was on a teaching practice on a PGCE course in his last placement.

On 27th June 2011 Mr Keen contacted her by telephone to inform her that he had been visited by the police following an allegation which had been made against him by a young boy who was a close family friend. A safeguarding meeting was convened, attended by Individual C the Human Resources advisor on 30th June 2011. Witness B produced a copy of the minutes of the meeting. The allegations against Mr Keen were that he had inappropriate contact with the child, he had conducted himself outside of work in a manner that impacted on his employment and that in doing so he had breached the trust and confidence placed on him as a teacher and he had committed a serious breach of school, Local Authority or other relevant procedures or regulations. As it was not possible to withdraw the offer of employment, he was suspended and a disciplinary investigation followed.

Witness B conducted the investigatory interview with Mr Keen on 15th September 2011. She had had no previous experience of conducting investigatory interviews. Mr Keen informed her that, on 26th June 2011, he had visited the home of a family friend to play computer games with the child, Child A, who was aged 15. Child A was alone in the house at the time as the other members of his family had gone out. At the time Mr Keen was 23 years old. Child A had told him that he had injured his leg and asked Mr Keen to have a look at it. Mr Keen offered to give Child A a massage which he accepted. He confirmed that he had been massaging Child A over 6 months. He denied that there was any sexual contact. The account given by Mr Keen differed from that of Child A.

Mr Keen was not concerned about boundary issues. His manner was incredulous that any accusation could be made against him. He was a family friend.

Following the investigation, Witness B presented her findings in the investigation to a disciplinary hearing, the minutes of which were in the bundle. Mr Keen attended the meeting and was represented. She mentioned that Mr Keen had received and understood child protection training. He was a PGCE graduate. She considered that his admission that he had been massaging Child A would have been considered inappropriate conduct under the Department for Children, Schools and Families (DFCS) Guidance for Safer Working Practice for Adults who work with Children and Young People. She was concerned about Mr Keen's lack of judgement and the effect on his ability to perform his role as a teacher.

In the Disciplinary Hearing, again Mr Keen did not recognise that his behaviour could be seen as inappropriate and that he had crossed professional boundaries.

She stated that he had breached the trust that existed between his employer and himself. He did not acknowledge any mistake. He maintained that he was right and did not apply his training to the situation in question.

Witness B answered a number of questions from the panel:

- She could not remember if Mr Keen had detailed training in child safety in his PGCE training;
- Mr Keen had done voluntary work in other primary schools;
- There were inconsistencies in his approach. For example, he insisted on saying that there was no problem (on other occasions) when he was massaging Child A as he left the door open and at the same time there was nothing inappropriate in his behaviour;
- He did not disclose that he had massaged Child A before he went home when he first disclosed to her that the police wished to interview him.

E. Decision and Reasons

Findings of fact

The findings of fact of the panel are as follows:

The panel has found the following particulars of the allegation against Mr Keen proved:

1. He failed to maintain appropriate boundaries with a child, Child A, in that he:
 - a. massaged him on several occasions in his bedroom during 2010 – 2011;
2. He failed to comply with the DCSF “Guidance for Safer Working Practices for Adults who work with Children and Young People” in his dealings with this child; and
3. As a result of 1-2 he undermined the relationship of trust that existed between his employer and himself.

The reasons of the Panel are as follows.

So far as particular 1 is concerned, Mr Keen admitted the factual allegation. The Panel reached the conclusion that boundary issues were involved when a teacher or student teacher aged in his early 20s has physical contact with a child aged 15 or younger. He has a duty to conduct himself in a way in which could not be criticised. There may be circumstances when a teacher can give a massage to a child, but not in the confines of a child’s bedroom when no other adult is present and when there was no obvious reason for the massage. The fact that the child was a family friend does not justify the privacy of the arrangement. The Panel finds that he failed to maintain appropriate boundaries whenever he massaged him in these circumstances. Those boundaries applied when he was a teacher and a student teacher.

So far as particular 2 is concerned, the DCSF guidance for Safer Working Practice for Adults who work with Children and Young People applied to Mr Keen. Section 2.2 sets out that the purpose of the guidance was for all adults working with children to understand that the nature of their work and the responsibilities related to it placed them in a position of trust. Mr Keen was such an adult when working as a trainee teacher or a teacher. It was during that period that he gave massages to Child A as described in particular 1.

Section 7 of the guidance which deals with propriety and behaviour sets out that :

Adults in contact with children and young people should ... understand and be aware, that safe practice also involves using judgement and integrity about behaviours in places other than in the work setting.

The Panel find that Mr Keen failed to comply with the guidance by behaving as he did as set out in particular 1.

So far as particular 3 is concerned, the Panel noted that on 2nd June 2011, Gladstone Primary School appointed Mr Keen to a permanent teaching post at the school. He was to take up his position on 1st September 2011. In consequence of that appointment, it finds that the relationship of employer and employee subsisted between Mr Keen and Gladstone Primary School from 2nd June 2011. It further finds that by continuing to behave as alleged in particular 1, that is by continuing to massage Child A in his bedroom at home, in the circumstances established in the foregoing particulars, Mr Keen was undermining the relationship of trust that existed between his employer and himself. An employer in the teaching profession must be able to rely upon the integrity of its teachers and upon its teachers observing appropriate boundaries, following guidance and generally acting in such a way as to safeguard children.

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

The Panel found that the facts which it has found proved amounted to conduct that may bring the profession into disrepute. It concluded that this was misconduct of a serious nature falling significantly short of the standards expected of a teacher. Part 2 of the Teachers Standards issued in May 2012, to which the Panel is entitled to have regard, provides that a teacher is expected to demonstrate consistently high standards of personal and professional conduct. In the Teaching Agency publication, Teacher misconduct – the prohibition of teachers, section 5(ii) provides that allegations which take place outside of the school environment may be considered to be relevant if they are serious and the behaviour is directly related to an individual's suitability to be a teacher and, if proven, may bring the profession into disrepute. Pupils must be able to view teachers as role models in the way they behave.

The Panel finds that Mr Keen behaved in such a way as to bring the profession into disrepute. This was not just one occasion when he behaved as he did. It occurred on several occasions in circumstances of complete privacy. On the last occasion, the behaviour of Mr Keen clearly concerned Child A to the extent that he reported the

incident to his father and the police were summoned. Mr Keen had manifestly breached the boundaries and behaved in a way which disturbed Child A.

The Panel does not find that the behaviour of Mr Keen amounted to unacceptable professional conduct as it took place outside the work setting.

Panel's Recommendation to the Secretary of State

The Panel has carefully considered whether it should recommend Prohibition to the Secretary of State. It bears in mind that it must have regard, in the first place, to the public interest. That includes the protection of children and other members of the public, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct. In the view of the panel, Mr Keen has failed the public interest on all three grounds and over a considerable period of time.

Having regard to the list of matters which may indicate that his behaviour is incompatible with being a teacher, the Panel noted the following:

- Serious departure from the personal and professional conduct elements of the teacher standards;
- Evidence of a deep-seated attitude which could lead to harmful behaviour;
- Abuse of position of trust.

The principle concern which the Panel has is that Mr Keen did not recognise the seriousness of his behaviour even when the matter had reached the stage of an internal disciplinary enquiry. The answers which he gave on being questioned suggested that he was oblivious of safeguarding principles and oblivious to the risk of abuse of a child if any or repeated physical contact took place in these circumstances, not to mention being oblivious to the risks which his behaviour posed to himself. It is for this reason that the Panel found that there was evidence of a deep seated attitude which could lead to harmful behaviour

On the other hand the panel recognises that Mr Keen had many qualities which warranted his appointment to a full time position at Gladstone Primary School. He interviewed very well and indeed was one of only 2 teachers who answered a child protection question impressively. He had good references and had taught successfully at other primary schools in the area. He had served as a supply teacher satisfactorily at Gladstone Primary School. Moreover he is young and only newly qualified.

The Panel must apply the principle of proportionality to its decision making in this case and indeed have regard to Mr Keen's own interests.

The Panel has determined that this is a case where it should recommend to the Secretary of State a Prohibition Order. The behaviour of Mr Keen and his lack of insight raises serious questions about his ability to become a safe and satisfactory teacher at the present time. It considers that the onus should be thrust onto Mr Keen himself to demonstrate that he has learnt from these proceedings and to establish, on any application which he may make to set it aside, that he understands why his approach to child safeguarding issues is so concerning and how he can reassure a

reviewing Panel as to the future. The Panel considers that a Prohibition Order is appropriate.

The Panel believes that Mr Keen needs sometime to reach a sufficient stage of maturity and reflection before he should have the chance of satisfying another panel about these matters. It therefore recommends to the Secretary of State that the prohibition order should be imposed for 3 years before he should have an opportunity to apply for it to be set aside. It considers that 3 years is the appropriate period.

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 and that those facts amount to conduct that may bring the profession into disrepute. Mr Keen failed to recognise the seriousness of his behaviour and the Panel found evidence of a deep seated attitude that could lead to harmful behaviour.

Having regard to the public interest the Panel have recommended that a Prohibition Order is proportionate and appropriate in this case and I support that recommendation.

The Panel believe that Mr Keen requires time to properly reflect on his actions and behaviours and I concur with their recommendation that he should be allowed to apply for the order to be set aside after a minimum period of 3 years has elapsed.

This means that Mr Richard Keen 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 13 June 2016, 3 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 Richard Keen remains barred from teaching indefinitely.

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

Mr Richard Keen 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: 6 June 2013

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