

THE TEACHING AGENCY

Decision of a Professional Conduct Panel and the Secretary of State

Teacher: Mr Matthew Comerford
Teacher ref no: 02/22596
Teacher date of birth: 04/11/1975
TA Case ref no: 9333
Date of Determination: 18 December 2012
Former Employer: Shrewsbury Sixth Form College

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on 18 December 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Matthew Comerford.

The Panel members were Mr David Longson (Teacher Panellist– in the Chair), Councillor Gail Goodman (Teacher Panellist) and Mr William Brown (Lay Panellist).

The Legal Adviser to the Panel was Mr Paul Owston of Berrymans Lace Mawer LLP Solicitors.

The Presenting Officer for the Teaching Agency was Ms Louisa Atkin of Browne Jacobson LLP Solicitors.

Mr Comerford 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 15 October 2012.

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

1. Between September 2011 and April 2012, he engaged in an inappropriate relationship with a student of Shrewsbury Sixth Form College, Student A, including that he;

- a. exchanged messages with her via the social networking site 'Facebook';
- b. met with her outside of school on more than one occasion including at his home without the knowledge or consent of her parents;
- c. kissed her on at least one occasion;
- d. had sexual contact with her on at least one occasion, including on or around 17 February 2012.

Mr Comerford had admitted the facts of allegations 1 a, b & c and that they amounted to unacceptable professional and/or conduct that may bring the profession into disrepute. He denied allegation 1 d.

C. Preliminary Applications

Proof of Service/Proceeding in the Absence of the Teacher

Ms Atkin confirmed that the Notice of Proceedings had been served properly and Mr Comerford had responded to that. The Panel therefore had discretion to proceed in the absence of Mr Comerford and she invited them to do so.

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

The Panel first needs to be satisfied that the Notice of Proceedings has been served in accordance with Rule 4.10 of The Disciplinary Procedures for the regulation of the teaching profession. In particular, the Notice must be served at least eight weeks before the hearing date, unless otherwise agreed with the teacher.

The Notice of Proceedings is dated 15 October 2012 and has therefore been properly served more than 8 weeks prior to the hearing. Further, Mr Comerford has responded to that in the standard Notice of Proceedings Form.

On that basis the Panel can be satisfied that the Notice has been sent in accordance with Rule 4.10.

If so satisfied, the Panel has discretion to proceed with the hearing in the absence of Mr Comerford or adjourn. They should take into consideration any representations by the Presenting Officer and any written submissions made by Mr Comerford. In exercising its discretion the Panel has to proceed with great care and caution and with close regard to the overall fairness of the proceedings. The Panel should have regard to the guidance contained 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:-

1. The risk of reaching the wrong conclusion as a result of not being able to hear from Mr Comerford;

The Panel can take into account the fact that Mr Comerford has made representations for them to consider.

Further, the hearing will be conducted in an investigative manner. The Panel will hear oral evidence from two witnesses and have the opportunity to question them.

The Panel also has available to it documents relating to contemporaneous investigations into the events in question.

2. The nature and circumstances of the behaviour of Mr Comerford in absenting himself and whether the behaviour was voluntary and if so whether he had plainly waived his right to be present.

The Panel can take into account the correspondence and representations indicating that Mr Comerford is aware of today's hearing and has decided not to attend.

3. Whether an adjournment would resolve the matter and if so the likely length of such an adjournment.

The Panel should note that there have been no application for an adjournment and the correspondence and representations indicate that Mr Comerford is expecting the hearing to proceed in his absence.

4. The Panel can also take into account the general public interest and the proper regulation of the profession and the protection of the public and the need for a hearing to take place in a reasonable time;

The Panel should give reasons for its decision.

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

We have decided to proceed in the absence of Mr Comerford for the following reasons:-

We are satisfied that the Notice of Proceedings has been served in accordance with Rule 4.10 of The Disciplinary Procedures for the regulation of the teaching profession. The Notice was sent to Mr Comerford on 15 October 2012 and he has clearly received that since he has responded to it.

We have carefully considered whether in the absence of Mr Comerford the proceedings can be dealt with fairly having regard to the guidance in R v Jones and Tait v Royal College of Veterinary Surgeons. Taking the criteria referred to by the legal adviser in turn:-

Mr Comerford has made representations for us to consider. Further, having regard to the previous investigations into the events in question and that there are two witnesses present today we are satisfied that there is sufficient evidence before us to reach the correct decision despite the absence of Mr Comerford.

We are satisfied from his correspondence and representations that Mr Comerford has made a conscious decision not to attend today's hearing and has therefore voluntarily waived his right to be present.

We do not consider that an adjournment would assist in resolving the matter since we believe that we can fairly deal with the proceedings today. Further, Mr Comerford has not made an application for an adjournment.

The public interest determines that a hearing should take place within a reasonable time and we have taken account of the general public interest in the proper regulation of the profession and the protection of the public.

Submission of Late/Additional Documents & Request for and/or Consideration of Private Hearing

Mr Comerford had submitted a document dated 9/12/2012 addressed "To whom it may concern". That set out mitigating circumstances with the request that they not be read out in public. Mr Comerford had also indicated in the Notice of Proceedings Form that he would like the hearing heard in private.

Ms Atkin confirmed that she had no objection to the document being admitted as evidence and it should assist the Panel. She did not consider it in the public interest for the hearing to be heard in private and Mr Comerford's concerns in that regard were unfounded or irrelevant. Further, questioning the witnesses in public would address any concerns he had with regard to their evidence.

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

Rule 4.56 of The Disciplinary Procedures for the regulation of the teaching profession states that a Professional Conduct Panel may exclude the public from a hearing or part of a hearing where:

1. It appears necessary in the interests of justice;
2. The teacher makes a request that the hearing should be in private and the Panel does not consider it to be contrary to the public interest; or
3. Where it is necessary to protect the interests of children or vulnerable witnesses.

The presumption is that hearings are normally heard in public. In deciding whether the hearing or part of it should be heard in private the Panel will need to weigh up any potential damage to the private life of the teacher and/or third parties as against the extent of any prejudice to the public interest.

It is of course the case that the decision on the facts and unacceptable professional conduct and/or conduct that may bring the profession into disrepute will be announced in public in any event. Further, the final decision will be published.

Further to Rule 4.24 & 4.25 of The Disciplinary Procedures for the regulation of the teaching profession it is possible for documents which have not been served in accordance with the usual timetable to be admitted as evidence at the discretion of the Panel. It must be in the interests of a fair hearing to do so.

Ms Atkin has confirmed that she has no objection to the additional mitigation of Mr Comerford being admitted and that should assist the Panel and it should therefore be in the interests of a fair hearing to admit such documents.

The Panel should give reasons for its decision.

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

We will admit as evidence the document headed "To whom it may concern", dated 9 December 2012, containing additional representations from Mr Comerford. The Teaching Agency do not object to this evidence being admitted and it will assist us in our consideration of the matter. Accordingly, it is in the interests of a fair hearing to admit this document.

We do not consider it appropriate for the hearing to take place in private. There need be no reference to Mr Comerford's family in the hearing and we can ensure that when he is referred to his identity is clear. In relation to any evidence given at the hearing we can question the witness and it can only be in Mr Comerford's interests' that is done in public. Our decision will be announced in public and the final decision will be published in any event. Therefore, all the relevant parties will be in the public domain and the student concerned has been anonymised. Accordingly, we consider that it would be contrary to the public interest to hold the hearing in private and we should not upset the usual presumption that hearings should be held in public.

We will add the document and Mr Comerford's application to the bundle as pages 62 – 65.

D. Summary of Evidence

Documents

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

Anonymised Pupil List & Chronology - on pages 1 - 3

Notice of Proceedings & Response – on pages 4 - 11

Witness Statements - on pages 5 – 18

Teaching Agency Documents – on pages 19 – 57

Teacher Documents – on pages 20 - 61

In addition, the Panel agreed to accept the following:

Document referred to above (“To whom it may concern”, dated 9 December 2012) – on pages 62 - 64

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

Brief summary of evidence given

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

Ms Atkin called two witnesses to give evidence – Witness A, Principal of Shrewsbury Sixth Form College, and Witness B, Assistant Principal (Resources & Risk) of Shrewsbury Sixth Form College. Their statements were taken as read and they answered questions from Ms Atkin and the Panel.

Witness A confirmed that all the staff were aware of the school’s code of conduct and safeguarding procedures and there were clear guidelines in relation to the use of social media. Using personal Facebook pages to contact pupils was not acceptable. It was made clear, particularly to younger members of staff, that it was especially important to keep a professional distance from pupils given their age range.

Witness A confirmed how he had become aware of the matter after receiving an email from Mr Comerford and after that he had met Student A’s parents. Given that it would be difficult for Student A to talk openly in front of her parents he had sent her to another member of staff to write down her account of the matter. She had later come to his office with a friend and said she wanted to add something to her account. She found it difficult to say anything, was embarrassed and cupped her face in her hands. Therefore he asked her to write it down. That was why there were two written accounts from Student A. He was not aware that Student A was under any pressure to add to her account and prior to that he had heard enough to be very concerned without looking for further evidence. He thought that she just wanted to get matters off her chest and say what had happened.

Witness A did not consider that Mr Comerford was under any undue pressure, beyond that experienced by any teacher in his position. The college was operating under budgetary constraints but it was the same for all staff. Mr Comerford had not raised any particular issues with him.

Witness A thought that Student A was probably immature in relation to her experience of relationships with the opposite sex and lacking in confidence. Therefore it could be said that she was vulnerable or would appreciate attention from an adult male and be flattered by that. She was quiet and hard working.

Witness B confirmed that she had prepared notes of her meeting with Mr Comerford and they were an accurate account of that. When she had asked the

question about sexual contact Mr Comerford definitely heard her and went very quiet, put his head down and said nothing. She asked him if he wanted to take a break. He said no and they carried on. She only asked him the question once.

Witness B thought that she had dealt with her investigation professionally and that she had been fair and unbiased. She had simply made a mistake when she had reported that Mr Comerford had admitted to sexual contact.

Witness B thought that any stress that staff had was of the average sort and no more than at any other establishment. There was a good management structure and help for staff where they required it.

E. Legal Advice

Before the Panel went into private session to consider 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/or conduct that may bring the profession into disrepute; and
 - (iii) If unacceptable professional conduct and/or conduct that may bring the profession into disrepute 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.

Although there is a partial admission of the facts and unacceptable professional conduct and/or conduct that may bring the profession into disrepute the Committee must still satisfy themselves as to the facts of the case and that those amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

2. The burden of proving the allegations rests with the Presenting Officer, not with the Respondent Teacher.
3. The standard of proof applied in these proceedings is the civil standard, “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 Teaching Agency 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. The Panel should consider treating hearsay evidence with caution and consider carefully what weight it considers can be attached to it.

5. "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.
6. Whether any facts the Panel find proved amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute is a matter for the judgment of the Panel itself, applying this definition.
7. The Panel may have regard to the GTC Code of Conduct & Practice for Registered Teachers (effective from 1 October 2009) and the latest teachers' standards as published by, or on behalf of, the Secretary of State.
8. 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 decision 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.

The Panel should give reasons for its decisions and recommendations at each stage.

F. Decision and Reasons

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 and the additional document, dated 9 December 2012, from Mr Comerford.

It is alleged that whilst employed at Shrewsbury Sixth Form College as a Film and Media teacher Mr Comerford engaged in an inappropriate relationship with a female student.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegation against Mr Comerford proven, for these reasons:

1. Between September 2011 and April 2012, he engaged in an inappropriate relationship with a student of Shrewsbury Sixth Form College, Student A, including that he;
 - a. exchanged messages with her via the social networking site 'Facebook';
 - b. met with her outside of school on more than one occasion including at his home without the knowledge or consent of her parents;
 - c. kissed her on at least one occasion;
 - d. had sexual contact with her on at least one occasion, including on or around 17 February 2012.

Mr Comerford admitted allegations 1 a, b, & c, during the course of the college's investigation into the matter and has also admitted them in relation to these proceedings. We have also accepted the documents relating to the college's investigation of the matter which have been verified by Mr Ward, the Head Teacher of the College, and Ms Janet Stephens, Assistant Principal of the College. Mr Ward had the initial contact with Mr Comerford and Student A and her parents and Ms Stephens carried out the subsequent investigation which led to Mr Comerford's resignation. They both gave credible evidence about the matters that they dealt with and we are satisfied that matters were considered in a proper fashion and Student A and her parents and Mr Comerford were all given a full opportunity to put across their version of events.

In relation to allegation 1 a. we have also seen copies of messages that were exchanged by Mr Comerford and Student A and we do not consider those appropriate given that the personal nature of them. In particular Mr Comerford said to Student A on one occasion "You know what I wear in bed, and that is more than I usually wear".

In relation to allegation 1 d. we have been mindful that Student A's account of the sexual conduct is contained in a short handwritten statement, given after the initial meeting with Mr Ward and her parents and we have therefore considered very carefully what weight we consider can be attached to it.

Witness A gave evidence about the circumstances in which Student A made the statement. He related how Student A was embarrassed and would not tell him what she wanted to say but wrote it down when invited to do so. Further, he did not consider that Student A was acting under duress and that she was a quiet and hard working girl. It is quite understandable why Student A might not want to have imparted this information on the first occasion when her parents were in school and Witness A's account rings true of a student giving a truthful account of a very personal matter. Further, we have seen no evidence to suggest why Student A may have made up this account.

We have also had regard to Witness B's evidence about the interview she conducted with Mr Comerford on 7 March 2012. It concerns us that she did not put what was said in Student A's second statement directly to Mr Comerford but she

clearly recorded and it is not disputed by Mr Comerford that he did not answer when he was asked if there had been genital contact. She gave a convincing account of his reaction to this question in that he went very quiet and put his head down. Further, he did admit that the relationship had at least developed to kissing and Student A staying overnight at his home. Further, we have noted again the Facebook message we have already mentioned.

Mr Comerford has made much of Witness B's error in stating that he had admitted that there was sexual contact. She freely admitted today that she had made a mistake and we do not consider that relevant to our consideration of the allegation.

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

Having found the facts of the allegations proved we further find that those amount to unacceptable professional conduct and/or conduct which may bring the profession into disrepute.

This is because:

Mr Comerford's actions constituted misconduct of a serious nature, falling significantly short of behaviour expected of a teacher.

We have noted Mr Comerford's admission that those matters that he admits amount to unacceptable professional conduct and/or conduct which may bring the profession into disrepute.

Mr Comerford's actions breached the GTC Code of Conduct and Practice for Registered Teachers, effective from 1 October 2009. Specifically he:

Failed to put the wellbeing, development and progress of children and young people first by failing to:

- Follow his school's child protection policy and procedures:
- Establish and maintain appropriate professional boundaries in their relationships with children and young people.

And also failed to maintain reasonable standards in his own behaviour to uphold public trust and confidence in the teaching profession.

Mr Comerford's actions also breached the latest Teacher's Standards published by the DfE in that he failed to:

Set high expectations which inspire, motivate and challenge pupils by failing to establish a safe and stimulating environment for pupils, rooted in mutual respect.

And also failed to uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by failing to observe proper boundaries appropriate to a teacher's professional position.

And also failed to have proper and professional regard for the policies and procedures of the college.

We think it is self-evidently unacceptable for a teacher to have a relationship with a pupil, not least one that involved sexual contact. It is particularly concerning in this case that Mr Comerford was not simply a teacher at the college but Student A's football coach.

Panel's Recommendation to the Secretary of State

When considering what sanction, if any, to recommend we have had regard to "The Prohibition of Teachers – DfE advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession". In particular we have had regard to the protection of children and members of the public, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct. We have sought to approach the issue bearing in mind the principle of proportionality. We have concluded that in this instance it is appropriate to recommend that a Prohibition order be made.

We have carefully considered the documents that we have been provided with, and the submissions made by Ms Atkin and the representations by Mr Comerford.

Having a relationship with a student, involving sexual contact, is incompatible with being a teacher. It represents a serious departure from the GTC Code of Conduct and Practice for Registered Teachers, effective from 1 October 2009, and the latest Teachers' Standards published by the DfE and constitutes an abuse of a position of trust.

As we have already noted Mr Comerford was Student A's football coach and we have heard evidence from Mr Ward that she was naïve and likely to be vulnerable to advances from an older male teacher. In these circumstances his behaviour is particularly concerning.

Mr Comerford has made a number of representations in mitigation and it appears that he has a good history as a teacher and was effective in his role at the time of the events in question. Nevertheless, after initially accepting responsibility for his behaviour, we find many of his comments very self-serving. He goes on at length about the failings of the management of the school and the investigation against him. These are of no relevance to the allegations and nor does any work related stress that he may have perceived excuse his conduct. In contrast he shows no insight into his failings or the effect those may have had on Student A. He has not accepted that his actions were deliberate and there was no element of duress.

In light of the serious nature of Mr Comerford's conduct and his response to that we do not recommend that Mr Comerford should be allowed to apply to set aside the Prohibition Order.

Secretary of State's Decision and Reasons

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

The panel has found that Mr Comerford engaged in an inappropriate relationship with Student A and that this relationship included a sexual element.

This behaviour is a clear breach of the standards expected of a teacher. It is behaviour that brings the profession into disrepute and has the potential to cause serious harm to pupils. Mr Comerford failed to maintain the proper boundaries expected.

It is also clear from the recommendation of the panel that although Mr Comerford has some good history as a teacher he has failed to show sufficient insight into his behaviour.

I therefore support the recommendation of the panel that Mr Comerford is prohibited from teaching.

I have also given careful consideration to the matter of a review period. The lack of insight, and in particular the failure to recognise the impact on Student A of his behaviour, supports the recommendation in terms of review. I also support that position.

This means that Mr Matthew Comerford 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 Matthew Comerford shall not be entitled to apply for restoration of his eligibility to teach.

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

Mr Matthew Comerford 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: Alan Meyrick

Date: 19 December 2012