



National College for
Teaching & Leadership

Mr Richard Walsh: Professional conduct panel outcome

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

April 2016

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Mr Richard Walsh

Teacher ref number: 1251497

Teacher date of birth: 14 August 1977

NCTL case reference: 13975

Date of determination: 29 April 2016

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 29 April 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Richard Walsh.

The panel members were Mrs Mahfia Watkinson (lay panellist – in the chair), Mr Colin Parker (teacher panellist) and Mr Tony Heath (lay panellist).

The legal adviser to the panel was Eve Piffaretti of Blake Morgan LLP solicitors.

The presenting officer for the National College was Ben Chapman of Browne Jacobson LLP solicitors.

Mr Walsh was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation set out in the Notice of Proceedings dated 8 February 2016.

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

- 1. He received a caution from the Metropolitan Police on 1 April 2015 for possessing a Controlled Drug, namely Class A, Heroin, contrary to the Misuse of Drugs Act 1971 s.5(2).**

In the Notice of Referral Form dated 26 August 2015, Mr Walsh stated that, whilst he admitted the facts of the allegation, he did not accept such facts amounted to conduct likely to bring the profession into disrepute.

On 15 October 2015, the Presenting Officer wrote to Mr Walsh inviting him to respond to a subsequent letter sent to him dated 19 August 2015 which amended the wording of allegations to allege that he was guilty of unacceptable conduct and / conduct that may bring the profession into dispute in that: 1. You received a caution from the Metropolitan Police on 1 April 2015 for possessing a Controlled Drug, namely Class A, Heroin, contrary to the Misuse of Drugs Act 1971 s.5 (2).

The material difference between the letters of 14 August and 19 August 2015 was the inclusion of the allegation that the caution amounts to unacceptable professional conduct. Although there have been email exchanges between Mr Walsh and the presenting officer, Mr Walsh has not responded further to the allegation of unacceptable professional conduct and therefore this was taken to have not been admitted.

C. Preliminary applications

Additional Documents

The presenting officer applied at the outset of the hearing for a number of documents being admitted into evidence. These documents included postal and email correspondence between Mr Walsh and the NCTL and a statement from Amy Johnson of NCTL dated 26 April 2016. It was submitted that they were relevant to preliminary matters, in particular, proof of service of the Notice of Proceedings, proceeding in the absence of Mr Walsh and whether to grant his request an adjournment. In addition, the presenting officer referred to additional document received from the Metropolitan Police clarifying the availability of further information in relation to Mr Walsh's caution.

The panel granted the application for all these additional documents to be admitted. The panel accepted the legal advice and noted that the documents were relevant to the decisions it was required to make in relation to preliminary issues. The panel decided that the documents should be added to the case papers before the panel in the interest of fairness.

A further document was provided to the panel by an officer of NCTL, being an email received from a third party timed at 17.29 on 28 April 2016. It was not clear whether the email had been sent with Mr Walsh's knowledge or was being relied on, on his behalf. The Presenting Officer objected to the late admission of this email. He submitted that there was no evidence that the email was relied on by the teacher and that it was not relevant to the decision.

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

"In the interests of fairness the panel have decided to admit this document though we note that the provenance of the person sending the document is unknown and that the teacher has not sought to rely on this document. We will bear this in mind when considering the weight attached to this evidence."

The email was added to the bundle of documents before the panel as page 69.

Proof of Service/Proceeding in the Absence of the Teacher/ Adjournment

The panel considered proof of service of the Notice of Proceedings, proceeding in the absence of Mr Walsh and whether to grant his request of an adjournment. The presenting officer objected to an adjournment.

Having received legal advice, the panel announced its decision and reasons for that decision as follows:

"The panel have considered an application by the Presenting Officer for the hearing to proceed in the absence of Mr Walsh and Mr Walsh's application that the hearing be adjourned. The panel carefully considered the presenting officer's submissions and Mr Walsh's written submissions, received by email.

The panel was satisfied that the proceedings had been served on Mr Walsh in accordance with Paragraphs 4.11 and 4.12 of the Teacher Misconduct - Disciplinary Procedures for the Teaching Profession ("the Disciplinary Procedures").

The Notice of Proceedings was sent to Mr Walsh , at his request, by email dated 8 February 2016 , to the e-mail address he provided to the NCTL. We have considered the email that was sent to Mr Walsh on this date and are satisfied that the Notice stated the information required to be included in accordance with Paragraph 4.12. We took into account that :-

- Mr Walsh chose this as his method of communication with the NCTL
- Mr Walsh has corresponded with the NCTL and the Presenting Officer from his email address over a period of four months. He had not subsequently contacted the NTCL or the Presenting Officer to indicate that his dates of availability had changed
- On 24 January 2016, Mr Walsh provided his dates of availability which included the 29 April 2016, being today's hearing date
- He first mentioned that his School was to be inspected by Ofsted this week in an email dated 22 April 2016.

We also noted the statement from Amy Johnson dated 26 April 2016 which confirmed that an email enclosing the Notice of Proceedings was sent on 8 February 2016 and she received no bounce back. A copy of this email was subsequently forwarded to Mr Walsh from her sent email folder on 22 April 2016. Furthermore we took into account that Mr Walsh has corresponded with the Presenting Officer in relation to his letter dated 11 April 2016, sent by email which included reference to the hearing date today.

The panel then considered whether it was appropriate to proceed in the absence of Mr Walsh and his request for an adjournment.

The panel accepted the legal advice provided and considered carefully each of the criteria set out in *R v Jones and Tait v Royal College of Veterinary Surgeons*. The panel proceeded with great care and caution and close regard to the overall fairness of the proceedings.

The panel took into account the risk of reaching the wrong conclusion as a result of not being able to hear from Mr Walsh and the fact that Mr Walsh may be at risk of losing his livelihood. Mr Walsh is aware of the nature of the allegations against him. The panel noted that Mr Walsh had been aware that his caution for possession of a Class A controlled drug on 31 March 2015 had been referred by the NCTL, following initial investigation, to a professional conduct panel. This was communicated to him by letter dated 14 August 2015 to which he responded. On 26 August 2015, Mr Walsh completed a Notice of Referral Form indicating that he admitted the fact of the allegation but denied that the facts amounted to conduct which may bring the profession into disrepute. We are satisfied that Mr Walsh has had ample time to submit evidence in relation to his case and none has been forthcoming.

In the circumstances, the panel was satisfied that Mr Walsh had voluntarily absented himself and had waived his right to attend. We noted that the case has already been subject to a postponement, at Mr Walsh's request. Consequently on 24 January 2016, Mr Walsh provided his dates of availability for a rescheduled hearing, which included today's date. Mr Walsh submits that he is now not able to attend due to his involvement with an Ofsted inspection at his School and as he does not wish to let down his students so close to their exams. He has not provided any evidence to verify that an Ofsted inspection is taking place at the School. Notwithstanding this, the panel are not satisfied that it was needed for Mr Walsh to attend the Ofsted inspection or that his absence from School for one day would be detrimental to his students.

The panel noted that the hearing had previously been postponed, at Mr Walsh's request and that Mr Walsh had been aware of NCTL proceedings since the referral to a professional conduct panel on 14 August 2015. The panel was not satisfied on the balance of probabilities that the reasons put forward by Mr Walsh were sufficient to require an adjournment, for the reasons set out above. Bearing in mind the history of the case, the panel therefore concluded that an adjournment would serve no purpose and were not satisfied, on the balance of probabilities, that Mr Walsh would provide further evidence or attend on a future date.

In the light of the serious nature of the allegations and given that Mr Walsh is currently working as a teacher, the panel decided that it was in the public interest for the proper regulation of the profession and the protection of the public that this case should proceed and that the hearing should take place without further delay.

The panel therefore decline Mr Walsh's application for an adjournment and have decided to proceed in his absence today.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 2 to 3

Section 2: Notice of Proceedings and Response – pages 5 to 15

Section 3: NCTL witness statements

Section 4: NCTL documents – pages 18 to 32

Section 5: Teacher documents

In addition, the panel agreed to accept the following:

Additional documents accepted by the panel relevant to Mr Walsh's application for an adjournment and proceeding in absence were added to the bundle as NCTL documents as pages 34 to 67.

Page 33 was marked as a blank page and page 34 was renumbered as page 68.

An email to NCTL dated 28 April 2016 which was added to the bundle under Section 5 - Teacher documents and marked page 69.

The panel members confirmed that they had read all of the documents in advance of the hearing.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before us and have reached a decision.

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Brief Summary

On 14 May 2015, the Metropolitan Police ("MPS") notified the NCTL under the Notifiable Occupations Scheme, that Mr Walsh had received a caution on 1 April 2015 in relation to

possession of a controlled drug , Class A. Mr Walsh had been identified as having a notifiable occupation , that being a Teacher.

The circumstances of the incident were described as:-

" On 31/03/ 2015 at Lansdown drive E8 had in your possession 4 small wraps of diamorphone a controlled drug of Class A".

On 1 June 2015 , the NCTL received the Police National Computer Disclosure Print Out which confirmed that Mr Walsh had been cautioned , on 1 April 2015 for possessing a controlled drug, Class A, heroin on 31 March 2015 contrary to the Misuse of Drugs Act 1971 section 5(2).

On 8 April 2016, the MPS sent the NCTL's presenting officer an email confirming the following information from the custody record:

"On 31/03/2015 at Lansdown Drive,E8,had in your possession 4 small wraps of diamorphone a controlled drug of class A in contravention of section 5(1) of the Misuse of Drugs Act 1971 contrary to section 5(2) of and Schedule 4 to the Misuse of Drugs Act 1971."

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegation against you proven, for these reasons:

- 1. You received a caution from the Metropolitan Police on 1 April 2015 for possessing a Controlled Drug, namely Class A, Heroin, contrary to the Misuse of Drugs Act 1971 s.5(2).**

The facts of allegation 1 were admitted by Mr Walsh in the Notice of Referral Form dated 26 August 2015 . We are also satisfied that Mr Walsh must have admitted to the possession of a controlled drug, namely Class A in order to have received a caution. The panel notes that heroin is the colloquial name for the drug Diamorphine, which is classed as a controlled drug, Class A, in Schedule 4 of the Misuse of Drugs Act 1971. The panel also relied on the contents of the Notification from the MPS Notifiable Occupations Scheme, the Police National Computer Disclosure Print and the contents of the custody record set out in an Email dated 8 April 2016 from MPS.

The panel found the facts of allegation 1 proved.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found the facts of the allegation proved, the panel deliberated on whether, in respect of allegation 1, the facts amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the published Teachers Standards and also the guidance contained in the document entitled Teacher Misconduct; The Prohibition of Teachers which the panel referred to as "the Advice".

The panel concluded that the facts of allegation 1 were such that Mr Walsh was guilty of unacceptable professional conduct and conduct likely to bring the profession into disrepute. The findings of misconduct are serious and the conduct displayed would likely have a negative impact on Mr Walsh's status as a teacher, potentially damaging the public perception of the profession. Mr Walsh was found in possession of 4 wraps of heroin, a Class A drug and we are satisfied, on the balance of probabilities that he was found in possession of heroin at his home address, for his personal use, given that the nature of the caution imposed related to a possession offence only.

We consider that Mr Walsh's conduct falls significantly short of the standards of behaviour expected of a teacher and, in the view of the panel, would also bring the conduct of the profession into disrepute.

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 pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

Mr Walsh's conduct reflects an unacceptable attitude towards controlled drugs given his uniquely influential role as a teacher.

The panel is satisfied that the conduct of Mr Walsh in relation to the fact found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Walsh 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
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel has also considered whether the teacher's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and note that Mr Walsh was cautioned for the offence of possession of a class A drug which is listed amongst the examples. The Advice 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.

Accordingly, the panel is satisfied that Mr Walsh is guilty of unacceptable professional conduct and that Mr Walsh'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 unacceptable professional conduct/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 punitive effect.

The panel has considered the particular public interest considerations set out in the 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/declaring and upholding proper standards of conduct.

The panel took into account its findings against Mr Walsh as set out above, which included that, on the balance of probabilities, he was in possession of 4 wraps of a Class A drug, heroin, at his home address, for his personal use. The panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Walsh was outside that which could reasonably be tolerated.

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 Walsh.

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 Walsh. The panel took further account of the Advice, 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;
- actions or behaviours that undermine the rule of law
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

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 above.

There was no evidence that the teacher's actions were not deliberate.

There was no evidence to suggest that the teacher was acting under duress.

We noted the contents of the Police National Computer Disclosure Print and that he had no previous history of criminal offences prior to the caution. There was no evidence as to his teaching ability.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of the teacher. The serious nature of the offence was a significant factor in forming that 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 them to decide to recommend that a review period of the order should be considered. The panel were mindful that the 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 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes class A drug abuse or supply.

The panel again carefully considered the very limited information in mitigation. Mr Walsh has been aware that the caution had been referred to the NCTL since August 2015 and he has provided no evidence as to his insight into his conduct or remorse for his actions as indicated above.

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 provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have considered very carefully the findings and recommendations of the panel in this case. The panel have found the allegation proved and made findings of fact and unacceptable professional conduct, and conduct likely to bring the profession into disrepute.

The panel is satisfied that the conduct of Mr Walsh in relation to the fact found proved, involved breaches of the Teachers' Standards. Mr Walsh was cautioned for the offence of possession of a class A drug.

I have considered the public interest in this case. I agree with the panel that the relevant public considerations in this case are: the protection of pupils; the protection of other members of the public; maintenance of public confidence in the profession; and upholding proper standards of conduct.

I note the panel considered the public interest considerations both in favour of, and against prohibition, as well as the interests of Mr Walsh. There was no evidence that Mr Walsh's actions were not deliberate, or that he was acting under duress. The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of the teacher. The serious nature of the offence was a significant factor in forming that opinion. I agree with the panel's view that prohibition is both proportionate and appropriate.

I now turn to the matter of a review period. I note that the panel considered the very limited information in mitigation. The Advice indicates that proven behaviours including class A drug abuse or supply would mitigate against a review period being recommended. I also note that Mr Walsh has provided no evidence as to his insight into his conduct or remorse for his actions.

Taking account the seriousness of the offence, and for the reasons set out above, I agree with the panel's recommendation, that a prohibition order should be imposed and that no review period should be allowed.

This means that Mr Richard Walsh 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 Walsh 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 Walsh 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 be 'JM', with a horizontal line through the middle and a small dot at the end.

Decision maker: Jayne Millions

Date: 4 May 2016

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