



National College for
Teaching & Leadership

Mr David Heath: Professional conduct panel outcome

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

April 2017

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

Teacher: Mr David Heath

Teacher ref number: 0950449

Teacher date of birth: 26 October 1966

NCTL case reference: 15396

Date of determination: 18 April 2017

Former employer: The Royal Hospital School, Ipswich

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 18 April 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr David Heath (“Mr Heath”), by way of a meeting.

The panel members were Ms Mary Speakman (teacher panellist – in the chair), Ms Catherine Boyd (lay panellist) and Mr Sathi Ariya (lay panellist).

The legal adviser to the panel was Miss Laura Ellis of Eversheds Sutherland (International) LLP.

The presenting officer for the National College was Mr Ben Bentley of Browne Jacobson LLP. However, as a meeting was convened instead of a hearing, pursuant to paragraphs 4.83 to 4.91 of the Teacher misconduct – Disciplinary procedures for the teaching profession (the “Procedures”), the presenting officer was not present.

For the same reason, Mr Heath was also not present and was not represented.

The meeting took place in private, save for the announcement of the panel's decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Referral dated 14 September 2016 and Notice of Meeting dated 3 February 2017.

It was alleged that Mr David Heath was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a Head of Department and Teacher of Religious Studies at the Royal Hospital School, he:

1. Took class A drugs, which resulted in a failure to attend work and/or perform duties accordingly, on one or more occasion(s).

Mr Heath admits the facts of the allegations above, in the Statement of Agreed Facts which he signed on 16 November 2016. Mr Heath also admits that the allegations constitute unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

There were no preliminary applications.

D. Summary of evidence

Documents

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

Section 1: Chronology – pages 2 to 3

Section 2: Notice of Referral, response and Notice of Meeting – pages 5 to 10b

Section 3: Statement of Agreed Facts and Presenting Officer Representations – pages 12 to 15

Section 4: NCTL documents – pages 17 to 45

Section 5: Teacher documents – pages 47 to 48

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

Witnesses

As this was a meeting, no witnesses were called to provide oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Heath began employment as a teacher of religious education at The Royal Hospital School in Ipswich (the "School") in September 2014. He was then appointed as Head of Department with effect from 1 September 2015. It is alleged that on three occasions after school holidays during 2016 (22 February, 20 April and 6 June), he failed to return to work. On 7 June 2016 he invited two of his colleagues to visit him at his home and he disclosed to them that the reason for his absence was that he had been recovering from using illegal drugs during the school holidays. Mr Heath was subsequently suspended from the School on 8 June 2016 and he resigned on 17 June 2016.

Findings of fact

Our findings of fact are as follows:

The panel must decide whether the facts of the case have been proved on the balance of probabilities. The panel has found the following particulars of the allegation against you proven, for these reasons:

It is alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a Head of Department and Teacher of Religious Studies at the Royal Hospital School, you:

- 1. Took class A drugs, which resulted in a failure to attend work and/or perform duties accordingly, on one or more occasion(s).**

The panel notes that Mr Heath has admitted this allegation in the Statement of Agreed Facts, which he signed on 16 November 2016. In this, he states that after three school holidays during a 14 month period, he failed to return to work for the first day or so (the most recent being on 6 June 2016) which was a result of recovering from using class A drugs during the school holidays. The panel has also seen written statements from the two colleagues who visited Mr Heath's home on 7 June 2016, which confirm that Mr Heath told them that he had used class A drugs during the school holidays. The allegation is therefore found proven.

Having found the allegation to have been proven, the panel has gone on to consider whether the facts of the proven allegation amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher misconduct: The prohibition of teachers, which the panel refers to as “the Advice”.

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

A teacher is expected to demonstrate consistently high standards of personal and professional conduct...

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school...
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Mr Heath fell significantly short of the standards expected of the profession. This is because the possession of controlled class A drugs is a criminal offence (albeit there is no evidence that he was convicted of such an offence) and resulted in Mr Heath being unable to attend work to teach his students, which risked adversely impacting their education and the ability of the School to function effectively. Mr Heath did this on three occasions during 2016, so it was not an isolated incident.

The panel has also considered whether Mr Heath’s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of possession of class A drugs is relevant. 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.

The panel notes that Mr Heath’s drug use took place outside of the education setting as it happened during the school holidays when no students were present. However, it adversely affected Mr Heath’s ability to fulfil his teaching role as it meant that he was unfit to attend work when the School term resumed, on three separate occasions.

Accordingly, the panel is satisfied that Mr Heath is guilty of unacceptable professional conduct.

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.

The findings of misconduct are serious and the conduct displayed would likely have a negative impact on Mr Heath's status as a teacher, potentially damaging the public perception.

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

Having found the facts of the allegation proved, the panel further finds that Mr Heath's conduct amounts to both unacceptable professional conduct and 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 and 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 Advice and having done so has found a number of them to be relevant in this case, namely the protection of pupils, the maintenance of public confidence in the profession, declaring and upholding proper standards of conduct, and the interest of retaining the teacher in the profession.

In light of the panel's findings against Mr Heath, which involved misuse of illegal class A drugs that resulted in his inability to perform his teaching duties, the panel considers that there is a public interest in ensuring that students are not exposed to this behaviour and that their education does not become disrupted as a result of it. The panel also considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Heath were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel also considers that there is a public interest in retaining Mr Heath in the profession, since no doubt has been cast upon his abilities as an educator and the evidence presented to the panel indicates that he is able to make a valuable contribution to the profession.

In view of the clear public interest considerations that were present, the panel has 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 Heath.

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 Heath. 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:

- a 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.

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. Mr Heath's actions were deliberate and he did not act under duress. The panel has also reviewed the written statement from Mr Heath and the testimonial from one of his previous supervisors outside the of the education setting. There is no evidence to suggest that Mr Heath did not previously have a good teaching history; he was promoted shortly after joining the School and appears to have been highly employable.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the Panel is sufficient.

The panel is of the view that applying the standard of the ordinary intelligent citizen, recommending no prohibition order is not a proportionate and appropriate response. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for Mr Heath of prohibition.

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 Mr Heath. The present risk to students 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 it to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice states 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. These behaviours include class A drug abuse, which is relevant in this case.

However, the panel has noted that Mr Heath has shown considerable remorse and insight into the seriousness of his behaviour and the consequences of this. He disclosed it to his colleagues voluntarily and has cooperated fully with the disciplinary process from the beginning. [REDACTED] The panel also notes that although Mr Heath admitted using the drugs himself, no one else was involved in this, which reduces the risk posed to students. There is also no suggestion that Mr Heath supplied drugs to any third party. The panel therefore considers that given Mr Heath's level of insight, remorse, [REDACTED] and the fact that he had a previously good teaching history, he should be given the opportunity to re-join the profession at a later date if he is able to recover and demonstrate that there will be no repetition of the behaviour. The panel therefore considered that the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period after five years. The panel considers that, until this time, the public interest is addressed by the imposition of a prohibition order. The burden of proof would be upon Mr Heath to persuade a future panel that he has sufficiently recovered and that there is no risk of repetition in order that he may return to the profession, and it is likely that he would need to provide medical evidence of recovery to do this.

Decision and reasons on behalf of the Secretary of State

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

In considering this case I have given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case the panel has found the allegation proven and found that that the proven case amounts to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr Heath should be the subject of a prohibition order, with a review period of five years.

In particular the panel has found that Mr Heath is in breach of the following standards:

“A teacher is expected to demonstrate consistently high standards of personal and professional conduct...

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school...
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel has explained that it is satisfied that the conduct of Mr Heath fell significantly short of the standards expected of the profession. This is because the possession of controlled class A drugs is a criminal offence (albeit there is no evidence that he was convicted of such an offence) and resulted in Mr Heath being unable to attend work to teach his students, which risked adversely impacting their education and the ability of the School to function effectively. Mr Heath did this on three occasions during 2016, so it was not an isolated incident.

The panel has also considered whether Mr Heath's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of possession of class A drugs is relevant. 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.

The panel notes that Mr Heath's drug use took place outside of the education setting as it happened during the school holidays when no students were present. However, it adversely affected Mr Heath's ability to fulfil his teaching role as it meant that he was unfit to attend work when the School term resumed, on three separate occasions."

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Heath, and the impact that will have on her, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children and students. The panel has observed "there is a public interest in ensuring that students are not exposed to this behaviour and that their education does not become disrupted as a result of it." A prohibition order would therefore prevent such a risk from

being present. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel has identified the behaviours that are relevant in this case to be:

- a 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.

In my judgement the repetition of the behaviours is significant in judging the risk to public confidence in allowing Mr Heath to continue teaching at this time.

I have had to consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public as a failure to uphold those high standards. In weighing these considerations I have had to consider the matter from the point of view of an "ordinary intelligent and well-informed citizen."

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Heath himself. The panel has observed that, "There is no evidence to suggest that Mr Heath did not previously have a good teaching history; he was promoted shortly after joining the School and appears to have been highly employable."

A prohibition order would prevent Mr Heath from teaching at this time.

In this case I have placed considerable weight on the panel's comments concerning insight and remorse. The panel has said, "Mr Heath has shown considerable remorse and insight into the seriousness of his behaviour and the consequences of this. He disclosed it to his colleagues voluntarily and has cooperated fully with the disciplinary process from the beginning.

I have also been able to see other comments made by the panel concerning Mr Heath.

In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision alone will not in my view protect the public interest sufficiently to maintain public confidence in the profession.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended a 5 year review period.

I have considered the panel's comments, "although Mr Heath admitted using the drugs himself, no one else was involved in this, which reduces the risk posed to students. There is also no suggestion that Mr Heath supplied drugs to any third party."

The panel has also said commented, "the public interest is addressed by the imposition of a prohibition order. The burden of proof would be upon Mr Heath to persuade a future panel that he has sufficiently recovered and that there is no risk of repetition in order that he may return to the profession, and it is likely that he would need to provide medical evidence of recovery to do this."


I have considered whether a 5 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, the factors relating to Mr Heath's health mean that a five year review period is sufficient to achieve the aim of maintaining public confidence in the profession.

I consider therefore that a five year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr David Heath 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 26 April 2022, 5 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr David Heath remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Mr David Heath 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.



Decision maker: Alan Meyrick

Date: 21 April 2017

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