



Teaching
Regulation
Agency

Ms Fiona Patnode: Professional conduct panel outcome

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

September 2018

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

Teacher: Ms Fiona Patnode
Teacher ref number: 0838506
Teacher date of birth: 12 November 1971
TRA reference: 16856
Date of determination: 4 September 2018
Former employer: Varna Community Primary School, Manchester

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 3 September 2018 to 4 September 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Ms Fiona Patnode.

The panel members were Mr Ian Carter (teacher panellist – in the chair), Ms Alison Feist (former teacher panellist) and Dr Geoffrey Penzer (lay panellist).

The legal adviser to the panel was Ms Surekha Gollapudi of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the TRA was Mr Andrew Cullen of Browne Jacobson LLP solicitors.

Ms Patnode 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 20 June 2018.

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

1. On or around 3 November 2017, attended the School whilst under the influence of alcohol and / or consumed alcohol on the premises;
2. On or around 3 November 2017, had in her possession a bottle of alcohol in a classroom in the vicinity of one or more pupils.

The allegations have not been admitted by the teacher.

C. Preliminary applications

The panel considered an application from the presenting officer to proceed in the absence of Ms Patnode.

The panel was satisfied that the Agency complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel was also satisfied that the Notice of Proceedings complied with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel determined to exercise its discretion under paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher.

The panel understood that its discretion to commence a hearing in the absence of the teacher must be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel noted that the teacher may waive her right to participate in the hearing. The panel took account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. The panel was satisfied that the NOP was sent to the teacher's home address.

The Agency had also attempted to contact the teacher by telephone, and by email on more than one occasion, but received no response.

The panel therefore considered that the teacher had waived her right to be present at the hearing in the knowledge of when and where the hearing would take place.

The panel had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There was no indication that an adjournment might result in the teacher attending the hearing.

The panel had regard to the extent of the disadvantage to the teacher in not being able to give her account of events, in light of the nature of the evidence against her. The panel had the benefit of representations made by the teacher, during investigations conducted by the school and the teacher supply agency, and was able to ascertain the lines of defence. The panel noted that two witnesses were to be called to give evidence and the panel could test their evidence in questioning, considering such points as were favourable to the teacher, as were reasonably available on the evidence. The panel did not identify any significant gaps in the documentary evidence provided. The panel noted that should such gaps arise during the course of the hearing, it could take them into consideration in deciding whether the hearing should be adjourned for such documents to become available and in determining whether the presenting officer had discharged the burden of proof. The panel was also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel also noted that there were two witnesses present at the hearing, who were prepared to give evidence, and that it would be inconvenient for them to attend again.

The panel had regard to the seriousness of this case, and the potential consequences for the teacher and accepted that fairness to the teacher is of prime importance. However, it considered that in light of the teacher's waiver of her right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witnesses; that on balance, these were serious allegations and the public interest was in this hearing continuing today.

D. Summary of evidence

Documents

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

Section 1: Chronology and list of key people – pages 2 to 3

Section 2: Notice of Proceedings and Response – pages 5 to 12

Section 3: Teaching Regulation Agency witness statements – pages 14 to 22

Section 4: Teaching Regulation Agency documents – pages 24 to 64

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

Witnesses

The panel heard oral evidence from the headteacher and deputy headteacher of the school.

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.

Ms Patnode was employed at the school as a supply teacher. On or around 3 November 2017, it is alleged that Ms Patnode was under the influence of alcohol whilst at the school and also had in her possession an open bottle of vodka.

Findings of fact

Our findings of fact are as follows:

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

1. On or around 3 November 2017, attended the School whilst under the influence of alcohol and/or consumed alcohol on the premises

The headteacher gave oral evidence that on Monday 6 November 2017, she was notified that a teaching assistant at the school was concerned that Ms Patnode was under the influence of alcohol. The headteacher requested that Ms Patnode attend a meeting with her, and the deputy headteacher, immediately.

The headteacher went on to state that Ms Patnode presented as a person who was under the influence of alcohol as Ms Patnode was slurring her words, was dishevelled and smelled of alcohol.

This evidence was supported by the oral evidence of the deputy headteacher who confirmed that Ms Patnode appeared to be intoxicated and under the influence of alcohol and that there was a strong smell of alcohol.

The panel found the evidence of the headteacher and deputy headteacher to be credible and reliable.

The panel heard oral evidence from the deputy headteacher that Ms Patnode had left the premises at lunchtime on 6 November 2017. The panel was not provided with any clear

evidence that Ms Patnode drank alcohol on the school's premises. The panel therefore did not conclude that Ms Patnode had been consuming alcohol on the premises.

The panel noted that Ms Patnode stated in her interview with the headteacher and deputy headteacher that her flushed appearance was due to taking medication and / or related to [redacted]. The panel was not provided with any further evidence of either of these factors and was unable to determine whether this was true.

The panel found this allegation proven on the balance of probabilities.

2. On or around 3 November 2017, had in your possession a bottle of alcohol in a classroom in the vicinity of one or more pupils

The panel had regard to the notes of an interview with Ms Patnode, conducted by the school, in which Ms Patnode confirmed that she did have a bottle of vodka in her bag whilst at school on 6 November 2017. Ms Patnode states she bought the bottle of vodka that lunchtime, to drink at home that evening.

The panel heard oral evidence from both the headteacher and deputy headteacher that Ms Patnode's bag did contain an opened bottle of vodka on 6 November 2017. The headteacher and the deputy headteacher both stated in oral evidence that the bottle was not full. The panel found the headteacher and deputy headteacher to be credible and reliable witnesses.

The panel found this allegation proven on the balance of probabilities.

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

Having found the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations 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 Ms Patnode in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Ms Patnode is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach;

- 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 Ms Patnode amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel has also considered whether Ms Patnode's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel found that none of these offences are relevant.

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.

Having found the facts of particulars 1 and 2 proved, the panel finds that Ms Patnode'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 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 Ms Patnode, which involved being under the influence of alcohol whilst at school and being in possession of an open bottle of vodka whilst at school, there is a strong public interest consideration in respect of the protection of pupils.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Patnode were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel noted there is a strong public interest consideration in declaring proper standards of conduct in the profession as the conduct found against Ms Patnode was outside that which could reasonably be tolerated.

The panel further considers there is a public interest in retaining the teacher in the profession. No doubt has been cast upon her abilities as an educator and she is potentially able to make a valuable contribution to the profession in the future.

In view of 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 Ms Patnode.

In carrying out the balancing exercise the panel took account of the public interest considerations both in favour of and against prohibition as well as the interests of Ms Patnode. 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.

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.

There was no evidence to suggest that the teacher was acting under duress, or that her actions were not deliberate. However, the panel accepts that Ms Patnode did have a previously good history, as was evidenced by the oral evidence of both the headteacher and deputy headteacher. The panel also accepted that the incident was not part of a wider pattern of inappropriate behaviour.

The panel heard oral evidence from the headteacher and deputy headteacher that prior to this incident, Ms Patnode always presented in a professional manner, and had demonstrated in the year prior to 6 November 2017 that she was a good teacher, despite this incident, which resulted in her losing her position.

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, despite the severity of consequences for the teacher 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 Ms Patnode, despite the mitigation which was present. Accordingly, the panel recommends 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 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 panel noted that Ms Patnode had not engaged with this hearing and therefore the panel was not able to assess her level of insight into her actions. The panel was not persuaded that Ms Patnode understood the gravity of being under the influence of alcohol whilst children were under her care. The panel also heard no evidence from Ms Patnode as to what measures she would put in place to ensure she did not find herself in a similar situation in the future.

The panel felt 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 provision for a review period of two years, to enable Ms Patnode to demonstrate the necessary insight into her actions.

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 also 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 allegations proven and found that those proven facts amount 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 Ms Patnode should be the subject of a prohibition order, with a review period of two years.

In particular the panel has found that Ms Patnode is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel finds that the conduct of Ms Patnode fell significantly short of the standards expected of the profession.

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 Ms Patnode, 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. The panel has observed "findings against Ms Patnode, which involved being under the influence of alcohol whilst at school and being in possession of an open bottle of vodka whilst at school, there is a strong public interest consideration in respect of the protection of pupils." A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel's comments on insight and remorse which the panel sets out as follows, "The panel noted that Ms Patnode had not engaged with this hearing and therefore the panel was not able to assess her level of insight into her actions.". In my judgement the lack of evidence of insight means that there is some risk of the repetition of this behaviour and this risks future pupils safeguarding. 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 observe, "public confidence in the profession

could be seriously weakened if conduct such as that found against Ms Patnode were not treated with the utmost seriousness when regulating the conduct of the profession.”

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 Ms Patnode herself. She has subsequently secured work teaching and the panel comment “the panel accepts that Ms Patnode did have a previously good history, as was evidenced by the oral evidence of both the headteacher and deputy headteacher. The panel also accepted that the incident was not part of a wider pattern of inappropriate behaviour.”

A prohibition order would prevent Ms Patnode from continuing that work. A prohibition order would also clearly deprive the public of her contribution to the profession for the period that it is in force.

I have considered the panel’s comments, “The panel was not persuaded that Ms Patnode understood the gravity of being under the influence of alcohol whilst children were under her care. The panel also heard no evidence from Ms Patnode as to what measures she would put in place to ensure she did not find herself in a similar situation in the future.”

I have given less weight in my consideration of sanction therefore, to the contribution that Ms Patnode has made and is making to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by remorse or insight does not in my view satisfy the public interest requirement concerning 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 2 year review period.

I have considered the panel’s comments “ The panel heard oral evidence from the headteacher and deputy headteacher that prior to this incident, Ms Patnode always presented in a professional manner, and had demonstrated in the year prior to 6

November 2017 that she was a good teacher, despite this incident, which resulted in her losing her position.”

The panel has also said that a 2 year review period would “ enable Ms Patnode to demonstrate the necessary insight into her actions.”

I have considered whether a 2 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. I am in agreement with the panel and believe this is required to satisfy the maintenance of public confidence in the profession.

This means that Ms Fiona Patnode is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children’s home in England. She may apply for the prohibition order to be set aside, but not until 6 September 2020, 2 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Patnode remains prohibited from teaching indefinitely.

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

Ms Patnode has a right of appeal to the Queen’s Bench Division of the High Court within 28 days from the date she is given notice of this order.

A handwritten signature in black ink, appearing to read 'Dawn Dandy', with a stylized, sweeping flourish at the end.

Decision maker: Dawn Dandy

Date: 06 September 2018

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