

DECISION

Application no.: 0065
Application by: Mr. X
Respondent: Secretary of State for Education and Skills
Hearing date: 8th November 2001

Application

Mr. X (the applicant) appeals under regulation 13(1)(b) of the Education (Restriction of Employment) Regulations 2000 against a refusal in a letter dated 26th February 2001 by the Secretary of State for Education and Skills to revoke or vary a direction prohibiting or restricting his relevant employment.

Preliminary

1. The President made a Restricted Reporting Order under Regulation 25 on 1st June 2001 prohibiting the publication of any matter likely to lead members of the public to identify the applicant or any child.
2. We granted a request made by Mr. Engleman (counsel for Mr. X) that the Secretary of State's evidence should be called first on the basis that as all the evidence was available to both parties, it was not necessary to ascertain the Applicant's case at the first opportunity.

Facts

1. Mr. X has been a teacher since the 1960s. As a result of an incident in 1967 he was barred from teaching for five years, that ban being lifted in 1976.
2. Mr. X taught at a number of preparatory schools and had been at school A for a number of years by March 1997. He had various school responsibilities in addition to his teaching commitment and was a greatly valued member of the school community. On the evening of 6th March 1997, after having consumed a quantity of alcohol he wrote some inappropriate words in the condensation on the window of his school flat about one of the pupils in the school. As a result of other pupils discovering these words, he was dismissed from the school at once on the grounds of gross misconduct. As was required by the regulations, the head teacher of school A immediately

informed the Department for Education and Employment (DfEE) as it was then called.

3. On 24th June 1997 a member of the Teachers Misconduct Team at the DfEE wrote to Mr. X informing him that the Secretary of State had to consider whether he should use his power under regulation 10 of the Education (Teachers) Regulations 1993 to bar or restrict Mr. X's employment. The letter explained that before a decision was made the Secretary of State wished to seek a medical report from a consultant forensic psychiatrist (Dr. Mezey) and consider any explanations and representations that Mr. X might wish to make.

4. Dr. Mezey's report of 18th November 1997 concluded that the level of risk Mr. X posed to children was not of a degree that warranted a total ban from all employment involving children under the age of 18 and, consequently, it would not be unreasonable for him to resume a career in teaching. Paragraph 11 of Dr. Mezey's report proposed a number of ways in which Mr. X could be 'encouraged' to reduce the risk to children.

5. Having received the report from Dr. Mezey, the Teachers Misconduct Team interviewed Mr. X on 17th February 1998. A detailed record of that meeting was contained in our papers. Unbeknown to the officers, Mr. X had applied for and been offered (in December 1997) a job at school B to start from September 1998. Having been interviewed in February 1998, Mr. X heard nothing further from the DfEE. On 30th September 1999, the head teacher of school B became aware that Mr. X was barred from being a teacher. Mr. X left the school immediately. He subsequently contacted the DfEE and discovered that it had sent him a letter (dated 16th February 1999) notifying him of the bar. He states that he has never received that letter.

6. As he was entitled to do, Mr. X asked the Secretary of State to review the decision to bar him. This was done without a further interview and on 16th April 2000, the DfEE sent a letter confirming the decision of 16th February 1999. Mr. X applied for judicial review of the decision of the Secretary of State of 16th April 2000 on a number of grounds. Those proceedings were resolved by agreement on the basis that, as Mr. X had fresh information he wished to be considered, he would be re-interviewed by the Teachers Misconduct Team. This interview took place on 9th January 2001. In addition to the note of the interview, we have a copy of a memorandum prepared by Dr. Ernaelsteen (a consultant medical adviser employed by the DfES) as a result of that meeting. In an additional memorandum dated 17th January 2001, she set out (in paragraph 5) a number of conditions she thought might minimise the risk and prevent Mr. X from being employed in a similar situation to that at school A.

7. The Protection of Children Act Tribunal was established from 2nd October 2000 to determine appeals from (inter alia) the decision of the Secretary of State for Education and Skills not to revoke or vary a direction prohibiting or restricting the employment of a teacher. As a result, when Mr. X received the letter from the Secretary of State dated 26th February 2001 informing him that the prohibition would not be revoked or varied, Mr. X lodged his appeal to this Tribunal on 7th March 2001.

8. In addition to the reports mentioned above, we have been provided with a report from Ms Houston (a consultant Clinical and Forensic Psychologist) prepared on behalf of Mr. X and dated 9th July 2001.

Conclusions and Reasons

1. We agree with Ms Grey (counsel for the Secretary of State) that the key issues we needed to determine were how great a risk Mr. X poses to children and whether or not that risk could be sufficiently minimised by the imposition of conditions on Mr. X's employment were we to agree that he could return to teaching.

2. It was agreed between the medical experts that Mr. X is low risk. In fact, Dr. Mezey described him as "a very low risk" and Ms Houston thought he posed a "relatively" low risk. The fact that the reports of Dr. Mezey, Dr. Ernaelsteen and Ms Houston raised the possibility of Mr. X returning to teaching subject to some conditions leads us to conclude that Mr. X should be permitted to teach again, albeit subject to certain conditions.

3. We are aware that if we impose too many, or too onerous conditions, the effect of our decision may, in reality, mean that Mr. X is not able to teach again anyway. However, we believe that it is important to ensure the appropriate safeguards are in place. To do this, we need to reach some conclusions about Mr. X.

4. There is no doubt that Mr. X is a committed teacher who is very good at his job. However, we were concerned that he did not inform Dr. Ernaelsteen and the DfES officers when interviewed in February 1998 that he had been offered a post at School B. The fact that the contract of employment had not been signed by the time of the interview did not justify Mr. X not telling them about the offer. We do not regard this lack of openness as an indication of risk, however. We were told, and accept, that Mr. X is more open now. This is important as it is inevitable that in any future employment he will have to be completely frank about his past.

5. It appears that Mr. X is of a rigid character. Although this suggests that he will not take easily to any counselling that will be offered, he tells us that he is now more flexible and willing to take advantage of the professional help offered. Again, it will be necessary for him to work with a forensic psychiatric service and so he will have to become more flexible if he is not at present.

6. Mr. X takes on responsibilities as he enjoys his job and finds that he tends to have little life outside school. It was whilst he was stressed by pressure of work that this incident happened. The management of stress (by not involving himself in matters outside the classroom) will help and, of course, he will have the forensic psychiatric service to turn to should matters start to overwhelm him again.

7. Mr. X clearly enjoys working in the independent sector and were we to place upon him an embargo that he should not work in a school which has boarders, it is very likely that he will not be able to find a job. We believe that the appropriate condition in this regard would be that Mr. X should live away from the school (rather than on

the school site). We also feel that it would be appropriate to exclude Mr. X from any pastoral role in the school as that may inadvertently lead him to being in the boarding environment at the weekend (for example) and consequently defeat the intention of having him live away from the school.

8. To ensure that Mr. X does not pose a risk, he will have to be open with any head teacher who intends to employ him both at the interview and during the course of his employment. This openness would include, not only disclosure of his past, but also, importantly, any pressures or stresses felt by Mr. X. Part of the openness would be the provision of this decision to the head teacher.

9. Mr. X accepted that he would benefit from working with the forensic psychiatric/psychological service. We believe that that service will have to be accessed through his G.P. (by an extra contractual referral). Mr. X will need regular, though infrequent, appointments. Ms Houston recommends two monthly appointments and we agree. There should be a named individual in the psychiatric service who should provide regular reports to the DfES as and when required and instructed by the Department. For the avoidance of doubt, Mr. X will have to authorise the disclosure by the psychiatrist of any information about him to the DfES. We anticipate that whichever consultant is engaged in working with Mr. X, that person will need a copy of this Tribunal's bundle of documents to obtain a clear picture of Mr. X. Ms Houston told us that if instructed she would write a letter of instruction to the consultant psychiatrist. We were told by Mrs. Hunter of DfES Teachers Misconduct Team that they had one person at present who is subject to this type of monitoring.

10. We would hope, and expect, that the head teacher would liaise with the forensic psychiatric service as often as required to share any information and concerns each might have. Of course, we cannot order that or make it a condition of Mr. X's employment.

11. Whether or not there should be any conditions about preventing Mr. X from undertaking personal tuition and school holiday trips has not been an easy decision. Mr. X states that he has not been on a school organised trip for about 30 years so, in theory, that should not be a problem. Since all private tuition should be organised through the school and that since the head teacher will be fully aware of Mr. X's position, we would anticipate that it will be unlikely that Mr. X will be given any such work. We feel, therefore, that since the employing head teacher will need to see a copy of this decision, it is not necessary to make it a formal condition of Mr. X's employment.

12. In conclusion, we are satisfied that the magnitude of risk is not so high that Mr. X should be permanently excluded from teaching. He is a clearly committed (and inspiring) teacher. We are satisfied that we can strike the right balance between Mr. X's wish to teach and the risk he might pose. The conditions we will order were not in place in 1997. Had they been, it is possible that the incident might not have happened. We would not expect him to start to teach again until all the conditions have been met.

Order

1. We will lift the ban placed on Mr. X by the DfES on 16th February 1999
2. We impose the following conditions upon Mr. X's eligibility to teach:
 - a) He must refer himself through his G.P. to a forensic psychiatric service for the area in which he is teaching and living;
 - b) He must not reside on the school site;
 - c) He must not have any pastoral role within the school;
 - d) He must be open with the head teacher about his past and show him/her a copy of this decision.

Signed:

Chairman: Simon Oliver

Dated: 25th November 2001