



DECISION

Application No: 0042
Application by: Andrew Swindells
Respondent: Secretary of State for Health

Determination Date: 12 June 2001

Application

Andrew Swindells (the applicant) appeals under Section 4(l)(a) of the Protection of Children Act 1999 against the decision of the Secretary of State for Health to include him in the list kept under Section 1 of that Act.

Preliminary

The applicant requested, in his further information dated 27 February 2001, that the appeal should be decided without a hearing. Accordingly, the Tribunal has determined the application in accordance with Regulation 16 (1) of the Protection of Children Act Tribunal Regulations 2000.

Facts

1. The applicant is a single man aged 35 years. He graduated from Cambridge University with a degree in History following which he worked for approximately nine months as an auxiliary nurse in a Hospice. He then took up a place at a Cambridge theological college, where he graduated and was subsequently ordained in 1992 at the age of 27. In 1994 he accepted the post of Second Chaplain at Tonbridge School where he also shared responsibility for teaching Religious Studies and History. In May 1998 the applicant was arrested in Germany for possession of child pornography; his immediate resignation from his post at Tonbridge School was accepted. In June 1998 he was convicted in Germany of distribution of child pornography and was, as a result of the conviction, placed on the Consultancy Service Index. In October 2000 the applicant's name was transferred to the Protection of Children Act List where, following representations made by the applicant and a review, his name remains.
2. The Department of Health opposes the application against the inclusion of the applicant's name on the List kept under Section 1 of the Protection of Children Act 1999. The Department's opposition is based on the applicant's admission

that he bought, watched and attempted to pass on a video showing the sexual abuse of boys aged about 11-14 years by adult males, and that he was convicted in a German Court of the offence of distribution of child pornography.

3. The applicant admits the **offence** and expresses much regret for his actions. The applicant has told us, in his statement dated 6 April 2001, that he has taken responsibility for his actions by undertaking psychological counselling with a view to seeking explanations and addressing issues raised. He has altered his lifestyle and distanced himself from pastoral and schoolwork. He submits that he does not pose a risk to children and has never directly harmed a child; the applicant states that in his opinion there is a difference between direct harm to a child (in which he states that he has never engaged) and indirect harm caused to children by the pornographic industry.
4. We have been provided with a number of references dated August/September 1999 on behalf of the applicant, and note that the authors of the references include former colleagues from Tonbridge School, friends, a former pupil, and former colleagues from the applicant's work at a hospice and as a youth worker. We gave particular consideration to the reference from Dr. Watts, a friend of the applicant and a clinical psychologist, and a report from Mr. Gauntlett, a psychodynamic psychotherapist. It is not clear, however, whether the latter actually professionally examined or treated the applicant. We have also paid attention to the reference from Mr. Hammond, the headmaster of Tonbridge School, and the letter dated February 1999 from Mr. Hammond to the Department of Health.
5. We have been provided with a report dated December 1999 from Dr. Adrian Berry, a psychiatrist, commissioned by the Department for Education and Employment. We have also had regard to a report dated September 1998 from PS Cordier of the Kent County Constabulary detailing the police involvement with the applicant in connection with the incident in May 1998, both in Germany and in England. We have noted the police concerns that as the conviction was outside this country, the applicant's name cannot be placed on the Sex Offenders Register or the Police National Computer.
6. We have noted that the individual cases of those names included on the Consultancy Service Index were reviewed prior to their transfer to the Protection of Children Act List. The applicant had the opportunity to make representations to the Department of Health at that time and, following consideration of those representations, the applicant's name was included in the list.

Conclusions with Reasons

- a. We have carefully considered all the papers which the parties submitted to the Tribunal in advance, and we have had regard to the Protection of Children Act 1999. We have in particular considered the applicant's right to work in his chosen field, but we have also considered our objective which is to protect children.

- b. We acknowledge that we must be satisfied on both the following points if this appeal is to be dismissed:-
- (i) That the applicant was guilty of misconduct which harmed a child or placed a child at risk of harm.
 - (ii) That the applicant is unsuitable to work with children.
- c. We accept that there has been misconduct by the applicant which harmed a child. There is evidence that the actions of the applicant leading up to the incident in May 1998 were premeditated and pre-arranged and involved children. We do not accept the argument that because the children involved in the pornographic video were anonymous, the applicant's behaviour does not amount to misconduct. We are of the opinion that by watching the three hour long video twice and trying to exchange it for a similar one in Germany, the applicant demonstrated behaviour which harmed children.
- d. We do accept that the applicant's behaviour at Tonbridge School before the incident gave no cause for concern. We have been impressed by the references provided as to the applicant's background, work experience and strengths prior to the incident, and the steps he has since taken to seek to explain and address his behaviour. However, we do not believe that the references give us any expert opinion or insight into the applicant's suitability to work with children now. We also note that all the references are dated August/September 1999 and we have not been assisted by any more recent references.
- e. We considered carefully the opinions of Mr. Hammond in February 1999 and Reverend Bell, the Senior Chaplain at Tonbridge School, in September 1999 that the applicant did, at that time, present as someone who should not work unsupervised with children. We noted that Mr. Hammond changed his view in September 1999 and considered that the applicant posed no threat to young people. We were unable to find any evidence or explanation for this inconsistency and change of opinion.
- f. We have read the very detailed and informative psychiatric report from Dr. Berry. We have noted that whilst concluding that the applicant does not present as a person with a high risk of offending against children, Dr. Berry is unable to give a satisfactory explanation for the applicant's offence involving child pornography. We consider that the recommendations in the report are inconclusive as to future risk assessment and to the applicant's suitability to work with children now. We believe that we would have been helped by an up-to-date psychiatric report which may have taken into account steps which the applicant has taken to address his inappropriate behaviour, and given us an insight into any future risk.
- g. We have had regard to the letter dated September 1999 from Tim Gauntlett, a psychodynamic psychotherapist, which told us that the applicant had been in weekly therapy since November 1998. However, we have no further

information regarding ongoing therapy, the results of such therapy or if the therapy has concluded. In the absence of more recent information, we are not able to satisfy ourselves that the applicant no longer poses a risk of re-offending.

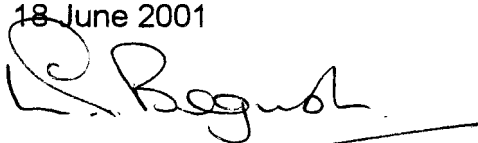
- h. We were disappointed not to have had the benefit of any references, reports or information from anyone who has treated, or had any professional or personal contact with the applicant since his move to Yorkshire. In all the circumstances, we find that the applicant remains a continuing risk and is unsuitable to work with children.

Order

The appeal is dismissed.

Dated 18 June 2001

Signed

A handwritten signature in black ink, appearing to read 'L. Bogush', written over a horizontal line.

Chairman Mrs. Lisa P. Bogush