**Trojan Horse by Lung Theatre – a guide to the legal landscape**

Following the publication of Peter Clarkes’ report (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/340526/HC\_576\_accessible\_-.pdf), it fell on the Department for Education to take action. Unfortunately, before it is possible to understand what action they took, and what the legal events referenced in the play are, a little background is necessary.

One of Michael Gove’s first actions upon arrival at the Department of Education was to abolish the independent regulator of the teaching profession created by the Blair government. Seemingly in response to one weak decision, and without any significant consultation, the General Teaching Council for England was erased from existence and its powers to regulate the teaching workforce taken back into the department. Mr Gove wanted a “robust” system and Parliament duly passed laws that granted him the power to prohibit an individual from teaching where there was a “case to answer”.[[1]](#footnote-1)

Someone must have explained to Mr Gove that removing the right of a professional to pursue their profession amounts to the “determination of their civil rights” and as such cannot be done on the say-so of a politician. The determination of civil rights requires a fair trial in accordance with article 6 of the European Convention of Human Rights. To satisfy this requirement a new agency was created to provide the trappings of a fair trial for accused teachers. That agency has been rebranded three times during the course of its short life but at the time of the Birmingham Schools hearings it was called the National College for Teaching and Leadership. It was, and is, simply a part of the Department for Education. The final decision remains with the Secretary of State for Education but accused teachers get a hearing before an independent panel who act as factfinders and then make a recommendation as to the outcome to the Secretary of State.

Under other powers (section 128 Education and Skills Act 2008), the Secretary of State can bar an individual from being involved in the management of schools. Stopping somebody from filling the voluntary role of the governor is regarded as a lesser step than preventing someone carrying on their profession and no fair trial is required. Instead the Secretary of State writes a “minded to” letter to the accused person, as in: “I am minded to bar you from being involved in the management of schools because I am of the view that you have acted contrary to fundamental British values by agreeing to allow an undue amount of religious influence in schools in Birmingham”. The Secretary of State sends all the material they have considered when arriving at their “minded to” position and the accused person is invited to try and persuade the Secretary of State to change their mind. No hearing takes place, this is all a paper-based procedure. Once the Secretary of State has made a decision and confirmed the bar, it is open to the governor to appeal and at this stage a hearing takes place at the “First Tier Tribunal”. The test on appeal is whether or not the Secretary of State’s decision was “wrong”. It’s always hard to win such an appeal, the First Tier Tribunal may not agree wholeheartedly with what was done by the Secretary of State but persuading them that what has happened was “wrong” is an uphill task.

In the play you see two parallel sets of proceedings in action: the case against the teachers, where a fair trial takes place before the National College of Teaching and Leadership; and Tahir Alam, the Governor, been barred without a fair trial by the administrative action of the Department for Education and then failing to overturn that bar on appeal.

To further complicate matters, the play conflates two sets of proceedings against teachers, particularly when discussing the failure of disclosure. In the leadership trial the case was eventually stopped because to allow it to continue, given the way the lawyers acting for the government had behaved, so offended the panel’s sense of propriety and justice that in their view it was wrong to allow the case to go on. That meant that the accused teachers were not guilty and in the old-fashioned language of the legal profession left the hearing “without a stain on their character”. However, morally and emotionally, as set out powerfully in the play, it left them in limbo. A lot of evidence had been given that explained the ethos of the school and the history of praise by Ofsted and the Department of Education for the very practices which were later criticised, but no judgment was ever given setting all that out. The wrongness that so offended the panel related to a failure by the lawyers acting for the government to explain why they had not disclosed material passed to them by the Peter Clark enquiry to the defence lawyers in the NCTL case. There is, of course, more to it than that, and those who wish can read the panel’s judgement still available online here: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/619386/PVL_Panel_decision_and_reasons_for_web.pdf>

It is noteworthy that the persistence of one barrister, Katie Langdon, led to the eventual admission by the government lawyers that the panel had been persistently misled. Katie was, as the panel noted, given a “torrid time” for her actions in refusing to accept the assurances of the lawyers but her obduracy, in the face of severe criticism, won the day.

In a parallel set of proceedings other teachers, some of whom cooperated with the playwrights and their narratives form part of the teacher’s story in the play, were found guilty of Unacceptable Professional Conduct in relation to their alleged behaviours whilst teaching PHSE lessons. They appealed to the High Court and won their appeal on the basis that the lawyers acting for the government had failed in their duty of disclosure. In this instance, the failure to disclose related to a failure to appreciate that all of the expert material the leadership trial was throwing up should have been disclosed to all of the teachers accused in other trials because it assisted their defence. Again, this is a simplification of a complex legal situation and those who wish to can read the full High Court decision here: <https://www.bailii.org/ew/cases/EWHC/Admin/2016/2507.html>

Finally, the guidance about collective worship and religious education that Anne Connor was unaware of, and never drew Peter Clarke’s attention to, is still current and is available here: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/281929/Collective_worship_in_schools.pdf>

1. 1. Section 141b Education Act 2002 (inserted by section 8 Education Act 2011) directs that: “Where the Secretary of State finds on an investigation of a case ... that there is a case to answer, the Secretary of State must decide whether to make a prohibition order in respect of the person.” [↑](#footnote-ref-1)