

**General Teaching Council for Scotland
Fitness to Teach Panel**

**Full Hearing
6 August 2012**

Name of Respondent:	Mr David Morrissey
Registration Category:	Secondary – Chemistry / Maths / Science
Presenting Officer: For Respondent:	Mr Greg Smith Not Represented
Convener:	Mr Donald MacKay
Legal Assessor:	Mr David Preston

Notice and attendance

The Panel was satisfied that Notice of the hearing had been served on the Respondent in accordance with the Fitness to Teach and Appeals Rules.

The Presenting Officer provided a Certificate of Intimation dated 2 July 2012 and an electronic proof of delivery showing that the Notice of Proceedings dated 2 July 2012 were delivered to the registered address of the Respondent and signed for as received on 3 July 2012. The Panel was satisfied that the Respondent had proper notice of the hearing.

The Panel considered a letter from Ram Solicitors dated 24 July 2012 wherein the Respondent's representative confirmed that she had not been instructed to represent the Respondent at the hearing. The Panel was also provided with a copy of a letter from the Respondent dated 29 July 2012 in which he stated that he would not be attending the hearing or instructing a representative to attend on his behalf. The Panel was therefore satisfied that the Respondent had voluntarily chosen to absent himself from the proceedings.

The Panel decided that in all of the circumstances the hearing should proceed in the Respondent's absence.

The Panel drew no adverse inference from the fact that the Respondent neither attended nor was represented at the hearing.

Procedural issues

The Panel considered a letter from Ram Solicitors on behalf of the Respondent requesting that the hearing be held in private. The letter indicated that the Respondent's current domestic arrangements involved a child with a disability and that the Respondent wished the Panel to conduct matters in private to avoid an adverse effect on the child.

The Panel was referred by the Presenting Officer to the GTCS Practice Statement on Conducting Hearings in Private and, in particular, to its duty to balance the interests of the public against those of the Respondent or individuals involved in the case and the interests of justice, issues of private life and effect on children.

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The Panel was mindful of the matters raised by the Respondent's solicitor and the Presenting Officer and, in particular, considered whether intimate and sensitive details about the child in question would be raised but did not consider that this applied to the circumstances of this case. In addition, the Panel noted from the solicitor's letter that the circumstances behind the Respondent's court cases had been explained at length to all of the Respondent's children including the child in question.

Accordingly, in the interests of transparency, public trust and confidence in the profession, the Panel determined that the proceedings should be held in public in accordance with Rule 1.7.2 and that the exceptions in terms of Rule 1.7.3 had not been established to the Panel's satisfaction.

Complaint

The complaint against the Respondent considered at the hearing was as follows:

1. You were at Hamilton Sheriff Court on 26 April 2011 convicted of:
 - a. On 15 and 16 February 2010 at [address removed] Allanton, you did conduct yourself in a disorderly manner, shout, swear, repeatedly telephone Lorraine Hatcher your wife and [Child A], born [date of birth removed], then both residing at [address removed], and Marion Lawson, then residing at [address removed] aforesaid, utter threats, repeatedly attend at the house at [address removed] aforesaid, bang on the door of said house at [address removed] aforesaid, place said Lorraine Hatcher, [Child A] and Marion Lawson in a state of fear and alarm and commit a breach of the peace.
 - b. On 16 February 2010 on a road or other public place, namely [address removed] Wishaw, [address removed] Allanton, and other roads within North Lanarkshire, you were, when driving a mechanically propelled vehicle, namely motor car registered number unknown, unfit to drive through drink or drugs; contrary to the Road Traffic Act 1988, Section 4(1).
 - c. On 18 and 19 March 2010 at [address removed] Wishaw, you did assault Lorraine Hatcher, your wife, then residing there, in that you did repeatedly put your arms around her, attempt to kiss her on the mouth, threaten to ravish her, unbutton her trousers, attempt to place your hand under her clothing, pull off her boots, handle her breasts, and press your fists into her body.
 - d. You being an accused person and having been granted bail on 22 March 2010 at Hamilton Sheriff Court in terms of the Criminal Procedure (Scotland) Act 1995 and being subject to the condition *inter alia* not to approach or contact Lorraine Hatcher, did on 3 August 2010 at [address removed] Wishaw fail without reasonable cause to comply with said condition in respect that you did contact said Lorraine Hatcher by telephone; contrary to the Criminal Procedure (Scotland) Act 1995, Section 27(1)(b).
2. You were at Hamilton Sheriff Court on 18 October 2011 convicted of:
 - a. On 10 July 2011 at [address removed] Wishaw, you did steal a driving licence.

It is further alleged that your fitness to teach is impaired.

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Findings of fact

The Panel gave careful consideration to all of the evidence adduced and took account of the submissions made by the parties in making its findings of fact.

The Panel was mindful that the burden of proof rested on the Presenting Officer and that the standard of proof required is that used in civil proceedings, namely the balance of probabilities.

The Panel considered each paragraph of the complaint separately and made the following findings:

1. Paragraph 1 of the complaint was found proven.

The Presenting Officer referred to an extract conviction dated 21 June 2011 which related to the charges disposed of by the court on 26 April 2011 being a breach of the peace, a contravention of the Road Traffic Act 1988 s4(1), a sexual assault and a contravention of the Criminal Procedure (Scotland) Act 1995 s27(1)(b) which had been lodged.

The Panel noted that the extract conviction referred to the accused's name as David Hatcher and that the charges referred to David Robert Hatcher otherwise known as David E Morrissey. The Panel was referred to a Statutory Declaration of Change of Name or Surname from David Robert Hatcher to David E Morrissey dated 30 September 2010 and was satisfied that the extract conviction referred to the Respondent.

In terms of Rule 3.1.4 and in the absence of any rebuttal evidence by the Respondent in terms of Rule 3.1.5 the Panel found the complaint to be proven.

2. Paragraph 2 of the complaint was found proven.

The Presenting Officer referred to an extract conviction dated 18 December 2011 had been lodged and related to the charges disposed of by the court on 18 October 2011 being theft of a driving licence.

In terms of Rule 3.1.4 and in the absence of any rebuttal evidence by the Respondent in terms of Rule 3.1.5 the Panel found the complaint to be proven.

Findings on Fitness to Teach

The Panel determined that the Respondent's conduct falls short of the standards expected of a registered teacher and that his fitness to teach is therefore impaired.

The Presenting Officer reminded the Panel of its duty to determine that the Respondent's fitness to teach is impaired as at the date of the hearing and is likely to remain so in the future. He referred the Panel to a number of cases.

He referred to the case of *Meadow v General Medical Council* [2006] EWCA Civ 1390 at paragraph 32 in terms of which it was not the function of the Panel to punish the Respondent for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise.

The Presenting Officer also referred to the case of *Cheatle v General Medical Council* [2009] EWHC 645, in particular, paragraph 22 in which Mr Justice Cranston stated:

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“...the context of the doctor’s behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor’s behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor’s misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor’s misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practise Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct.”

He also referred to paragraph 48 of *Yeong v General Medical Council* [2009] EWHC 1923: where a Panel considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between the medical practitioner and patient, thereby undermining public confidence in the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and the profession.

The Panel was satisfied that the principles applying in these cases to the medical profession applied equally to the teaching profession.

The Panel noted that the circumstances in the present case did not relate directly to the relationship between the Respondent and pupils as outlined in *Yeong*. However, it considered that the gravity of the offences was such as to undermine public confidence in the teaching profession.

The Presenting Officer also referred the Panel to paragraphs 1.3, 1.4 and 1.6 of the Code of Professionalism and Conduct 2008 (“COPAC”) which had been in force at the time of the complaints. The nature of the charges of which he had been convicted specifically related to violence, sexual assault and dishonesty. He submitted that the Respondent’s conduct clearly fell short of the standards expected of a registered teacher as set out in COPAC.

There was no evidence placed before the Panel on behalf of the Respondent in relation to the issue of impairment of his fitness to teach nor was there any evidence that he had reflected on his actions or shown any remorse.

The Panel was mindful of these representations and the GTCS Indicative Outcomes Guidance Practice Statement and made its determinations for the following reasons:

- The Panel accepted the Presenting Officer’s submissions and determined that the nature of the offences was such as to mean that his conduct did fall short of that set out in COPAC.
- The seriousness of the matters at issue, with reference to COPAC.
- The offences of which he was convicted on 26 April 2011 occurred between February and August 2010; and that of which he was convicted on 18 October 2011 occurred on 10 July 2011; these therefore did not constitute an isolated incident.
- There was no evidence of remorse or reflection on the part of the Respondent, nor any steps taken to address the behaviour.
- The inclusion of an offence of theft indicated a lack of honesty and trustworthiness as provided for in COPAC.
- The behaviour indicated the Respondent had failed to maintain an awareness of his position as a role model to pupils.

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Disposal

The Panel considered the options available to it in terms of the GTCS Indicative Outcomes Guidance Practice Statement. It was mindful of its duty to have a proportionate regard to the public interest, the interests of the Respondent and the particular circumstances of the case including maintenance of the public's confidence in the teaching profession and of GTCS as a professional regulator.

The Panel considered that in view of the gravity of the offences of which the Respondent had been convicted, to make no order or to issue a reprimand would not be appropriate disposals. Further, the Panel was unable to identify any appropriate conditions which could be imposed on the Respondent's registration. Any such conditions would require to be measurable and enforceable and not impact on the Respondent's private life.

Accordingly, in view of the seriousness of the convictions, the Panel found that it had no option but to order the Registrar to remove the Respondent's name from the Register.

Once the Respondent has been removed from the Register, the Respondent remains so removed unless and until an application for re-registration is made by him and a Fitness to Teach Panel directs that the application be granted. The Panel directed that the Respondent should be prohibited from making an application for re-registration for a period of 2 years from the date of removal. The Panel considered that a shorter time period was inappropriate in view of the gravity and nature of the offences of which he had been convicted and in the absence of any evidence of mitigating factors.

Protection of Vulnerable Groups (Scotland) Act 2007

The Panel decided to exercise its discretion to make a referral under section 8 of the Protection of Vulnerable Groups (Scotland) Act 2007 in order that Scottish Ministers may consider whether or not the Respondent should be barred from working with children. The Panel decided to do so because it considered that a referral ground set out in section 2 of that Act is met in that while a child had not been directly involved in the incidents, a child was present when a Breach of the Peace was committed by the Respondent, thus placing the child at risk of harm.

Appeal

The Respondent will receive written notice of this decision within 14 days and has the right to appeal to the Court of Session against the decision within 28 days of the date of service of that written notice.

The Respondent will remain on the Register until the appeal period has expired and any appeal lodged within that period has been determined.

(Signed)

Convener.....

Legal Assessor.....