



National College for
Teaching & Leadership

Mr Luke Atkinson: Professional Conduct Panel outcome

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

June 2014

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher:	Mr Luke Atkinson
Teacher ref no:	09/52741
Teacher date of birth:	27 March 1989
NCTL Case ref no:	0010098
Date of Determination:	25 June 2014
Former employer:	Balby Carr Community Sports and Science College

A. Introduction

On 28 March 2014 a case management hearing took place, in preparation for a hearing of a Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”), relating to Mr Luke Atkinson.

The Panel convened to consider the substance of the case on 24 and 25 June 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH.

The Panel members at the hearing of 24 and 25 June 2014 were Professor Helen Valentine (Lay Panellist– in the Chair), Mr Tony James (Teacher Panellist) and Mrs Ruth Winterson (Teacher Panellist).

The Legal Adviser to the Panel on 24 and 25 June 2014 was Mr Thomas Whitfield of Eversheds LLP Solicitors.

The Presenting Officer for the National College was Ms Laura Ryan of Kingsley Napley LLP Solicitors.

Mr Luke Atkinson was not present at the case management hearing or the substantive hearing and was not represented.

The substantive hearing took place in public, save for the parts when Pupil A’s evidence was being given. The hearing was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 19 March 2014.

It was alleged that Mr Luke Atkinson was guilty of unacceptable professional conduct/ conduct that may bring the profession into disrepute, in that, whilst employed at Balby Carr Community Sports and Science College he:

1. In June 2012 failed to maintain professional boundaries by:
 - a. Requesting that Pupil A and B join him in a hotel room;
 - b. Taking Pupil A to a hotel room; and
 - c. Engaging in sexual activity with Pupil A.
2. Failed to co-operate fully with the police investigation into a serious safeguarding matter.
3. Attempted to mislead those responsible for investigating the incidents within the school.

Mr Atkinson has admitted allegation 1.b. He has not admitted any of the other allegations. Mr Atkinson has not admitted that allegation 1.b. (or any of the other allegations) amounts to unacceptable professional conduct or conduct that may bring the profession into disrepute.

C. Preliminary applications

At the case management hearing, a panel of the National College considered applications made by the Presenting Officer for (in summary):

- a. permission to seek a witness summons in respect of Pupil A;
- b. a direction that Pupil A be treated as a vulnerable witness;
- c. permission for Pupil A to give evidence via video-link; and
- d. for that evidence to be given in private.

That panel allowed each of the applications.

At the substantive hearing, the Panel considered an application from the Presenting Officer that the hearing proceed in the absence of Mr Atkinson. The Panel noted the indications that Mr Atkinson had given in writing that he did not intend to attend the hearing and the e-mail from Mr Atkinson's union representative that he was not instructed

to attend on Mr Atkinson's behalf. The Panel found that Mr Atkinson had deliberately and unequivocally waived his right to participate in the hearing in person; that there was no indication that an adjournment might result in Mr Atkinson attending; that an adjournment may however jeopardise the attendance of the key witness (Pupil A); and that there was a public interest in the hearing taking place within a reasonable time of the events to which it related. On these bases the Panel decided to continue in the absence of Mr Atkinson.

The Panel also considered Mr Atkinson's written request that the public be excluded from the hearing. The Panel decided that excluding the public from the entire hearing would be contrary to the public interest and accordingly determined that the hearing, save for the evidence of Pupil A, would be conducted in public.

During the course of the hearing the Panel considered the Presenting Officer's application that Witness C provides oral evidence by telephone. The Panel decided that such evidence may reasonably be considered to be relevant to the case; that it was fair to admit that evidence in the form of a telephone call; and went on to exercise its discretion so as to admit the oral testimony of Witness C given by telephone.

D. Summary of evidence

Documents

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

- Section 1: Chronology and anonymised pupil list, with page numbers from 1 to 4.
- Section 2: Notice of Proceedings and Response, with page numbers from 5 to 12.
- Section 3: NCTL Witness Statements, with page numbers from 13 to 28.
- Section 4: NCTL Documents, with page numbers from 29 to 204.
- Section 5: Teacher Documents, with page numbers from 205 to 211.

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

Included with the bundle of documents sent to Mr Atkinson ahead of the hearing, and available at the hearing, were two DVDs containing CCTV footage from a hotel. The Panel were shown this footage during the hearing.

In addition, the Panel agreed to accept the following, which they also read:

Document description	Page numbers
E-mail exchange between Steve Lloyd NASUWT representative of Luke Atkinson and Jessica Ward of Kingsley	212-214

Napley LLP solicitors. 23 June 2014.	
Note of telephone call between Pupil B and Jessica Ward of Kingsley Napley LLP solicitors. 23 June 2014.	215
Note of telephone call between Witness C and Jessica Ward of Kingsley Napley LLP solicitors. 24 June 2014.	216

Witnesses

The Panel heard oral evidence from the following witnesses, each of which was called by the Presenting Officer:

- Pupil A, former pupil at Balby Carr Community Sports and Science College (evidence given via video-link);
- Witness B, at the time of the alleged facts an Assistant Headteacher and the Child Protection Officer at Balby Carr Community Sports and Science College; and
- Witness C, the Detective Constable involved in the police investigation of the alleged facts giving rise to the allegations being considered by the Panel (evidence given via telephone).

E. Decision and reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

Summary of Evidence

Mr Luke Atkinson commenced his employment as a Physical Education teacher with Balby Carr Sports and Science College on 1 September 2010. In June 2012 Pupil A was a sixth form student at Balby Carr Sports and Science College and was 17 years old. Pupil A had not herself been taught by Mr Atkinson. On the evening of Saturday 16 June 2012 and/or early hours of Sunday 17 June 2012, Pupil A and Pupil B were in the Priory Nightclub, Doncaster, with a group of friends. Mr Atkinson also happened to be at the Priory Nightclub at the same time as Pupil A and Pupil B. It is alleged and the teacher admits that he thereafter took Pupil A to a hotel room. It is the National College's case that he engaged in sexual activity with Pupil A at that time. The teacher denies that he engaged in any sexual activity with Pupil A at all.

Following initial Local Authority Designated Officer (“LADO”) strategy meetings, a police investigation was commenced, but Mr Atkinson was not charged as Pupil A did not wish to pursue the matter.

At a school disciplinary hearing on 29 November 2012 it was decided that Mr Atkinson had taken Pupil A to a hotel room and that he had lied to the police about the matter. As a result Mr Atkinson was dismissed with immediate effect. The decision makers at the disciplinary hearing (who had not had the benefit of hearing oral evidence from Pupil A direct) did not find substantiated the allegation that Mr Atkinson had had sexual intercourse with Pupil A.

Further LADO strategy meetings were conducted in relation to this matter. Those present at LADO strategy meetings following the conclusion of the disciplinary proceedings disagreed with the disciplinary hearing’s decision in respect of the sexual allegation and believed that the information available suggested that sexual intercourse had taken place.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against Mr Atkinson proven, for these reasons:

Whilst employed at Balby Carr Community Sports and Science College you:

1. In June 2012 failed to maintain professional boundaries by:

...

b. Taking Pupil A to a hotel room; and

The allegation has been admitted by Mr Atkinson and is corroborated by Pupil A and CCTV footage from the hotel. The allegation is found proven.

c. Engaging in sexual activity with Pupil A

The Panel considered the evidence of Pupil A, delivered by video-link, which supported this allegation. The Panel took into account that some subtleties of tone or body language may have been lost through the use of this method rather than Pupil A providing evidence to the Panel in person. Nonetheless the Panel found Pupil A to be a very credible witness.

The Panel noted that Pupil A was reluctant to give her evidence, given the impact that this could have on Mr Atkinson and indeed that a witness summons had been required to secure her evidence. This reluctance had been consistently evident throughout the investigation of these matters and reinforced to the Panel their belief that Pupil A was not motivated by any malice towards Mr Atkinson; rather that her account was an honest recollection of events.

The Panel was able to test Pupil A's evidence through questioning and found it to be consistent with her previous evidence, given to the police and school.

The Panel considered Mr Atkinson's denial of this allegation and the alternative version of events now put forward as to what happened in the hotel room. The Panel noted that Mr Atkinson had not been present before the Panel for his version of events to be tested by cross-examination or for the Panel to view his body language and tone when presenting his evidence. The Panel also noted that Mr Atkinson's version of events had been inconsistent, in that he had denied meeting Pupil A in the Priors nightclub and had denied taking her to a hotel room, until he was informed of CCTV footage contradicting his position. These factors led the Panel to place less weight on Mr Atkinson's evidence than it would otherwise have done.

Taking into consideration all of these factors, the Panel preferred the evidence of Pupil A and accordingly found this allegation proven.

2. Failed to co-operate fully with the police investigation into a serious safeguarding matter;

The Panel was satisfied that the police investigation was into a serious safeguarding matter, involving as it did allegations of sexual activity with a pupil.

The Panel noted Mr Atkinson's indication to the police that he had not taken Pupil A to a hotel room and that Mr Atkinson now accepted that he had in fact taken Pupil A to a hotel room.

A meeting note presented to the Panel also suggested that Mr Atkinson accepted in a school investigation meeting on 3 September 2012 that he had not given an accurate account to the police.

The Panel further noted that Mr Atkinson continued, at the time of the hearing, to deny that he had engaged in sexual activity with Pupil A and that the Panel had found that, contrary to this, Mr Atkinson did engage in sexual activity with Pupil A in a hotel room.

In light of the above, the Panel concluded that Mr Atkinson had failed to co-operate fully with the police investigation into a serious safeguarding matter and accordingly that this allegation was proven.

3. Attempted to mislead those responsible for investigating the incidents within the school.

The Panel noted Mr Atkinson's indication to the school, in the investigation interview of 3 September 2012, that he had not arrived with Pupil A at the hotel but that, once informed that CCTV existed showing him arriving at the hotel with Pupil A, Mr Atkinson admitted this.

The Panel also noted that the minutes of the meeting of the disciplinary hearing of 29 November 2012 indicated that Mr Atkinson at that stage accepted that he had not initially told the school the full truth.

The Panel further noted that Mr Atkinson continued, at the time of the hearing, to deny that he had engaged in sexual activity with Pupil A and that the Panel had found that, contrary to this, Mr Atkinson did engage in sexual activity with Pupil A in a hotel room.

In light of the above, the Panel concluded that Mr Atkinson had attempted to mislead those responsible for investigating the incidents within the school. Accordingly the Panel found this allegation proven.

We have found the following particulars of the allegation against Mr Atkinson not proven, for these reasons:

1. In June 2012 failed to maintain professional boundaries by:

a. Requesting that Pupil A and B join you in a hotel room;

Mr Atkinson denies this allegation.

During the evidence Pupil A provided to the Panel, it was not confirmed that Mr Atkinson requested both Pupil A and Pupil B to join him in a hotel room.

Pupil B has stated that Mr Atkinson requested that Pupil A and B join him in a hotel room. However, Pupil B's evidence has only been submitted as hearsay, in that she has provided a written statement but has not attended the hearing to provide oral evidence. Accordingly, the Panel places less weight on Pupil B's evidence than that of Pupil A, as the evidence has not been tested by cross-examination nor has the Panel had the benefit of seeing and hearing Pupil B to assess her credibility. Further, Pupil B's statement to the Panel differs in a number of respects from the evidence she provided to the police and school, which leads the Panel to place less weight on Pupil B's statements.

Weighing all of the evidence before it and taking into account the above factors the Panel concludes that this allegation has not been proven on the balance of probabilities.

Findings as to Unacceptable Professional Conduct and/or Conduct that may bring the profession into disrepute and/or conviction of a relevant offence

Having found the facts of allegations 1.b., 1.c, 2 and 3 proven, the Panel further finds that these amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

In considering the allegations that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the ‘Guidance’.

The Panel is satisfied that the conduct of Luke Atkinson in relation to the facts found proven, involved breaches of the Teachers’ Standards. The Panel considers that by reference to Part Two, Luke Atkinson 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
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher’s professional position;
 - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions.

The Panel is satisfied that the conduct of Mr Atkinson fell significantly short of the standards expected of the profession.

The Panel has also considered whether Luke Atkinson’s conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the Guidance. The Panel has found that Luke Atkinson’s conduct did display behaviours associated with an offence involving sexual activity. The Guidance indicates that where behaviours associated with such an offence exist, a Panel is likely to conclude that an individual’s conduct would amount to unacceptable professional conduct.

The Panel notes that the proven allegations all took place outside of the education setting but that they involved a then current pupil at the school where he worked (Pupil A) being exposed to Luke Atkinson’s behaviour in a harmful way.

Accordingly, the Panel is satisfied that Luke Atkinson is guilty of unacceptable professional conduct.

As to whether the allegations proven amount to conduct that may bring the profession into disrepute, 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 pupil's lives and that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct are serious and the conduct displayed would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The Panel therefore finds that Luke Atkinson's actions constitute 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 unprofessional 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.

No character statements have been provided to the Panel in relation to Mr Atkinson, but as far as the Panel is aware, Mr Atkinson is of previous good character.

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 Teacher Misconduct – Prohibition of Teachers 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.

There is a strong public interest consideration in respect of the protection of pupils given the finding that Mr Atkinson engaged in sexual activity with a pupil.

Similarly, the Panel considers that public confidence in the profession could be seriously weakened if taking a pupil to a hotel room, engaging in sexual activity with a pupil, failing to co-operate fully with a police investigation into a serious safeguarding matter and attempting to mislead those investigating the incidents within the school, were not treated with the utmost seriousness when regulating the conduct of the profession.

The Panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Atkinson was outside that which could reasonably be tolerated.

Notwithstanding 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 Mr Atkinson. In forming a judgement in this respect, the Panel was mindful of the fact that prior to these findings being made against him, Mr Atkinson was considered to be a person of good character with, to the Panel's knowledge, no criminal or disciplinary sanctions recorded against him.

In carrying out the balancing exercise the Panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Atkinson. The Panel took further account of the Teacher Misconduct – Prohibition of Teachers 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 are:

- serious departure from the personal and professional conduct elements of the teachers' standards
- misconduct seriously affecting the education and/or wellbeing of pupils, and particularly where there is a continuing risk
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

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. The Panel has found that the teacher's actions were deliberate and there was no indication that he was acting under duress. The Panel did however find that the teacher had a previously good history.

The Panel is of the view that Prohibition is both proportionate and appropriate. We have decided that the public interest considerations outweigh the interests of Mr Atkinson. The potential harm to a pupil, abuse of trust and involvement of sexual misconduct were significant factors in forming that opinion. Accordingly, the Panel makes a recommendation 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 for them to decide to recommend that a review period of the order should be considered. The Panel was mindful that the Teacher Misconduct – Prohibition of Teachers Advice advises 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 two years.

The Teacher Misconduct – Prohibition of Teachers Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours is serious sexual misconduct, eg where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons. The Panel has found that Mr Atkinson has engaged in sexually activity with Pupil A which resulted in, or had the potential to result in, harm to Pupil A.

Notwithstanding the above, the Panel felt that 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 provisions for a review after a period of five years.

In reaching this conclusion the Panel took into consideration the fact that Pupil A had indicated that she had engaged in the sexual activity with Mr Atkinson willingly at the time; that Mr Atkinson was only six years older than Pupil A when the sexual activity took place (being aged 23 to Pupil A's 17); that Pupil A was above the age of consent at the relevant time (had a position of trust not existed); that the Panel found this event to be an isolated incident, that had not been pre-planned by Mr Atkinson; and that Mr Atkinson was an inexperienced teacher, who had been a student at Balby Carr Community Sports and Science College and had returned there as a teacher straight after qualifying.

The Panel believes that Mr Atkinson may have gained sufficient maturity and have gained sufficient insight into his actions and their impact to be permitted to teach again, once five years have passed, there is a greater age difference between him and his potential pupils and he has gained further life experience. The Panel notes this does not mean that he will automatically be permitted to teach at that time; rather it will be for a future panel to decide whether the Prohibition Order should be removed, taking into consideration Mr Atkinson's position at that time.

In light of these factors, the Panel considered that it was appropriate and proportionate for Mr Atkinson to be permitted to apply to have any Prohibition Order to be reviewed after a period of five years and accordingly recommends that the Secretary of State includes such a provision.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the findings of the panel. I have also given very careful consideration to the recommendation of the panel both in respect of sanction and also review period.

This is a very serious case involving serious sexual misconduct. The panel found that Mr Atkinson had a sexual relationship with a student. He also denied the circumstances of this case until he was shown CCTV evidence by the police. He continued to deny other elements of the case that were found proven. He also did not accept that the one allegation that he admitted was unacceptable conduct. As a result of his denials the pupil witness had to attend and give evidence.

The guidance published by the Secretary of State is very clear on the misconduct that has been found in this case. I therefore support the recommendation of the panel that it is proportionate and in the public interest to prohibit Mr Atkinson.

I have also given very careful consideration to the matter of a review period. The advice is very clear that cases that involve serious sexual misconduct should be considered as falling into the category of case where there is no provision for a review.

I have not found sufficient evidence that Mr Atkinson has either insight or has expressed remorse for his behaviour. His continuing denials of the facts and the implications of those facts is evidence of that.

Although he was a young teacher at the time, his behaviour was deliberate and he would have had no doubt that it was a serious breach of the standards that are expected of a teacher. In my view his behaviour is so serious that a review period is not in the public interest.

This means that Mr Luke Atkinson is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Luke Atkinson shall not be entitled to apply for restoration of his eligibility to teach.

This Order takes effect from the date on which it is served on the Teacher.

Mr Luke Atkinson has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this Order.



NAME OF DECISION MAKER: Alan Meyrick

Date: 26 June 2014

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