



National College for
Teaching & Leadership

Ms Hannah Elizabeth Day: Professional conduct panel outcome

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

February 2016

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Ms Hannah Elizabeth Day

Teacher ref number: 1173767

Teacher date of birth: 21 July 1988

NCTL case reference: 12723

Date of determination: 11 February 2016

Former employer: Capita Education Resourcing and Our Lady and St Philomena's Catholic Primary School, Liverpool

A. Introduction

A professional conduct panel ("the panel") of the National College for Teaching and Leadership ("the National College") convened on 10 and 11 February 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Ms Hannah Day.

The panel members were Mr Tony Woodward (teacher panellist – in the chair), Ms Susan Netherton (lay panellist) and Mrs Kathy Thomson (teacher panellist).

The legal adviser to the panel was Eszter Horvath-Papp of Eversheds LLP.

The presenting officer for the National College was Mr Ben Rich of 2 Hare Court.

Ms Day was not present and not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation(s) set out in the Notice of Proceedings dated 15 September 2015.

It was alleged that Ms Day was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a supply teacher at Our Lady and St Philomena's Catholic Primary School:

1. On 22 October 2014, whilst in the role of classroom teacher, she:
 - a. Appeared under and/or was under the influence of alcohol;
 - b. Smelt of alcohol;
 - c. Struggled to read a story to the class;
 - d. Lost control of the class when the children engaged in a water fight;
 - e. At the time of the water fight referred to 1d above, she left the classroom;
 - f. Failed to take appropriate action when a child cut her finger with a pair of scissors;
 - g. Used her mobile phone whilst in charge of pupils;
 - h. Failed to control the noise levels in her classroom.
2. By her behaviour described at 1a and/or 1c and/or 1d and/or 1e and/or 1f above she created a situation whereby a pupil and/or pupils could be at risk.

In the agreed statement of facts which she signed on 2 March 2015, Ms Day accepted a number of facts underlying the allegations. However, there were no questions asked of her which matched the wording of allegations 1d and 1e, and she answered “no” to the following two proposed facts:

- “During the lesson you were seen to be playing Pacman on your mobile telephone”;
- “Appeared under and/or were under the influence of alcohol”.

In light of this, it appeared that Ms Day had admitted allegations 1b, 1c, 1f, 1h and 2, but she did not admit the other allegations.

In the agreed statement of facts, Ms Day also accepted that her behaviour amounted to unacceptable professional conduct and conduct that brought the profession into disrepute.

C. Preliminary applications

The panel considered an application from the presenting officer to proceed in Ms Day's absence. As part of this application, he also asked the panel to admit an additional document, namely a note of a telephone call between the NCTL and Individual A of the morning of the first day of the hearing. In the call Individual A explained that Ms Day [redacted], but that she wanted the hearing to proceed in her absence, as she, "really just wants it all over and forgotten".

The panel carefully considered the application and decided to admit the additional document at page 53, as it considered that it would be fair to do so. It was mindful that its discretion to proceed in the teacher's absence should be exercised with the utmost care and caution. In particular, if the absence of the teacher was due to involuntary illness, it would very rarely be right to proceed in their absence.

However, the panel noted that Ms Day had originally asked for the matter to be dealt with by way of a meeting, and had indicated that she did not intend to attend. She had initially engaged in the process and had responded to the agreed statement of facts and had provided some additional evidence of her own. However, she has shown less and less engagement over time, and has not been in contact with the NCTL at all since the notice of proceedings was sent to her. The panel was satisfied that she had received actual notice of the hearing, which was confirmed by her a telephone call.

The panel was of the view that even if Ms Day had been well, she still would not have wished to engage with the hearing. There was no indication that an adjournment would result in her attending at a future date, and in fact, there was some evidence that a delay to the proceedings would cause her ongoing stress. The panel was comfortable that it had sufficient evidence of Ms Day's position regarding the allegations to enable the panel to consider such points as would be favourable to her, and to raise appropriate challenges to the NCTL's evidence on her behalf. The panel was therefore comfortable that any prejudice to Ms Day arising from her absence would be minimised.

In the circumstances, the panel concluded that it would be fair and in the public interest to proceed with the hearing in Ms Day's absence.

D. Summary of evidence

Documents

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

Section 1: Chronology, with page number 2.

Section 2: Notice of Proceedings and response with page numbers 4 to 15.

Section 3: Witness Statements, with page numbers from 17 to 22.

Section 4: National College for Teaching & Leadership documents, with page numbers from 25 to 47.

Section 5: Teacher documents, with page numbers from 49 to 52.

In addition, the panel admitted the additional document referred to above, and numbered it page 53.

The panel members confirmed that they had read all of the documents in advance of the hearing.

Witnesses

The panel heard oral evidence on behalf of the NCTL from:

Witness A – a nursery nurse at the school

Witness B – the headteacher at the school at the time of the allegations

No witnesses were called on behalf of Ms Day.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and has reached a decision.

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

At the time of the allegations, Ms Day was employed via Capita Education Resourcing as a supply teacher at Our Lady and St Philomena's Catholic Primary School in Liverpool (the "school"). She attended the school on a single occasion on the afternoon of 22 October 2014. The specific allegations against her succinctly set out her alleged conduct on that day. This matter was previously considered at a meeting of a professional conduct panel, but that original panel decided that Ms Day's denials, referred to above, related to issues that were of central importance to the assessment of the rest of her case, and therefore the matter should be considered at a full hearing.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegations against Ms Day proven, for these reasons:

1. On 22 October 2014, whilst in the role of classroom teacher, she:

a. Appeared under and/or was under the influence of alcohol,

This allegation was specifically denied by Ms Day in the agreed statement of facts.

The panel noted that this allegation consisted of two elements: appearing and actually being under the influence of alcohol.

In considering the first point, the panel noted Ms Day's admissions that she smelt of alcohol, she was slurring her words, she was mumbling, appeared vacant and was unsteady on her feet (page 31). In addition, she was described as "swaying" by Witness A (page 18), as "confused and unsteady" by Individual B (page 39) and as "confused" by Witness B (page 21).

The panel was satisfied that these descriptions fitted someone who appeared to be under the influence of alcohol, and therefore found the first limb of the allegation proven.

In relation to the second limb, the panel noted that Ms Day had admitted having drunk alcohol the night before, and acknowledged that the smell of this may still have been present the following day (page 34). [Redacted].

On the balance of probabilities, the panel was of the view that Ms Day's behaviour was clearly due to the alcohol she had consumed, regardless of whether it was directly due solely to the alcohol, or via a combination thereof with her medication. In either case, she was actually under the influence of the alcohol she had consumed and the panel therefore found the second limb of this allegation proven also.

b. Smelt of alcohol,

This allegation was admitted by Ms Day in the agreed statement of facts at point 20, and was supported by the written and oral witness statements of Witness A and Witness B.

In her handwritten notes dated 22 October 2014, Witness A stated that she, "smelt something like alcohol from her" (page 47). In her oral evidence, she said she did not know what she had meant by, "something like", as she had no doubt that it was anything other than alcohol that she smelt.

In addition, the handwritten notes by Individual B state that she, "smelt something odd" (page 39).

In the circumstances, the panel was satisfied that Ms Day did smell of alcohol, and therefore found this allegation proven.

c. Struggled to read a story to the class,

This allegation was admitted by Ms Day in the agreed statement of facts at point 17.

This incident was also described in detail in Witness A's witness statement (pages 17-18), in her contemporaneous notes (page 43), as well as in her oral evidence before the panel. Witness A described how Ms Day was slurring her words and mumbling, and that she put the book away before she would have had enough time to finish the story.

In the circumstances, the panel was satisfied on the balance of probabilities that Ms Day did struggle to read a story to the class, and found this allegation proven.

e. At the time of the water fight referred to in allegation 1d, she left the classroom,

In the statement of agreed facts, Ms Day was not asked a question which matched the wording of this allegation. However, she did admit at point 13 that she left the pupils unattended in the classroom.

This incident was not addressed in either of the written witness statements, and neither Witness A nor Witness B were witnesses to this incident.

However, in his oral evidence, Witness B described the reports he had received of the incident. He said that there were water containers outside classrooms in the corridor, and, "some" pupils had been out there, "messaging about".

The panel also noted Ms Day's written submissions that she had "little to no assistance when the children engaged in a water fight" and that she had to clear up and had to "leave the classroom to see if anyone was available to give me some help" (page 33).

In the circumstances, the panel was satisfied on the balance of probabilities that she must have left the classroom at the time of the water fight, and therefore found this allegation proven.

g. Used her mobile phone whilst in charge of pupils,

The panel noted that in the agreed statement of facts, it was put to Ms Day that she played Pacman on her phone, and she responded with a "no" to this. It was not put to her more generally that she used her mobile phone whilst in charge of the pupils, and her position was therefore not clear in relation to this allegation.

The panel noted Witness A's comment in her witness statement that she recalled, "seeing Ms Day at the writing table with the pupils and she was looking at her mobile phone" (page 17). witness A expanded on her evidence in front of the panel and the panel found very persuasive her description of how the children had crowded around Ms Day when she was using her phone. Further, Witness A said that Ms Day had used her phone for a block of about 10 minutes.

The panel was of the view that it was common sense that personal mobile phones should not be used by teachers while teaching, particularly for an extended period of several minutes.

In the circumstances, the panel was satisfied that Ms Day did use her mobile phone whilst in charge of pupils, and therefore found this allegation proven.

h. Failed to control the noise levels in her classroom;

This allegation was admitted by Ms Day in the agreed statement of facts at point 7.

In Witness A's statement she described how the pupils began chatting amongst themselves and, "Ms Day did nothing to bring them back or engage them" (page 18).

In her handwritten note, Individual C described how the children were, "out of their seats and quite noisy". She also said that Ms Day failed to get their attention (page 38).

In the circumstances, the panel was satisfied on the balance of probabilities that Ms Day did fail to control the noise levels in her classroom, and therefore found this allegation proven.

2. By her behaviour described at 1a and/or 1c and/or 1d and/or 1e and/or 1f above she created a situation whereby a pupil and/or pupils could be at risk.

This allegation was admitted by Ms Day in the agreed statement of facts at point 23.

Given the panel's findings in relation to allegation 1a in particular, the panel was very concerned that Ms Day had been in charge of pupils at a time when she was under the influence of alcohol. Given that she was confused, swaying, unsteady on her feet and slurring, it was difficult for the panel to see how she could have had sufficient control over pupils.

In the panel's view, this created a situation where pupils' wellbeing could potentially be at risk.

In the circumstances, the panel was satisfied that this allegation was proven.

The panel has found the following particulars of the allegations against Ms Day not proven, for these reasons:

1d. Lost control of the class when the children engaged in a water fight,

In the statement of agreed facts, the question put to Ms Day at point 11 was that, "you failed to stop the children engaging in a water fight", to which she replied, "yes". There was no question put to her which mirrored the wording of this allegation.

The panel was of the view that the fact that a water fight took place between a limited number of pupils was not the same as losing control of the entire class.

This incident was not addressed in either of the written witness statements, and neither Witness A nor Witness B were witnesses to this incident.

In his oral evidence, Witness B referred to receiving reports that “some” children were messing about by the water containers in the corridor. There was no evidence before the panel that the water fight took place in the classroom, or that the whole class was involved in it.

The panel did not consider that there was sufficient evidence to support the entirety of this allegation, and the panel was therefore unable to find this allegation proven on the balance of probabilities.

1f. Failed to take appropriate action when a child cut her finger with a pair of scissors,

This allegation was admitted by Ms Day in the agreed statement of facts at point 10. However, the panel turned its own independent mind to considering whether or not the facts were proven.

This incident was not addressed in either of the written witness statements, and neither Witness A nor Witness B were witnesses to this incident.

However, Witness B said in his oral evidence that Ms Day had not dealt with the cut finger at all, and that the teaching assistant had to intervene.

The panel noted Ms Day’s submissions that, “it was a minor cut and there was no blood present, so I did tell them to soak it in a cold paper towel” (page 33).

The panel was mindful that Ms Day’s submissions were not a formal witness statement and that there was no opportunity to test that evidence. Equally, the panel was mindful that Witness B had not himself witnessed the incident.

Furthermore, there was no evidence before the panel as to what would have amounted to “appropriate action” in this situation.

In the panel’s view, there was sufficient evidence that Ms Day did take some action in response to the cut finger, and in circumstances where there was a minor cut with no blood, it was entirely appropriate to ask the pupil to soak it in a cold paper towel.

In the circumstances, the panel felt that, despite Ms Day’s admission, she had acted appropriately at the time, and the panel was therefore unable to find this allegation proven on the balance of probabilities.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found allegations 1a, 1b, 1c, 1e, 1g, 1h, and 2 to have been proven, the panel went on to consider whether the facts of those proven allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

The panel noted Ms Day's admission that her behaviour did amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute, but the panel nevertheless turned its own independent mind to considering these issues.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers (the "Advice").

The panel was satisfied that Ms Day's conduct in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considered that by reference to Part Two, Ms Day was in breach of the following standards:

"A teacher is expected to demonstrate consistently high standards of personal and professional conduct..."

- 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...
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel was satisfied that the conduct of Ms Day fell significantly short of the standards expected of the profession."

The panel has also considered whether Ms Day's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that none of these offences were relevant.

In the panel's view, the issue of primary importance in this case was the fact that Ms Day had failed to have appropriate control of and engagement with her classes. This had the potential to put pupils' wellbeing at risk and was a major safeguarding issue. The panel also felt that it was the teacher's responsibility to assess whether they are fit for work, and Ms Day should have declined the offer of work at the school, when she was or ought to have been aware that she was not fit to work with children.

In addition, Ms Day had struggled to read a story to the class and spent some considerable time using her mobile phone. This was clearly detrimental to the pupils' learning and such behaviour fell significantly short of the standards expected of a teacher.

Accordingly, the panel was satisfied that Ms Day was guilty of unacceptable professional conduct.

The panel also considered whether Ms Day's conduct could bring the profession into disrepute. In considering this issue, the panel took into account how the teaching profession was viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel took account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave. Ms Day had clearly failed to engage with and appropriately control a class of young children, and this put their safety and wellbeing at risk. In the panel's view, such conduct undermines the public's trust in and view of the profession.

The panel was therefore satisfied that Ms Day's behaviour also constituted 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 professional conduct and conduct that may bring the profession into disrepute, it was 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.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel considered whether it was an appropriate and proportionate measure, and whether it was in the public interest to do so. The panel was mindful that prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they would be likely to have punitive effect.

The panel considered the particular public interest considerations set out on page 9 of the Advice and 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.

In light of the panel's findings against Ms Day, which involved being under the influence of alcohol in the classroom, that had a detrimental impact on her ability to engage with

and manage the children, the panel was of the view that there was a strong public interest in the protection of pupils' well-being. Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Day were not treated with the utmost seriousness when regulating the conduct of the profession. The panel was also of the view that there was a strong public interest in declaring proper standards of conduct in the profession, as the conduct found against Ms Day 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 Ms Day.

In carrying out the balancing exercise the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Ms Day. The panel took further account of the Advice, which suggested that a prohibition order might be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;

The panel has already found that Ms Day's conduct fell significantly short of the standards expected of a teacher and that it had the potential to put pupils' well-being at risk. [Redacted].

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, particularly taking into account the nature and severity of the behaviour in this case. The panel was of the view that:

- There was no evidence that Ms Day's actions were not deliberate, [redacted];
- There was no evidence to suggest that Ms Day was acting under duress;
- Ms Day has a previously clean disciplinary history.

In the circumstances, the panel reached the view that prohibition was both proportionate and appropriate, as the public interest considerations outweighed the interests of Ms Day. Ms Day had gone to work under the influence of alcohol, in a state when she was quite unable to engage with children, or adults, in any meaningful way. She made a significant error of judgment in going to work when she was unfit to do so. In the panel's view, given the information about Ms Day's current [redacted] circumstances, it identified a potential continuing risk.

Accordingly, the panel made 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 it to decide to recommend that a review period of the order should be considered. The panel was mindful that a prohibition order applies for life, but that 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 burden of making such an application was on the teacher, who would need to demonstrate to another panel that they were fit to return to teaching and committed to the teaching profession.

In the circumstances, the panel was of the view that Ms Day's conduct may have been affected by [redacted]. Any application to set aside the prohibition order would need to be supported with appropriate evidence to show that there would be no further risk to the education and well-being of pupils.

The panel felt 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 a review period of two years.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendations of the panel both in respect of sanction and review.

I have noted where the panel has made findings of fact and unacceptable professional conduct as well as where the panel has not made such findings. Where the panel has not found the facts proven I have put those allegations from my mind.

I have taken into account the need to balance the public interest with the interests of the teacher. I have also taken into account the need to be proportionate. I have read and taken into account the guidance published by the Secretary of State.

I note that in this case the panel has found that the actions of Ms Day were in breach of the following standards:

“A teacher is expected to demonstrate consistently high standards of personal and professional conduct...”

- 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...

- having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions...
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Ms Day's actions were:-

- a serious departure from the personal and professional conduct elements of the Teachers' Standards; and
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk.

I have also noted that the panel was of the view that:

- There was no evidence that Ms Day's actions were not deliberate, [redacted];
- There was no evidence to suggest that Ms Day was acting under duress;
- Ms Day has a previously clean disciplinary history.

Taking all of the facts into account I support the recommendation of the panel that Ms Day be prohibited. This seems to me to be proportionate.

I have also considered the matter of a review period. I have noted what the panel recommends and takes into account in making that recommendation. On that basis I support the recommendation of the panel.

This means that Ms Hannah Elizabeth Day is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the prohibition order to be set aside, but not until 22 February 2018, 2 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Hannah Elizabeth Day remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Hannah Elizabeth Day has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this order.



Decision maker: Alan Meyrick

Date: 15 February 2016

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