



National College for
Teaching & Leadership

Mr John Mitchell: Professional conduct panel outcome

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

March 2016

Contents

A.	Introduction	3
B.	Allegations	3-4
C.	Summary of Evidence	
	Documents	4
	Witnesses	4-5
D.	Decision and reasons	5
	Brief Summary	5
	Findings of Fact	6-9
	Findings of fact as to unacceptable professional conduct and/or Conduct that may bring the profession into disrepute	10
	Panels recommendation to the Secretary of State	10-12
	Decision and reasons on behalf of the Secretary of State	13

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

Teacher: Mr John Mitchell

Teacher ref number: 9762870

Teacher date of birth: 28 November 1975

NCTL case reference: 13415

Date of determination: 2 March 2016

Former employer: Repton School, Repton, Derby

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 29 February 2016 to 2 March 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr John Mitchell.

The panel members were Professor Ian Hughes (lay panellist - in the chair), Ms Kathy Thomson (teacher panellist), and Mr Brian Hawkins (teacher panellist).

The legal adviser to the panel was Mr Robin Havard of Blake Morgan solicitors.

The presenting officer for the National College was Ms Vivienne Tanchel of Nabarro solicitors.

Mr Mitchell was in attendance and was represented by Mr Ed Brown of NASUWT.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 2 October 2015.

It was alleged that Mr John Mitchell was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that he:

- 1. On 16 February 2015, received a caution from Derbyshire Constabulary for abuse of a position of trust contrary to s.16(1)(a) of the Sexual Offences Act 2003; namely that on 6 December 2014, he engaged in sexual activity with**

Pupil A, a female between the age of 13 and 17 and he did not believe that she was 18 or over;

- 2. On the 6 December 2014, he made inappropriate comments of a sexual nature to Pupil A;**
- 3. On the 8 December 2014, he sent inappropriate Facebook communications to Pupil A;**
- 4. His actions in relation to paragraphs 2 and/or 3 above were sexually motivated.**

Mr Mitchell admitted allegation 1. He further admitted that such behaviour amounted to unacceptable professional conduct and conduct likely to bring the profession into disrepute.

Allegation 2 was denied.

Allegation 3 was admitted.

Allegation 4 was denied.

C. 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 - pages 2 to 4

Section 2: Notice of Proceedings and Response - pages 6 to 11

Section 3: NCTL Witness Statements - pages 13 to 25

Section 4: NCTL Documents - pages 27 to 68

Section 5: Teacher documents - pages 70 to 174

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

Witnesses

The panel heard oral evidence from:

Pupil A

Witness A

Witness B

D. 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.

Brief Summary

In 2008, Mr Mitchell commenced employment at Repton School ("Repton" or "the school"). He taught physics and subsequently became head of department.

Repton School is an independent co-educational school for pupils aged 13 to 18 years.

In December 2014, Mr Mitchell was responsible with other staff for organising a "social" which was a ball for the senior pupils held at the school on 6 December 2014.

It is alleged that, after the social had ended, and in the course of cleaning up, Mr Mitchell touched Pupil A inappropriately on two separate occasions and that such contact was of a sexual nature. On the same evening, he also made inappropriate remarks to Pupil A. Two days later, it is alleged that Mr Mitchell communicated with her via Facebook when it was not permitted for teachers to do so and that the content of the communications was inappropriate.

Following an investigation by the Police, on 16 February 2015, Mr Mitchell agreed to a simple caution for an offence contrary to section 16(1)(a) of the Sexual Offences Act 2003 in relation to the inappropriate physical contact between him and Pupil A on 6 December 2014.

On 18 February 2015, Mr Mitchell resigned from his post at Repton School.

Findings of fact

Our findings of fact are as follows:

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

- 1. On 16 February 2015, you received a caution from Derbyshire Constabulary for abuse of a position of trust contrary to s.16(1)(a) of the Sexual Offences Act 2003; namely that on 6 December 2014, you engaged in sexual activity with Pupil A, a female between the age of 13 and 17 and you did not believe that she was 18 or over;**

This particular was admitted by Mr Mitchell and the panel found it proven.

Even though the two incidents of sexual activity giving rise to the caution were admitted, there was a dispute between the evidence of Mr Mitchell and Pupil A with regard to the nature and circumstances of the physical contact between them.

Pupil A stated that, at the end of the evening, there were lights in the kitchen which were still on and she asked Mr Mitchell whether she should switch them off. Both of them went down to the kitchen and Pupil A stated that it was when they were in the kitchen that Mr Mitchell placed his hand on Pupil A's bottom and left it there for perhaps up to five seconds.

Mr Mitchell indicated that it was as they were walking up the steps from the kitchen that he placed his hand on Pupil A's bottom. He confirmed that it was inappropriate and that it was a sexual act.

The panel wished to emphasise that it had been impressed with the evidence from Pupil A who had given evidence via Skype and that she had done her best to recollect the sequence of events which took place.

However, on balance, in respect of this particular incident, the panel preferred the evidence of Mr Mitchell. Notwithstanding that, the panel concluded that touching Pupil A's bottom in this way was both inappropriate and a sexual act.

As for the second incident of inappropriate contact, this occurred shortly after the incident in the kitchen, when Mr Mitchell was driving his car. Pupil A was the front seat passenger and the only other person in the car. According to Pupil A, as Mr Mitchell was driving, he placed his left hand on her right leg. Pupil A stated that he left his hand on her leg for some seconds and moved it up towards the hem of her dress and only removed it when he had to change gear. Pupil A stated that Mr Mitchell said, "do you find this weird?" to which she replied, "yes, because you are married and have four children, one in this school".

Pupil A's description of the physical contact made by Mr Mitchell was not challenged. However, when he gave his evidence, Mr Mitchell said that he had apologised to Pupil A for touching her bottom and Pupil A was alleged to have said that he need not worry and that she was, "not one of those silly little girls who was out to ruin your career or something". He said how much he appreciated that and it was then that he put his hand on her knee.

In his account, Mr Mitchell suggested that Pupil A had acted in a flirtatious manner when in the car but this had not been suggested to Pupil A when she gave her evidence.

The panel did not consider Mr Mitchell's evidence to be an accurate reflection of what took place. Having accepted that he had acted entirely inappropriately by placing his hand on Pupil A's bottom, he then suggests that, relieved that Pupil A was not upset, he thanks her for her reassurance and places his hand on her knee.

Pupil A was asked to confirm the accuracy of her account as set out in her statement. Again, the panel was impressed by the manner in which she gave her evidence and preferred her account of what took place in the car.

Consequently, the panel concluded that Mr Mitchell touching Pupil A in this way was inappropriate and a sexual act.

On this basis, the panel found particular 1 proven.

2. On the 6 December 2014, you made inappropriate comments of a sexual nature to Pupil A;

This allegation was denied.

When in the car, Mr Mitchell intended to take the bottles of soft and alcoholic drinks to a storage shed. Pupil A, therefore, went with him.

When Pupil A was bending over in order to pick up some of the drinks from the floor of the car to take them into the shed, according to Pupil A, Mr Mitchell stated, "You're not doing my blood pressure any good". There was a dispute as to what was said. Mr Mitchell stated that he said, "bloody hell, careful Pupil A, you'll give me a coronary".

In this instance, the panel decided, on the balance of probabilities, that Mr Mitchell's recollection of what was said was more reliable. Ironically, the panel assessed the comment as remembered by Mr Mitchell to be the more serious. In any event, Pupil A took the remark to be sexually-related.

It was accepted by Mr Mitchell that what he had said was inappropriate but denied that the comment was to be interpreted as being of a sexual nature.

Taking account of the events as outlined above in the findings under particular 1, the panel concluded that a proper inference to be drawn was that the comment was of a sexual nature. Furthermore, when cross-examined, whilst he had not meant the remark to be taken literally, Mr Mitchell conceded that it was related to his sexual feelings towards her.

On this basis, the panel found this particular proven.

We have found the following particulars of the allegations against you not proven, for these reasons:

3. On the 8 December 2014, you sent inappropriate Facebook communications to Pupil A;

This particular was admitted.

Mr Mitchell confirmed that he knew it was not appropriate for teachers to be "friends" with pupils on Facebook.

However, the panel noted that the invitation to become a "friend" had come from Pupil A's account although it was accepted that it may not have been Pupil A herself who had sent the invitation as others had access to her phone.

Mr Mitchell reacted by replying to Pupil A stating that it was not appropriate for him to accept her invitation. The panel had considered the entirety of the exchange between Pupil A and Mr Mitchell on 8 December 2014.

The National College had invited the panel to infer that the content was inappropriate. Rather than simply replying to Pupil A stating that he could not accept the invitation or simply not responding at all, the responses suggested that Mr Mitchell was looking to extend the contact with Pupil A by, for example, inviting her to one-on-one sessions in the SciPri building and that adverse inferences should be drawn from certain of the words used.

Mr Mitchell denied that the content of the messages was inappropriate. He was endeavouring to make sure that any communication between him and Pupil A via Facebook would cease. Furthermore, his offer of assistance in her studies was entirely genuine and that meetings he suggested would take place in the SciPri building would be public and that one-to-one meetings were normal practice and expected to take place at the school. Indeed, this was confirmed by Witness B when she gave evidence.

On balance, and despite the admission of Mr Mitchell, the panel decided that this particular was not proved in that, taking account of the overall circumstances that existed at the time, the content of the Facebook communications sent to Pupil A was not inappropriate.

4. Your actions in relation to paragraphs 2 and/or 3 above were sexually motivated.

Taking account of its findings in respect of particular 3, the panel only considered this particular with reference to particular 2 above.

The panel had listened carefully to the legal advice which had been given when considering whether or not the comment made by Mr Mitchell to Pupil A, namely, "bloody hell, careful Pupil A, you'll give me a coronary" was sexually motivated.

The panel had taken into account all the circumstances it considered to be relevant in reaching its decision. In particular, it noted the fact that Mr Mitchell had been a teacher for a number of years and Witness B gave evidence that he was an excellent teacher, worked very hard, and was involved in a number of activities throughout the school to include acting as a tutor in a boarding house at the school.

The panel also considered the event which occurred in September 2011. However, there was no suggestion that this event was sexually related. Its importance and its relevance were related to the informal written warning given Mr Mitchell that any, "intentional physical contact between a pupil and a member of staff is never appropriate, unless there is an issue of personal safety,...".

The panel then reflected on Mr Mitchell's behaviour on 6 December 2014 in overall terms and its relevance to the panel's decision whether the remark he made was sexually motivated.

The panel decided that, whilst the remark was inappropriate and of a sexual nature, it was more a question of a substantial lack of judgment as opposed to anything more sinister. On balance, therefore, the panel concluded that it was not sexually motivated.

The panel therefore found this allegation not proven.

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

The panel was satisfied that, in respect of the allegations found proved, Mr Mitchell was guilty of unacceptable professional conduct and conduct likely to bring the profession into disrepute. His behaviour was of a serious nature, falling significantly short of the standard expected of a teacher in that, in behaving in the way that he did on 6 December 2014, he failed:

- a. To demonstrate consistently high standards of personal and professional conduct;
- b. To treat a pupil with dignity and to build a relationship rooted in mutual respect;
- c. To observe proper boundaries appropriate to his position as a teacher;
- d. To have regard for the need to safeguard the well-being of impressionable pupils;
- e. To act as a role model, taking account of the uniquely influential position a teacher can hold in pupils' lives, and
- f. To comply with clear guidance provided by the school in September 2011

Panel's recommendation to the Secretary of State

The panel was satisfied that Mr Mitchell's behaviour was incompatible with being a teacher and the panel relied on the following reasons:

- These were serious departures from the personal and professional conduct elements of the Teachers' Standards as outlined above;
- It was a matter of good fortune that his conduct had not had a deleterious effect on Pupil A;
- This was deliberate behaviour which amounted to an abuse of his position of trust as a teacher involving sexual misconduct, namely actions on his part of a sexual nature;
- Such behaviour ran the risk of undermining pupils, the school and the profession;
- The actions of Mr Mitchell were deliberate and there was no suggestion that he had been acting under duress;
- What happened took place despite an informal warning being given to him in September 2011.

In reaching its decision on the appropriate recommendations to make to the Secretary of State, the panel had taken into consideration the references submitted by Mr Mitchell which were supportive and relevant.

The panel also considered this to be a sad case. The events giving rise to the proceedings had taken place on one day only. The detailed account provided by Mr

Mitchell illustrated the commitment he had shown to the school and the pupils at the school. He was clearly a capable physics teacher and Witness B was very complementary as to his abilities in the classroom. The events took place at a time when Mr Mitchell was under considerable pressure in school and had been so for some appreciable time. He also outlined the circumstances in his personal life which all contributed to his feeling of stress and general tiredness.

The panel was somewhat concerned as to his level of insight. It was true that Mr Mitchell had admitted a number of the allegations on a certain basis but his acceptance of responsibility was somewhat diluted when taking into account his description of Pupil A's alleged behaviour towards him in the course of 6 December 2014. Although throughout his written and oral evidence he maintained that he took full responsibility for what happened on that day, sections of his response suggested that it was partly as a consequence of Pupil A's behaviour that he acted in the way that he did.

However, the panel concluded that he illustrated genuine remorse and the consequences of his actions have been far-reaching and profound.

With regard to the risk of repetition, the panel decided that such a risk was low. Mr Mitchell had reflected on what had taken place during his time at the school and recognised that he had over-extended himself to the extent that he may not be suited to the level of commitment and the range of duties required at a boarding school. That was not to detract from the excellent work he had delivered during his years at the school and which was recognised by Witness B.

The panel was satisfied that a Prohibition Order was necessary in order to: protect pupils; maintain public confidence in the profession and to declare and uphold proper standards of conduct. The panel felt that this was appropriate and proportionate, having weighed the interests of the public against those of Mr Mitchell.

Whilst it did not doubt that the consequences of a Prohibition Order would be significant, it bore in mind that the reputation of the profession and the maintenance of the public's trust in the profession was more important than the fortunes of any one individual member of the profession. This was the panel's recommendation.

The panel further considered whether to recommend that Mr Mitchell should be able to apply for the Prohibition Order to be set aside after a specified period or whether there should be no such provision.

On balance, the panel recommended that Mr Mitchell should be entitled to apply for a review of the Prohibition Order after a period of two years has elapsed. Whilst any allegation involving sexual misconduct was serious, this was not a case where a physical sexual relationship had taken place. The conduct on the part of Mr Mitchell amounted to a gross error of judgment on one day.

The panel considered that a period of two years was sufficient to mark to the general public and the profession that such behaviour was wholly inappropriate. It may also be sufficient for Mr Mitchell to demonstrate that, over such a period, he had developed strategies which would ensure that, when working under stress, there would be no repetition of such behaviour.

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, and conduct likely to bring the profession into disrepute. I note where the panel have made no such findings and I have put these from my mind.

The panel is satisfied that the conduct of Mr Mitchell in relation to the facts found proven, involved breaches of the Teachers' Standards. I note the panel found Mr Mitchell's behaviour was of a serious nature, falling significantly short of the standard expected of a teacher, in behaving in the way that he did on one day.

I note the panel was somewhat concerned as to Mr Mitchell's level of insight. Although he maintained that he took full responsibility for what happened on that day, sections of his response suggested that it was partly as a consequence of the pupil's behaviour that he acted in the way that he did. However, I note the panel concluded that Mr Mitchell illustrated genuine remorse and the consequences of his actions have been far-reaching and profound. With regard to the risk of repetition, I note the panel decided that such a risk was low.

I have taken into account the need to balance the public interest with the interests of the teacher. The panel was satisfied that a prohibition order was necessary in order to: protect pupils; maintain public confidence in the profession and to declare and uphold proper standards of conduct. Having weighed the interests of the public against those of Mr Mitchell, the panel bore in mind that the reputation of the profession and the maintenance of the public's trust in the profession was more important than the fortunes of any one individual member of the profession. I support the recommendation of the panel that Mr Mitchell be prohibited. I agree that this is both proportionate and appropriate.

I have also considered the matter of a review period. Whilst any allegation involving sexual misconduct is serious, this was not a case where a physical sexual relationship had taken place. I agree with the panel that the conduct on the part of Mr Mitchell amounted to a gross error of judgment on one day. The panel considered that a period of two years was sufficient, and that it may also be sufficient for Mr Mitchell to demonstrate

that, over such a period, he had developed strategies which would ensure that, when working under stress, there would be no repetition of such behaviour.

For the reasons set out above, I agree with the panel's decision.

This means that Mr John Mitchell is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 10 March 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 he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Mitchell remains prohibited from teaching indefinitely.

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

Mr Mitchell 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.

A handwritten signature in black ink, appearing to read 'J. Millions', with a small dot at the end of the signature.

Decision maker: Jayne Millions

Date: 4 March 2016

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