



National College for
Teaching & Leadership

Mr Richard Charles Merrett: Professional conduct panel outcome

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

July 2016

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

Teacher: Richard Charles Merrett

Teacher ref number: 0984383

Teacher date of birth: 27 February 1986

NCTL case reference: 14768

Date of determination: 14 July 2016

Former employer: Stratton Upper School, Biggleswade

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 14 July 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Richard Merrett.

The panel members were Dr Robert Cawley (teacher panellist – in the chair), Ms Karen McArthur (lay panellist) and Mr Peter Cooper (teacher panellist).

The legal adviser to the panel was Mrs Claire Bertram of Eversheds LLP.

The presenting officer for the National College was Ms Fiona Butler of Browne Jacobson LLP.

As this was a meeting, the parties were not present.

The hearing took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegation(s) set out in the Notice of Proceedings dated 22 March 2016.

It was alleged that Richard Merrett was guilty of unacceptable professional conduct in that whilst he was employed at employed at Stratton Upper School he:

1. Engaged in an inappropriate relationship with Pupil A in that he:
 - a. Sent inappropriate emails to Pupil A's personal email address;
 - b. Sent inappropriate messages via social medial to Pupil A including:
 - i. Messages with sexual references
 - ii. Referring to a former employee of the school as a "fucking waste of space".
2. Failed to maintain professional boundaries in relation to Pupil B in that he:
 - a. Communicated with her by email using her personal email address whilst she was a pupil at the school.
 - b. Sent inappropriate emails to Pupil B, whilst she was still a pupil at the school including:
 - i. Sexual references
 - ii. Making comments regarding Pupil B's appearance such as 'you have nice pins which many girls would die for' and 'you have a beautiful body'
 - iii. Discussing his marriage and personal life
 - iv. Discussing under aged drinking
 - c. On or around 7 January 2015 he deleted a folder labelled with Pupil B's initial and deleted all email correspondence to and from Pupil B.
3. Failed to maintain professional boundaries in relation to Pupil C in that he:
 - a. Communicated with her by email using her personal email address whilst she was a pupil at the school.
 - b. Sent inappropriate emails to Pupil C including references to alcohol.
4. Failed to maintain professional boundaries in relation to Pupil D in that he:

- a. Communicated with her by email using her personal email address whilst she was a pupil at the school
 - b. Sent inappropriate emails to Pupil D including making enquiries about her weekend plans.
5. Failed to take appropriate action(s) in respect of safeguarding issues disclosed by Pupil B

In the agreed statement of facts, Mr Merrett admitted the facts of the allegations and that they amounted to unacceptable professional conduct.

C. Preliminary applications

Whilst there were no preliminary applications, the panel considered at the outset whether the allegation should be considered at a public hearing which the parties would be entitled to attend, or a private meeting without the parties present. The panel considered the interests of justice and given that the facts of the allegations have been admitted, that Mr Merrett had requested a meeting and the panel had the benefit of his representations, the panel was of the view that justice would be adequately served by considering this matter at a meeting.

The panel carefully considered the public interest. The panel noted that if the case proceeded in a meeting, there would be a public announcement of the panel's decision. The panel also had in mind that if a hearing were convened, there would be a cost to the public purse, which may not be justified if the matter could be determined in a meeting. The panel also had regard to the delay that would be caused by convening a hearing and considered it to be in the public interest to reach a final determination in this matter without further delay. The panel therefore decided to proceed with a meeting, but noted that it could, at any stage of the meeting, reconsider this issue.

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 – pages 2 to 5

Section 2: Notice of Proceedings and Response – pages 7 to 13

Section 3: Statement of Agreed Fact and Presenting Officer Representations – pages 15 to 20

Section 4: NCTL documents – pages 22 to 114

Section 5: Teacher documents – pages 116 to 121

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

Witnesses

The matter was convened as a meeting and no oral evidence was heard.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Richard Merrett was employed as head of year 13 and sixth form co-ordinator at Stratton Upper School.

On 6 January 2015 Pupil A's parents contacted the school with concerns and asked to meet with the headteacher. On 7 January 2015 Pupil A's parents attended the school and had a meeting where they disclosed their discovery of inappropriate Facebook messenger exchanges between Mr Merrett and Pupil A. An investigation then followed, which included a review of Mr Merrett's emails. As a result of this investigation, it was discovered that Mr Merrett had engaged in email correspondence with Pupils A, B, C and D to their personal email accounts whilst they were still pupils at the school. The investigation also revealed that Mr Merrett was aware of a safeguarding issue in relation to Pupil B but did not escalate this issue in accordance with the school's safeguarding policy.

The Police conducted an investigation into these issues but did not take matters any further.

Mr Merrett has admitted to engaging in inappropriate email correspondence with Pupils A, B, C and D and to failing to maintain professional boundaries. He also admits that he failed to report a safeguarding issue in relation to Pupil B.

Mr Merrett resigned from his post at Stratton Upper School on 30 April 2015.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegation(s) against you proven, for these reasons:

You are guilty of unacceptable professional conduct in that whilst employed at Stratton Upper School you:

1. Engaged in inappropriate relationship with Pupil A in that you

a. Sent inappropriate emails to Pupil A's personal email address

Mr Merrett admitted this allegation in the agreed statement of facts signed by him on 13 May 2016 (pages 15 – 18). In the agreed statement of facts Mr Merrett admitted to sending Pupil A 584 emails to her personal email address between 2 June 2014 and 22 August 2014 (page 16). Mr Merrett also admitted in his investigation interview on 30 April 2015 that he sometimes acted in an inappropriate and unprofessional way and that he had not behaved acceptably (pages 68, 69). The panel has also seen copies of the email correspondence between Mr Merrett and Pupil A.

The panel was therefore satisfied that this allegation was proven.

b. Sent inappropriate messages via social media to Pupil A:

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15-18). Mr Merrett also admitted this in his investigation interview on 30 April 2015 (page 57).

The panel was therefore satisfied that this allegation was proven.

i. including messages with sexual references

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15-18). The panel has also seen copies of the email correspondence between Mr Merrett and Pupil A. Such references included:

- “A 9 man tent is huge!!! How can they have sex knowing you guys are in the tent?”

The panel acknowledges, however, that Mr Merrett has stated on numerous occasions that there was never any sexual intent with any of the emails to his students (for example, in his Representation Statement dated 19 January 2016 (pages 119-120)).

The panel was satisfied that this allegation was proven.

ii. Referring to a former employee of the school as a “fucking waste of space”.

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15-18) and in his investigation interview dated 30 April 2015 (page 57). He also refers to it in his Mitigation Statement dated 13 May 2016 (pages 117-118) and his Representation Statement dated 19 January 2016 (pages 119-120). In his Mitigation

Statement, Mr Merrett explains the background to his comment and that it stemmed from the fact that his wife's maternity pay had been mis-calculated. He also accepts in the Mitigation Statement that this comment was inappropriate.

The panel was therefore satisfied that this allegation was proven.

2. Failed to maintain professional boundaries in relation to Pupil B in that you:

a. Communicated with her by email using her personal email address whilst she was a pupil at the school.

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15-18) and in his investigation interview dated 30 April 2015 (pages 53 – 72). The Police Report, which has been seen by the panel (pages 22 – 25), states that there were over 500 emails between Mr Merrett and Pupil B between the start of October 2014 and the end of November 2014, many of which were sent in the evening.

The panel was therefore satisfied that this allegation was proven.

b. Sent inappropriate emails to Pupil B, whilst she was still a pupil at the school including:

i. Sexual references

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18). The Police Report, which has been seen by the panel (pages 22 – 25), summarises the content of the emails between Mr Merrett and Pupil B. In respect of sexual references, the Police Report specifically sets out extracts from an email conversation that took place on 5 November 2014. Pupil B had asked Mr Merrett what had happened the previous night regarding a dream and Mr Merrett replied: "Probably best I tell you in person what happened, it may not come across best over email...it was nice though." Pupil B replies: "okay tell me when I see you". At the end of the same day, Pupil B emails Mr Merrett to say: "Tell me if I end up pouncing on you in the middle of the night again :) hopefully I won't be dreaming of any naked 40 year old women."

Pupil B has stated that she considered the content of Mr Merrett's emails to be "too unprofessional" and "too friendly" (see statement of Pupil B, pages 73 – 77). In her statement, Pupil B also refers to a conversation she had with Mr Merrett about sex on a trampoline.

It is noted that in his Mitigation Statement, Mr Merrett states that there were no sexual motives behind his words.

The panel was satisfied that this allegation was proven.

ii. Making comments regarding Pupil B's appearance such as 'you have nice pins which many girls would die for' and 'you have a beautiful body'

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18) and in his Mitigation Statement dated 13 May 2016 (pages 117-118). The Police Report, which has been seen by the panel (pages 22 – 25), refers to emails from Mr Merrett to Pupil B regarding her figure and the fact that she is beautiful. During the investigation meeting with Mr Merrett dated 30 April 2015, he refers to all of the times he has complimented Pupil B's body.

The panel was satisfied that this allegation was proven.

iii. Discussing your marriage and personal life

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18) and also in his investigation interview dated 30 April 2015 (pages 53 – 72). Pupil B also refers to having discussions with Mr Merrett about his marriage and personal life in her interview dated 26 March 2015 (pages 73 – 77). Such discussions are also referred to in the Police Report summarising the exchange of emails between Mr Merrett and Pupil B (pages 22 – 25).

The panel was satisfied that this allegation was proven.

iv. Discussing under aged drinking

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18) and in his investigation interview dated 30 April 2015 (pages 53 – 72).

The panel was satisfied that this allegation was proven.

c. On or around 7 January 2015 you deleted a folder labelled with Pupil B's initial and deleted all email correspondence to and from Pupil B.

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18), in his investigation interview dated 30 April 2015 (pages 53 – 72) and in his Mitigation Statement dated 13 May 2016 (pages 117 – 118). He consistently describes this action as a reaction of "pure panic."

The panel was satisfied that this allegation was proven.

3. Failed to maintain professional boundaries in relation to Pupil C in that you:

a. Communicated with her by email using her personal email address whilst she was a pupil at the school.

Mr Merrett admitted this allegation in his statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18). The Police Report, which has been seen by the panel (pages 22 – 25), refers to the existence of 200 emails between Mr Merrett and Pupil C between 27 February 2014 and 18 November 2014.

The panel was satisfied that this allegation was proven.

b. Sent inappropriate emails to Pupil C including references to alcohol.

Mr Merrett admitted this allegation in his statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18).

On the balance of probabilities, the panel was satisfied that this allegation was proven.

4. Failed to maintain professional boundaries in relation to Pupil D in that you:

a. Communicated with her by email using her personal email address whilst she was a pupil at the school

Mr Merrett admitted this allegation in his statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18). The Police Report, which has been seen by the panel (pages 22 – 25), refers to the existence of 95 emails between Mr Merrett and Pupil D between 3 October 2014 and 30 November 2014.

Pupil D does not consider that Mr Merrett has engaged in an inappropriate communication with her (pages 81 – 83).

On the balance of probabilities, the panel was satisfied that this allegation was proven.

b. Sent inappropriate emails to Pupil D including making enquiries about her weekend plans.

Mr Merrett admitted this allegation in his statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18).

On the balance of probabilities, the panel was satisfied that this allegation was proven.

5. Failed to take appropriate action(s) in respect of safeguarding issues disclosed by Pupil B

Mr Merrett admitted this allegation in the statement of agreed facts signed by him on 13 May 2016 (pages 15 – 18). In the statement of agreed facts, Mr Merrett also accepts that he attended safeguarding training on 20 September 2012 and 10 March 2014.

In his investigation interview dated 30 April 2016 (pages 52 – 72) and his Mitigation Statement dated 13 May 2016 (pages 117-118), Mr Merrett refers to the fact that he thought he had referred Pupil B's self-harming to others in the school. In his Mitigation

Statement, he states that his failure to report the safeguarding issue was a “pure oversight” due to exceptionally high workload and pressures.

The panel was satisfied that this allegation was proven.

Findings as to unacceptable professional conduct

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as “the Advice”.

The panel was satisfied that the conduct of Mr Merrett in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Merrett 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;
- teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.
- teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Taking into account the pattern of prolonged inappropriate communications with female pupils and the serious nature of his failure to report a safeguarding issue, the panel is satisfied that the conduct of Mr Merrett fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Merrett’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 are relevant.

Accordingly, the panel is satisfied that Mr Merrett is guilty of unacceptable professional conduct.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct, 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.

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 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 and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Merrett, which involved a pattern of prolonged and inappropriate communications with female pupils and a failure to report a significant and serious safeguarding issue, there is a strong public interest consideration in the protection of pupils.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Merrett 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 Merrett 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 Merrett.

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 Merrett. The panel took further account of the 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, those that are relevant in this case are:

- 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; and

- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils.

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.

There is evidence that Mr Merrett's actions were deliberate and were not isolated but that there was a pattern of prolonged inappropriate communication with female pupils. There is evidence to suggest that his failure to report a safeguarding issue was not deliberate but this was an extremely serious breach of the school's policy which could have had serious consequences.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Merrett. In forming this opinion, the following factors were a significant factor: the actions were not isolated; the excessive volume of inappropriate emails to the pupil's personal email accounts; the clear sense of guilt felt by Mr Merrett when he deleted the file containing his emails with Pupil B; the fact that this correspondence with the pupils was covert, using personal email addresses and sending emails during the evening when his wife was out of the room; the fact that some of the pupils were vulnerable and the serious nature of his failing to report the safeguarding issue.

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 were mindful that the 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 2 years.

Mr Merrett has shown significant remorse for his actions and has consistently said that he was only trying to help the pupils and now realises that his behaviour in doing this was inappropriate. He has also repeatedly confirmed that there was never any sexual motivation behind his actions. However, there is a concern that Mr Merrett has still failed to understand the seriousness of his actions. Mr Merrett has said that he has no intention of teaching again.

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 3 years.

Decision and reasons on behalf of the Secretary of State

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

I have noted the facts that the panel has found proven in this case and that those facts were found to amount to unacceptable professional conduct.

I also note that Mr Merrett admitted those facts and admitted that they amounted to unacceptable professional conduct.

The panel found that Mr Merrett's conduct 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;
- teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.
- teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Taking into account the pattern of prolonged inappropriate communications with female pupils and the serious nature of his failure to report a safeguarding issue, I note that the the panel was satisfied that the conduct of Mr Merrett fell significantly short of the standards expected of the profession.

I have taken into account the guidance published by the Secretary of State.

I have also taken into account the need to be proportionate and to balance the public interest with the interests of Mr Merrett.

I have considered Mr Merrett's behaviours and consider that, in terms of the guidance, those that are relevant in this case are:

- 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; and
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils.

For all of the reasons set out I support the recommendation of the panel that Mr Merrett should be prohibited from teaching.

I consider now the matter of a review period. I have considered the recommendation of the panel and noted their comments on insight and remorse. For the reasons given I support the recommended review period which seems proportionate and fair.

This means that Mr Richard Merrett 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 25 July 2019, 3 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 Richard Merrett remains prohibited from teaching indefinitely.

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

Mr Richard Merrett 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 blue ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 18 July 2016

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