



National College for
Teaching & Leadership

Miss Jennifer Ann Cann: Professional conduct panel outcome

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

June 2017

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

Teacher: Miss Jennifer Ann Cann
Teacher ref number: 1255945
Teacher date of birth: 25 June 1986
NCTL case reference: 15661
Date of determination: 1 June 2017
Former employer: Burton Borough School

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 1 June 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Miss Jennifer Ann Cann.

The panel members were Alison Walsh (teacher, practising – in the chair), Mr Martin Pilkington (lay member) and Mr Ian Hughes (lay member).

The legal adviser to the panel was Laura Ellis of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the National College was Holly Quirk of Browne Jacobson LLP solicitors, who was not present.

Miss Jennifer Ann Cann was not present and she was represented by Laurence Shaw of NASUWT who was also not present.

The meeting 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 following allegation set out in the Notice of Meeting dated 10 May 2017.

In that, whilst employed as a teacher of Information Technology and Computing at Burton Borough School:

1. Between the year(s) 2014 and 2016, she failed to maintain professional boundaries in that she:
 - a. Engaged in an inappropriate relationship with Student A;
 - b. Made inappropriate physical contact with Student A;
 - c. Met with Student A outside of school hours on more than one occasion.
2. Between the year(s) 2015 and 2016, she provided two of her GCSE Computing Science classes with the solution to the problem for their controlled assessments.

The typographical error in this allegation and Miss Cann's admissions are discussed in section C below.

C. Preliminary applications

Amendment of allegation

The panel observed that the Notice of Meeting contained a typographical error, in that it omitted the stem of the allegation that refers to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. This stem is a crucial part of the allegation that is required in order for the panel to proceed to consider the case, in accordance with section 141B of the Education Act 2011, sections 5 to 8 of the Teacher's Disciplinary (England) Regulations 2012 and the Teacher Misconduct – Disciplinary Procedures for the Teaching Profession (the "Procedures").

The panel noted that the stem was included in the Notice of Referral dated 19 January 2017 that was sent to Miss Cann, and the Statement of Agreed Facts which Miss Cann signed on 22 March 2017 (the "SOAF"). Within the SOAF, Miss Cann admitted the particulars of the allegations and that these constituted unacceptable professional conduct and/or conduct that may bring the profession into disrepute. This is also admitted in her legal representative's written submissions to the NCTL (undated). The presenting officer has also confirmed that the omission of the stem in the Notice of Meeting is a typographical error.

As a result of the above, the panel was satisfied that the omission of the allegation stem in the Notice of Meeting was merely a typographical error and considered whether to

exercise its discretion pursuant to paragraph 4.56 of the Procedures to amend the allegation. The panel noted that paragraph 4.56 requires the panel to consider any representations by the parties before making an amendment. As Miss Cann was not present at the meeting, the National College attempted to contact her and her representative to invite her to make any representations on this issue, but was unable to obtain a response.

As the allegations admitted by Miss Cann contained the stem (as explained above), the panel decided that it was able to amend the allegation in the Notice of Meeting so that it contains the stem. This amendment is in the interests of justice and it causes no risk of unfairness or prejudice to Miss Cann as it does not change the nature of the allegation that she has admitted to, make it more serious than before, or change the factual basis upon which the allegations are founded. Miss Cann's case would not have been presented differently if the amendment to the Notice of Meeting had been made at an earlier stage, as she has already clearly admitted to the allegation in its amended form in the SOAF and her legal representative's submissions.

The amended allegation is therefore as follows:

You are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a Teacher of Information Technology and Computing at Burton Borough School:

1. Between the year(s) 2014 and 2016, you failed to maintain professional boundaries in that you;
 - a. Engaged in an inappropriate relationship with Student A;
 - b. Made inappropriate physical contact with Student A;
 - c. Met with Student A outside of school hours on more than one occasion.
2. Between the year(s) 2015 and 2016, you provided two of her GCSE Computing Science classes with the solution to the problem for their controlled assessments.

Note regarding 'Student A'

By way of observation, the panel also noted that whilst allegation 1 concerns 'Student A', there are numerous references to 'Pupil A' throughout the meeting bundle, including in the SOAF. However, the panel considers that it is evident from the parties' submissions, (including the SOAF and an un-redacted statement that has been provided by Miss Cann from Student A) that the parties are referring to the same person. As there is no indication of confusion between the parties as to the identity of Student A, the panel is content to proceed to consider the allegation.

D. Summary of evidence

Documents

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

Section 1: Chronology – pages 2 to 3

Section 2: Notice of Referral, response and Notice of Meeting – pages 4 to 10b

Section 3: NCTL documents – pages 19 to 171

Section 5: Teacher documents – pages 172 to 209

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

Witnesses

Convened as a meeting - the panel heard no oral evidence.

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 meeting.

Following the completion of her PGCE teacher training course, Miss Cann began her NQT induction year at Burton Borough School (the “School”) in September 2014 as an IT and computing teacher. She received generally good feedback in relation to her teaching but the School had concerns regarding her ability to maintain professional relationships with pupils, and so her NQT induction period was extended. In September 2015 Miss Cann began mentoring Student A (a pupil of the School) outside of the School and without the School’s knowledge. Miss Cann passed her NQT induction in December 2015. In the following few months, the School undertook an investigation into allegations that Miss Cann had provided pupils with solutions to controlled assessments, which resulted in her suspension from the School on 14 April 2016 and the receipt of a final written warning for gross misconduct on 14 June 2016. On 21 June 2016 a safeguarding referral was made following sightings of Miss Cann with Student A outside of the School. Miss Cann resigned from the School on 15 July 2016.

Findings of fact

Our findings of fact are as follows:

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

You are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a Teacher of Information Technology and Computing at Burton Borough School:

1. In or between the year(s) 2014 and 2016, you failed to maintain professional boundaries in that you:

a. Established an inappropriate relationship with Student A;

Miss Cann has admitted this allegation in the SOAF and her other written representations. The panel has also seen the School's investigation report and notes of interviews conducted during that investigation. These documents confirm that Miss Cann met with Student A (who was a pupil of the School) outside of school time, in her car, on numerous occasions and sometimes with no third party present. This arrangement appears to have continued for some months. The panel acknowledges that Miss Cann states that the purpose of the meetings was to provide academic mentoring to Student A. However, this appears to have contravened the previous warnings given to Miss Cann by the headteacher of the School, which was to avoid meeting with pupils alone in order to maintain appropriate professional boundaries. Staff at the School (including Miss Cann) were also previously warned that Student A in particular was vulnerable. The panel also acknowledges that Miss Cann states that her family were friends with Student A's family, but considers that Miss Cann was aware that Student A was also a pupil of the School and so should have known that the meetings presented a conflict of interest. The allegation is therefore found proven.

b. Made inappropriate physical contact with Student A;

The panel notes that Miss Cann has admitted in the SOAF that she hugged Student A, and that this could be construed as inappropriate. The fact that Miss Cann hugged Student A is also supported by the notes of interviews exhibited to the School's investigation report and the statement from Student A. There is no suggestion that there was any sexual element to this, but nevertheless it did constitute physical contact with a pupil in the context of a 'one to one' inappropriate relationship outside of School, which the panel considers was very unwise on the part of Miss Cann. The allegation is therefore found proven.

c. Met with Student A outside of school hours on more than one occasion

Miss Cann has admitted this in the SOAF and her other written representations. It is also supported by Student A's statement and the notes of interviews from the School's investigation. The allegation is therefore found proven.

2. In or between the year(s) 2015 and 2016, you provided two of your GCSE Computing Science classes with the solution to the problem for their controlled assessments.

Miss Cann has admitted this allegation in the SOAF and her other written representations. This is also supported by the School's investigation report and exhibited documents. The SOAF also states that the pupils were consequently unable to submit the assessments and that the examination board (AQA) responded by imposing conditions upon Miss Cann's ability to supervise examinations. The allegation is therefore found proven.

The panel would like to highlight that its decisions have been based upon the documentary evidence that has been submitted from both parties in the meeting bundle, which are consistent with each other in terms of content. The panel has not been influenced by the outcome of the School's disciplinary process.

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

Having found the allegations to have been proven, the panel has gone on to consider whether the facts of the proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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 is satisfied that the conduct of Miss Cann in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Miss Cann 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

The panel is satisfied that the conduct of Miss Cann fell significantly short of the standards expected of the profession.

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

By way of observation, the panel considers that although allegation 1 concerned meetings with Student A outside of the School's premises during evenings, this took place within an education setting because the meetings concerned school matters (Miss Cann stated that she was mentoring Student A for school examinations) and it constituted a relationship with a pupil who had been in Miss Cann's care whilst she was a teacher at the School.

Accordingly, the panel is satisfied that Miss Cann is guilty of unacceptable professional conduct.

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 pupils' 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.

In relation to allegation 2, the panel notes that the School's investigation report states that a local newspaper article was published regarding this. The panel considers that pupils and the public need to have confidence in the assessment process, as this is a crucial part of the education system. Any interference with this (such as that demonstrated here) throws the integrity of the examination system into question.

The panel therefore finds that Miss Cann's actions constitute conduct that may bring the profession into disrepute.

Having found the facts of the allegations proved, we further find that Miss Cann's conduct amounts to both unacceptable professional conduct and 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/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.

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, declaring and upholding proper standards of conduct and the interest of retaining the teacher in the profession.

The panel's findings against Miss Cann involved failing to maintain professional boundaries with a pupil despite prior warnings from the School to do so, and providing pupils with answers to controlled assessments so that the results from those assessments could not be used to assess the pupils' progress. The panel considers that public confidence in the profession could be seriously weakened if conduct such as this were not treated with the utmost seriousness when regulating the profession.

The panel also considers that there is a public interest in retaining Miss Cann in the profession, as the documentary feedback from her PGCE and NQT training periods indicates that she is able to make a valuable contribution to the profession (subject to maintaining professional boundaries with pupils).

In view of 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 Miss Cann.

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 Miss Cann. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if there is evidence of one or more of the factors listed on page 10 of the Advice. In the list of such factors, those that are relevant in this case are:

- a 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

- ...deliberate behaviour that undermines pupils, the profession, the school or colleagues

The panel considers that the second bullet point above is particularly relevant to allegation 2, as Miss Cann's provision of the answers for controlled assessments meant that the results from those assessments could not be used to assess the pupils' progress, which would have had an adverse impact upon their education in that subject.

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 considered that Miss Cann's actions were deliberate and that there is no evidence to suggest that she was acting under duress, although the panel notes that in relation to allegation 2 Miss Cann states that she followed advice from her previous head of department. As Miss Cann was a recently qualified teacher, she did not have an extensive teaching history. However, as explained above, the panel notes that the feedback from her training period was generally good (subject to maintaining professional boundaries with pupils).

In addition to the documentary feedback of Miss Cann's teaching ability, the panel has reviewed the five character references that she has provided, which are from friends, parents of pupils that she has tutored and a work colleague.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel is sufficient.

The panel is of the view that applying the standard of the ordinary intelligent citizen, recommending no prohibition order is not a proportionate and appropriate response. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for Miss Cann of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations set out above outweigh the interests of Miss Cann. Miss Cann's decision to ignore the repeated warnings from her senior colleagues at the School about the need to maintain professional boundaries with pupils was a significant factor in forming that opinion, as it indicates that there is a risk that the behaviour may be repeated. 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 to recommend a review period of the order. The panel was mindful that the Advice states 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.

The Advice states that there are behaviours that, if proven, would militate against a review period being recommended. None of those behaviours are relevant in this case.

As explained above, the panel has very carefully considered the written representations submitted by Miss Cann. The panel acknowledges that in relation to allegation 1, Miss Cann states that her intention was purely to assist Student A with revision for examinations. The panel also notes that in relation to allegation 2, Miss Cann states that she received very little teaching support following the departure of her head of department, which was difficult to manage given Miss Cann's lack of experience in the profession and the fact that she had only recently qualified. The panel considers that she has shown some developing insight into her actions. She has also expressed remorse. She has admitted to the allegations throughout the process and cooperated with both the School and National College's investigations.

The panel therefore considers that a review period is appropriate. If Miss Cann wishes to re-join the profession in the future, this provides her with the time to reflect upon her conduct, including the importance of being trusted to work in a teaching environment and not crossing professional boundaries with 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 provision for a review period after two years.

Decision and reasons on behalf of the Secretary of State

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

In considering this case I have also given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case, the panel has found the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Miss Cann should be the subject of a prohibition order, with a review period of two years.

In particular the panel has found that Miss Cann 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

The panel has also set out that it is satisfied that the conduct of Miss Cann fell significantly short of the standards expected of the profession.

The panel has also gone on to consider whether Miss Cann's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that none of these offences are relevant.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Miss Cann, and the impact that will have on her, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has made two observations in respect of this, firstly that Miss Cann's behaviour "involved failing to maintain professional boundaries with a pupil despite prior warnings from the School to do so", and secondly, that her behaviour involved "providing pupils with answers to controlled assessments so that the results from those assessments could not be used to assess the pupils' progress".

A prohibition order would therefore prevent such a risk from being present whilst that order is in force.

I have also taken into account the panel's comments on insight and remorse which the panel sets out as follows, "The panel considers that she has shown some developing insight into her actions. She has also expressed remorse". In my judgement the panel's observation that Miss Cann has shown some developing insight indicates that there is some risk of the repetition of this behaviour and this risks future pupils' well-being and their ability to have their examination work properly assessed. The panel also comment, "Miss Cann's decision to ignore the repeated warnings from her senior colleagues at the School about the need to maintain professional boundaries with pupils was a significant factor in forming that opinion". I have therefore given these two elements in combination considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "public confidence in the profession could be seriously weakened if conduct such as this were not treated with the utmost seriousness when regulating the profession".

I have had to consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public as a failure to uphold those high standards. In weighing these considerations I have had to consider the matter from the point of view of an "ordinary intelligent and well-informed citizen."

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Miss Cann herself.

A prohibition order would prevent Miss Cann from teaching. A prohibition order would also clearly deprive the public of her contribution to the profession for the period that it is in force.

In this case I have placed considerable weight on the panel's comments concerning Miss Cann's, "decision to ignore the repeated warnings from her senior colleagues".

Overall I have given less weight in my consideration of sanction therefore, to the contribution that Miss Cann has made and is making to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by sufficient remorse or insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended a 2 year review period.

I have considered the panel's comments, "this provides her with the time to reflect upon her conduct, including the importance of being trusted to work in a teaching environment and not crossing professional boundaries with pupils".

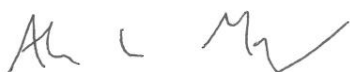
I have considered whether a 2 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession.

I consider that a two-year review period, which is the minimum that is set out in the legislation, is appropriate and proportionate to satisfy the maintenance of public confidence in the profession.

This means that Miss Jennifer Ann Cann 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 2019, 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, Miss Jennifer Ann Cann remains prohibited from teaching indefinitely.

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

Miss Jennifer Ann Cann 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.



Decision maker: Alan Meyrick

Date: 6 June 2017

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