



National College for
Teaching & Leadership

Mr Joshua Onduso: Professional conduct panel outcome

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

September 2017

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

Teacher: Mr Joshua Onduso

Teacher ref number: 0985031

Teacher date of birth: 4 February 1967

NCTL case reference: 15290

Date of determination: 16 May 2017

Former employer: The Reintegration Service, Moorside Community Centre

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 15 May 2017 and 8 September 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Joshua Onduso.

The panel members were Ms Karen McArthur (lay panellist – in the chair), Mr Chris Rushton (lay panellist) and Mr Brian Hawkins (teacher panellist).

The legal adviser to the panel was Miss Anna Lois Parry of Eversheds Sutherland solicitors.

The presenting officer for the National College was Ms Louisa Atkin of Browne Jacobson LLP solicitors.

Mr Joshua Onduso was present and was represented by Mr Charles Elton of Furnival Chambers.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegation set out in the Notice of Proceedings dated 14 November 2016.

It was alleged that Mr Joshua Onduso was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher at The Reintegration Service, Moorside Community Centre:

1. He engaged in offensive and/or homophobic dialogue on or around 6th May 2015, including;
 - a. that when asked what he thought about “gay people”, he responded by;
 - i. saying “gay people have a disease” or words to that effect;
 - ii. pointing to his head and saying “they have something wrong upstairs” or words to that effect;
 - b. that when asked by a pupil whether he thought “gay people” had a disease, he nodded and/or said yes;
 - c. that when asked by a pupil whether he thought “gay people” were like animals, he nodded and/or said yes;
 - d. when asked what he had said about “gay people” earlier in the day, he said they are “sick in the head” or words to that effect.
2. In so doing allegation 1, he demonstrated a lack of tolerance and respect for the rights and/or beliefs of others.

In advance of the hearing, Mr Onduso denied the facts of the allegation and denied having been guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

The panel considered an application made by Mr Elton on behalf of Mr Onduso to adduce 2 documents not already in the bundle, namely, Mr Onduso’s certificate of achievement and Mr Onduso’s job application form.

The panel noted that the documents had not been served in accordance with paragraph 4.20 of the Teacher misconduct: Disciplinary procedures for the teaching profession (the “Procedures”) but considered that it had discretion to allow a document not served in accordance with paragraph 4.20 to be admitted as evidence. The panel took into account paragraph 4.18 and whether it would be fair to admit the evidence. The panel considered

that the documents that Mr Onduso was seeking to rely on were relevant to the issues being determined by the panel. The job application form had formed part of the National College's papers and Ms Atkin was familiar with this document. The certificate of achievement was dated 11 May 2017 and could not therefore have been served in accordance with rule 4.20. The panel was of the view that it would be fair and appropriate to admit the documents at the hearing.

The panel also considered an application from Mr Elton that part of both Witness A (teaching assistant) and B's (the headteacher) evidence should be heard in private. The panel considered whether to exercise its discretion under paragraph 11(3)(a) of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and the first bullet point of paragraph 4.57 of the Procedures to exclude the public from all or part of the hearing.

The panel has taken into account the general rule that hearings should be held in public and that it is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession.

The panel considered the representations of Mr Elton and Ms Atkin. The panel took account of the fact that only a specific and discrete line of questioning would be heard in private and that the public interest would be satisfied by the fact that the public would be present for the majority of the hearing. The panel was persuaded that allowing part of the hearing to be heard in private would be in the interest of justice and would protect Witness A's right to private life.

The panel also considered whether to hear the evidence of Witness C (providing evidence of character called by Mr Onduso) via telephone. The panel noted that the Procedures do not specifically provide for the use of telephone evidence but had regard to paragraph 4.18 of the Procedures which state that the panel may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case. The panel considered the fact that the witness was not able to attend the hearing due to work commitments and also took into account the fact that this was a character witness, rather than a witness of fact.

The panel noted that there were no objections from Ms Atkin to the evidence being adduced by telephone.

The panel had regard to the fact that it would not have the benefit of observing the witness's reactions and body language and that there may be subtleties of tone that may be lost via the medium of telephone. However, the panel considered that the interest of fairness would be served by it taking account of these factors when assessing the weight of the witness's evidence. The panel exercised its discretion and admitted the evidence of Mr Onduso's good character witness via telephone.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 1 to 3

Section 2: Notice of Proceedings and Response – pages 4 to 10

Section 3: NCTL witness statements – pages 11 to 18

Section 4: NCTL documents – pages 19 to 104

Section 5: Teacher documents – pages 105 to 111

In addition, the panel agreed to accept the following:

Certificate of achievement – page 112

Teaching application form – pages 113 to 122

Statement of agreed facts - page 123

Character Reference dated 4 September 2017 – page 124 to 125

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

Witnesses

The panel heard oral evidence from:

Witness A - teaching assistant at the school; and

Witness B - headteacher at the school;

Both were called by the presenting officer.

Witness C - Witness providing evidence of character (friend and former colleague of Mr Onduso),

Witness C was called by Mr Onduso.

The panel also heard evidence from Mr Onduso.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Onduso commenced working at the school as a science and careers teacher in September 2014. On 6 May 2015 concerns were brought to the attention of the headteacher that Mr Onduso had made homophobic comments during lessons on the afternoon of 6 May 2015.

The headteacher decided to undertake a formal investigation under the disciplinary procedure and, on 7 May 2015, Mr Onduso was suspended pending completion of the investigation. On 3 June 2015, an investigation interview was held with Mr Onduso. He denied making the homophobic comments. On 15 July 2015 the investigation was completed and the headteacher wrote to Mr Onduso to inform him that a disciplinary hearing would be held. The disciplinary hearing took place on 23 September 2015. The outcome of that hearing was that Mr Onduso was summarily dismissed for reasons of gross misconduct. Mr Onduso appealed the decision of the disciplinary hearing. An appeal hearing was held on 22 January 2016.

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. Whilst employed as a teacher at The Reintegration Service, Moorside Community Centre, you engaged in offensive and/or homophobic dialogue on or around 6th May 2015, including;**
 - a. that when asked what you thought about “gay people”, you responded by;**
 - i. saying “gay people have a disease” or words to that effect;**
 - ii. pointing to your head and saying “they have something wrong upstairs” or words to that effect;**
 - b. that when asked by a pupil whether you thought “gay people” had a disease, you nodded and/or said yes;**

- c. that when asked by a pupil whether you thought “gay people” were like animals, you nodded and/or said yes;**
- d. when asked what you had said about “gay people” earlier in the day, you said they are “sick in the head” or words to that effect.**

The panel heard evidence about The Reintegration Service, Moorside Community Centre (the “School”) where the misconduct was alleged to have taken place. The school is a pupil referral unit which provides a broad and varied curriculum for pupils who are unable to attend mainstream schools.

The headteacher of the School, Witness B, stated in oral evidence that all the pupils who attend the School display challenging behaviour. Many of the pupils suffer from a range of emotional and mental health difficulties. Witness A, whose role at the School was to support the pupils with their activities and to also support the classroom teachers, described the pupils’ behaviour as “quite poor”.

Witness A’s evidence was that on 6 May 2015, during the course of lesson 5, the pupils asked Mr Onduso what he thought about rock music and gay people. In Witness A’s written evidence for these proceedings, Witness A stated that Mr Onduso replied that “gay people have a disease” and that “they have something wrong upstairs”.

The panel was impressed by Witness A’s oral evidence which was clear and consistent. The panel found Witness A to be a very credible witness who was prepared to admit what he could and could not remember. The panel took into account the fact that Witness A could not recall everything that had happened on 6 May 2015 and that his answers to some of the questions during cross-examination were vague. However, the panel took into account the impact that the passing of time can have on a witness’s evidence and were impressed by Witness A’s honesty and the fact that he did not seek to embellish his evidence.

The panel heard evidence from both Witness A and Mr Onduso that they enjoyed a professional relationship. There was no suggestion of any difficulties or animosity between Mr Onduso and Witness A. The panel considered, on the balance of probabilities, that there was no reason for Witness A to act maliciously against Mr Onduso or to give an untruthful account of what he had heard during lesson 5 and 6, nor that he was distracted and mistaken.

The panel also heard oral evidence from Mr Onduso. Mr Onduso was able to answer questions about his background convincingly. However, the panel was less confident in Mr Onduso’s oral evidence about the events of 6 May 2015. The panel found that his confidence wilted and he became flustered when questioned about the details of the events of 6 May 2015.

The panel took account of the evidence gathered during the school's disciplinary investigation. The panel had confidence in the investigation and were impressed by its speed, thoroughness and efficiency.

The panel considered the accounts provided by the pupils who had witnessed the alleged misconduct. The panel had regard to the fact that they had not had the opportunity to test and cross-examine the evidence of the pupils but accepted the National College's decision not to call the pupils as witnesses. The panel also noted that the pupils' accounts were corroborated by the direct witness evidence of Witness A.

The panel had regard to Pupil M's account at page 24 of the bundle and accepted that there may have been some discussion between the pupils about what had happened in the lessons. The panel considered whether the evidence of the pupils could have been contaminated but noted that the accounts at pages 20-26 of the bundle were taken contemporaneously. The panel believed, on the balance of probabilities, that the immediacy of the investigation and the way it had been handled by the school precluded any collaboration or collusion between the pupils.

The panel noted the differing nuances in the pupils' evidence. In the panel's view, this was not unusual given that the pupils were relaying to the lead teacher and headteacher what had happened in their own words. The panel concluded that they would expect to see some degree of inconsistency in the accounts provided by the pupils. If the pupils had discussed their evidence in detail and had conspired against Mr Onduso, the panel would have expected to see more similarities in their accounts.

The panel had regard to the evidence provided by Witness B that none of the pupils who provided evidence had made false allegations before and believed that, on the balance of probabilities, their accounts were unlikely to have been contaminated.

The panel accepted that Pupil M had defied Mr Onduso at the start of lesson 5. The panel was not persuaded that Pupil M had the ability to construct such a falsehood so convincingly and manipulate other pupils and Witness A to lie about the events of 6 May 2015. The panel noted that Mr Onduso had stated at paragraph 31 of his statement at page 108 of the bundle that he generally always got on well with the pupils at the school. This was corroborated by Witness A during his oral evidence. The panel was persuaded that the pupils did not have reason to lie about the events of 6 May 2015.

The panel took into account the submission made by Mr Elton that the words "diseased"; "sick in the head" and "like animals" were not the words of a middle aged professional man, but rather the words of teenagers. The panel did not accept this and were persuaded by Witness B's oral evidence when she said that she would have expected to see more swear words had the pupils fabricated the comments.

The panel moved on to consider the appropriateness of the lead teacher's role in the School's investigation. The panel accepted that Mr Onduso felt undermined by the

actions of the lead teacher, although considered that his sensitivity was not warranted. The panel believed that it was unlikely that any potential tension between Mr Onduso and the lead teacher had influenced how the lead teacher conducted the investigation as the panel believed from the evidence produced of the investigation that it had been conducted thoroughly.

The panel noted that the lead teacher had taken an account from Pupils C and R almost immediately. Pupils C and R also provided an account on the same day to Witness A. Witness A supported the account given by Pupils C and R and the panel found allegation 1.d proved on the balance of probabilities.

In contrast to the speed and efficiency of the school's internal investigation, the panel was struck by the fact that Mr Onduso had not written a contemporaneous account of what had happened during lessons 5 and 6. The panel had regard to his letter dated 11 May 2016 at page 33 of the bundle and concluded that it could not be certain how much of the "separate sheet" Mr Onduso referred to in that letter was contained in the statement at page 62 of the bundle, first submitted on 23 September 2016.

The panel heard evidence from Witness A and Mr Onduso about the size of the unit where the alleged misconduct took place. On the balance of probabilities, the panel did not believe that Witness A could have misheard the comments made by Mr Onduso. The panel was unconvinced that the classroom was in a state of turmoil. The panel was persuaded, given the small size of the unit and the close proximity between Mr Onduso, Witness A and the pupils, that it was more probable than not that Witness A had heard clearly what Mr Onduso was saying.

The panel also considered whether Witness A could have misheard or misunderstood Mr Onduso because English was not the first language of either. The panel heard evidence from Witness A that he always understood Mr Onduso. The panel noted that Mr Onduso and Witness A had worked together since February 2015 and were therefore likely to have become more accustomed to each other's accents. The panel considered that the opportunities for Witness A to mishear Mr Onduso was limited. Taking this and all of the above into account, the panel found that it was more probable than not that the dialogue in paragraph 1.a.i had occurred.

In relation to paragraph 1.a.ii specifically, the panel considered whether Witness A could have misinterpreted Mr Onduso's body language. The panel considered that Witness A's evidence was clear. He stated that he witnessed Mr Onduso pointing his two fingers to his head. The panel found it hard to separate that action from the words "they have something wrong upstairs" and therefore found that it was more probable than not that the action and dialogue in paragraph 1.a.ii had occurred.

The panel accepted that there was a discrepancy in the evidence with regard to whether or not Pupil J and Witness A were present in lesson 6. The panel took account of the personal investigations carried out by Mr Onduso to establish whether Pupil J was in

lesson 6. The panel heard evidence that Pupil J was a “wanderer” and could therefore understand why Mr Onduso may have thought that Pupil J was not in lesson 6. However, the panel had regard to the evidence which supported that Pupil J and Witness A were in lesson 6, namely, the written and oral evidence of Witness A, the written account given by Pupil J at page 32 of the bundle and the email from a teaching assistant at page 31 of the bundle. The panel was persuaded by this evidence and concluded that it was more likely than not that Pupil J and Witness A were both present for at least part of lesson 6.

Witness A stated in his oral evidence that he was sure that Pupil J has asked Mr Onduso whether he thought “gay people” had a “disease” and were like “animals”. Witness A recalled Mr Onduso giving an affirmative answer but could not recall whether he replied “yes” or nodded his head.

The panel had regard to the statement provided by Pupil J at page 32 of the bundle. The panel attributed less weight to this evidence as it was hearsay evidence that they had not had the opportunity to test and assess. The panel also noted that the statement was not contemporaneous and that the risk of contamination was therefore higher. The panel had regard to the fact that the statement at page 32 was different to the evidence of the other pupils. The panel heard that Pupil J had difficulties and therefore considered that he may have been tempted to embellish what he had heard.

However, since Witness A was certain that Mr Onduso had given an affirmative answer to the questions asked by Pupil J and the panel found that allegations 1.b and 1.c were proven on the balance of probabilities.

When considering the allegations in paragraph 1 above, the panel also had regard to what Mr Onduso allegedly told Witness B during a meeting on 6 May 2015. A note of the meeting appears at page 27 of the bundle. The panel took account of the statement of agreed facts and noted that Mr Onduso challenged in the course of the disciplinary process the accuracy of the note of this meeting. The panel found Witness B to be a credible witness and were persuaded by her oral evidence. Witness B stated that she had a really good recollection of what Mr Onduso told her during the meeting on 6 May 2015. Witness B stated that she had been shocked when Mr Onduso told her that he did not encourage gay people because of his beliefs and did not condone what they do. She stated that she asked him twice to clarify his position. On the balance of probabilities, the panel preferred the evidence set out in the meeting file note since Mr Onduso had the motivation to present to the panel a different interpretation of what he had said during the meeting with Witness B.

In considering allegation 1, the panel also had regard to the oral evidence of Witness C, a friend and former colleague of Mr Onduso. Both taught together at Social Working with Abusing and Abused Youth (SWAAY). Witness C described Mr Onduso as having a good relationship with the children at this school where they both taught together. Witness C described Mr Onduso as a very “cordial” and “loving and caring” man. The panel were not persuaded that these statements impacted on the credibility of Mr Onduso or his

propensity to carry out the alleged misconduct and did not therefore consider such statements relevant to the panel's findings of fact.

Taking all of the above considerations into account, the panel is satisfied that the misconduct described in paragraph 1 above did happen. This allegation was therefore found proven.

2. In so doing allegation 1, you demonstrated a lack of tolerance and respect for the rights and/or beliefs of others.

The panel went on to consider whether the conduct alleged in paragraph 1 constituted a lack of tolerance and respect for the rights and /or beliefs of others. The panel had regard to the fact that Mr Onduso stated in oral evidence that he agreed that the comments particularised in paragraph 1 were offensive and homophobic. He agreed that the comments would show a lack of tolerance and respect for the rights and/or beliefs of others.

The panel also heard oral evidence from Witness B that the pupils had been deeply upset by the comments made by Mr Onduso.

The panel was therefore satisfied on the balance of probabilities that Mr Onduso failed to demonstrate tolerance and respect for the rights and / or beliefs of others.

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

Having found the allegation to have been proven, the panel went on to consider whether the facts of the proven allegation amounts to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel 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 Onduso in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considered that by reference to Part Two, Mr Onduso was 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;
 - showing tolerance of and respect for the rights of others;
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs;

- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

The panel was satisfied that the conduct of Mr Onduso fell significantly short of the standards expected of the profession.

The panel was satisfied that Mr Onduso did not have proper and professional regard to the code of conduct of the school. He failed to act as a role model at all times.

The panel considered the vulnerability of the pupils at the school and heard evidence from Witness B about how angry, upset and distressed the pupils had been by what they had heard. The panel heard evidence that Pupil J had been experiencing issues with his language but that the staff at the school had worked hard with Pupil J to improve this. The panel was particularly struck by the impact Mr Onduso's conduct had on Pupil J which was evidenced at page 31 of the bundle.

Accordingly the panel is satisfied that Mr Onduso is guilty of unacceptable professional misconduct.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teacher may have on pupils, parents and other 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.

The panel therefore find that Mr Onduso's allegation constitutes 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 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 a punitive effect.

The panel has considered the particular public interest considerations set out in the Advice and having done so found a number of them to be relevant in this case, namely the protection of pupils; the protection of other members of the public the maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct; and the interest of retaining the teacher in the profession.

The panel found that Mr Onduso made offensive and homophobic comments and gestures in the presence of vulnerable pupils. Protection of pupils is an important factor given the serious nature of the comments made which demonstrated a lack of tolerance and respect on the grounds of sexual orientation.

The panel also found conduct that may bring the profession into disrepute. The panel considered that public confidence in the profession could be seriously weakened if conduct displaying openly homophobic behaviours, as found against Mr Onduso, was not treated with due seriousness when regulating the conduct of the profession. The panel considered that the public would expect teachers to encourage pupils to treat every individual with respect and to take a strong stand against homophobic and offensive behaviours.

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 Onduso was outside that which could reasonably be tolerated.

Notwithstanding the 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 it would have on Mr Onduso. The panel took into account the salutary effect the regulatory proceedings has undoubtedly had on Mr Onduso and also considered the public considerations in favour of allowing Mr Onduso, who is an experienced teacher, to continue to teach.

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 Onduso. 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 the panel considered are relevant in this case are as set out below. However, in each case, the panel carefully considered the extent to which each factor is relevant.

- Serious departure from the personal and professional conduct elements of the Teachers' Standards

Given the findings of unacceptable professional conduct, involving breaches of the Teachers' Standards, this factor is a relevant one.

The panel recognised that the misconduct found against Mr Onduso occurred on a single day during a short time frame. The panel found no evidence of Mr Onduso having made

offensive or homophobic comments in the past and recognised that the comments were made during a moderately stressful environment and in response to questions asked by pupils. However, the nature of the comments made was extremely serious and his behaviour constituted a serious departure from the personal and professional conduct elements of the Teachers' Standards.

The panel considered that Mr Onduso, despite being an experienced teacher, failed to maintain a high standard of ethics and behaviour.

- Misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;

The offensive and homophobic comments and gestures that were made by Mr Onduso were made in the presence of vulnerable pupils and the panel took account of the impact Mr Onduso's misconduct had on the pupils. The panel found no evidence that the impact was enduring. However, it is not unreasonable to believe that comments of this nature would have a serious effect on the well-being of pupils.

Significantly, the panel considered that Mr Onduso had not demonstrated any remorse and he failed to convince the panel that he understood the seriousness of such actions. This caused concern to the panel as they considered whether there was a risk that the misconduct could reoccur and whether there was a risk of continuing harm to the education and well-being of pupils.

- Actions or behaviours that undermine fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs;

Given the findings of offensive and homophobic behaviours, this factor is particularly pertinent. The panel took account of the fact that the comments were not made over a prolonged period of time. However, it was repeated both to the pupils during a different lesson and to the headteacher of the school during the initial investigation.

The panel considered that it is entirely unacceptable for a teacher to make prejudicial comments about individuals because of their sexual orientation and that this sort of behaviour clearly undermines fundamental British values of mutual respect and tolerance of others.

- A deep-seated attitude that leads to harmful behaviour;

The panel was of the view that Mr Onduso demonstrated a deep-seated attitude that leads to harmful behaviour. The panel noted that during discussions with the headteacher following the incident, Mr Onduso stated "I don't encourage gay people because of my beliefs, I am a Christian. I don't condone what they do". This comment was made some time after the first comments were made, outside the stressful environment of the classroom. He confirmed his views twice over.

During panel questioning, Mr Onduso was asked how he responded to a comment made by a pupil that “she hated lesbian people”. Mr Onduso was asked whether he had challenged this comment and replied that he did not.

- Abuse of position or trust (particularly involving vulnerable pupils);

The panel considered that Mr Onduso was in a position of trust. Vulnerable pupils were within his care. He should have been acting as a role model to the pupils, taking a stance against homophobic and prejudice-based behaviour. However, the panel considered that Mr Onduso abused his position as a teacher when he made the offensive and homophobic comments.

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 mitigate 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 was no evidence that Mr Onduso’s actions were not deliberate, nor to suggest that he was acting under duress.

Mr Onduso does have a previously good history and the panel took account of this. The panel accepts that the behaviour was out of character and did not hear any evidence that Mr Onduso had made comments of this nature in the past.

The panel considered the character reference provided at page 109 of the bundle where Mr Onduso was described as a “responsible man of good character and integrity. As a Christian, Mr Onduso holds the view of treating people fairly and with love, which he has demonstrated since the time I have known him.”

The panel also took account of the reference provided by a FDES-qualified teacher, the reference provided by the director of the Teaching Supply Agency which described Mr Onduso as pleasant and reliable, and the character statement from a member of Mr Onduso’s church organisation.

The panel noted that although it had seen evidence of good character, no professional testimony was provided about Mr Onduso’s abilities as a teacher.

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 Mr Onduso of prohibition.

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 Onduso. The nature of the homophobic comments made and the fact that they were made in the presence of vulnerable pupils, showing a complete lack of tolerance of sexual orientation was a significant factor in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate to decide to recommend that a review period of the order should be considered. 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 indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes intolerance and/or hatred on the grounds of sexual orientation. The panel found that Mr Onduso has been responsible for making offensive and homophobic comments and gestures which demonstrates a lack of tolerance on the grounds of sexual orientation.

The panel had regard to the degree of insight demonstrated by Mr Onduso. The panel noted that Mr Onduso acknowledged during oral evidence that the comments (which have now been found against him) were offensive and homophobic.

However, the panel was concerned by the manner in which Mr Onduso obfuscated his evidence. Mr Onduso has not been remorseful or sought to explain his misconduct.

The panel took account of the fact that Mr Onduso had undertaken further safeguarding training in an effort to demonstrate an ability to return to safe working practices. However, the panel did not consider that Mr Onduso has displayed sufficient insight into his actions and had not seen any evidence to persuade it that Mr Onduso has learnt from his actions. As a result, the panel finds it difficult to conclude that there is not a risk of this behaviour occurring again in the future. The panel does not have confidence that Mr Onduso could behave appropriately in a school setting and does not consider that further training would address the concerns given the findings of a deep-seated attitude that leads to harmful behaviour.

The panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provisions for a review period.

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 Mr Onduso should be the subject of a prohibition order, with no review period.

In particular the panel has found that Mr Onduso 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;
 - showing tolerance of and respect for the rights of others;
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

The panel finds that the conduct of Mr Onduso fell significantly short of the standards expected of the profession.

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 Mr Onduso, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed “it is not unreasonable to believe that comments of this nature would have a serious affect on the well-being of pupils” and that Mr Onduso,

“failed to act as a role model at all times.” The panel also noted, “Mr Onduso abused his position as a teacher.” A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel’s comments on insight and remorse which the panel said, “Mr Onduso had not demonstrated any remorse and he failed to convince the panel that he understood the seriousness of such action.” In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks future pupils’ being exposed to the same behaviour. I have therefore given this element 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, “considered that public confidence in the profession could be seriously weakened if conduct displaying openly homophobic behaviours, as found against Mr Onduso, was not treated with due seriousness when regulating the conduct of the profession.” The panel further observed “the public would expect teachers to encourage pupils to treat every individual with respect and to take a strong stand against homophobic and offensive behaviours.”

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 Mr Onduso himself. The panel noted that Mr Onduso had a previous good history and that there was no evidence of Mr Onduso making comments of this nature in the past. The panel also considered character references and noted “it had seen evidence of good character.” No professional testimony was provided about Mr Onduso’s abilities as a teacher.

A prohibition order would prevent Mr Onduso from continuing in the teaching profession. A prohibition order would also clearly deprive the public of his 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 the lack of insight or remorse. The panel said, “Mr Onduso had undertaken further safeguarding training in an effort to demonstrate an ability to return to safe working practices. However, the panel did not consider that Mr Onduso has displayed sufficient insight into his actions and had not seen any evidence to persuade it that Mr Onduso has learnt from his actions.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Onduso has made 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 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 no review period.

I have considered the panel's comments that it, "does not have confidence that Mr Onduso could behave appropriately in a school setting and does not consider that further training would address the concerns given the findings of a deep-seated attitude that leads to harmful behaviour." Furthermore the panel said it, "finds it difficult to conclude that there is not a risk of this behaviour occurring again in the future."

The panel has also said "the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provisions for a review period."

I have considered whether no 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 note that the Advice indicates that behaviours as found in this case would mitigate against a review period. In this case, there are two factors that in my view mean that no review period is sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the demonstration of a lack of tolerance on grounds of sexual orientation and the lack of either insight or remorse.

I consider therefore that no review period is required to satisfy the maintenance of public confidence in the profession.

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

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

Mr Joshua Onduso 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 'Dawn Dandy', with a stylized, cursive script.

Decision maker: Dawn Dandy

Date: 18 September 2017

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