



National College for
Teaching & Leadership

Mr Richard Day: Professional conduct panel outcome

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

February 2016

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

Teacher: Mr Richard Day

Teacher ref number: 0753927

Teacher date of birth: 14 December 1984

NCTL case reference: 12429

Date of determination: 22 February 2016

Former employer: Erasmus Darwin Academy, Staffordshire and Nunnery Wood High School, Worcestershire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 22 February 2016 at the Ramada Hotel, The Butts, Earlsdon, Coventry, CV1 3GG to consider the case of Mr Richard Day.

The panel members were Mrs Alison Robb-Webb (teacher panellist – in the chair), Mr Michael Lewis (teacher panellist) and Mr Paul Bompas (lay panellist).

The legal adviser to the panel was Mr Graham Miles of Blake Morgan LLP, solicitors.

The panel convened as a professional conduct panel meeting without the attendance of any party.

The meeting took place in private, save of the announcement of the panel's decision on facts and bringing the profession into disrepute in public. The panel's announcement was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 28 October 2015.

It was alleged that Mr Richard Day was guilty of conduct that may bring the profession into disrepute, in that:

Whilst employed at Erasmus Darwin Academy, Staffordshire, he failed to maintain professional boundaries in that he:

1. Became "friends" and communicated with one or more of his former students via the social networking site Facebook whilst they continued to attend Nunnery Wood High School, Worcestershire where he had previously taught;
2. Sent inappropriate messages to Student A via Facebook including messages where he:
 - (a) called other pupils "dickheads";
 - (b) told Student A that his cousin was "fit" and "hot";
 - (c) asked Student A if his cousin was gay;
 - (d) discussed meeting Student A in a nightclub;
 - (e) discussed buying Student A alcohol at a nightclub;
 - (f) discussed providing Student A with alcohol at his home;
3. Sent inappropriate messages of a sexual nature to Student A via Facebook including messages where he:
 - (a) discussed Student A's sexuality;
 - (b) asked Student A if he had pulled on one or more occasions;
 - (c) asked Student A if he had had sex on a visit to Brighton;
 - (d) discussed obtaining strangers' numbers and arranging "no strings" visits;
 - (e) implied that Student A could have sex with his own cousin;
 - (f) referred to having a threesome with Student A's cousin;
 - (g) suggested that Student A masturbate himself;
 - (h) referred to his birthday party to the effect that there was "lots of cock" there;
 - (i) referred to a photograph of Student A with a pole in his mouth and said:
 - (i) "not the first time I'm sure";
 - (ii) "you can use it when ur on ur own lol";
4. In doing the conduct described at 1 and/or 2 and/or 3 his behaviour was sexually motivated.

C. Preliminary applications

There were no preliminary applications

D. Summary of evidence

Documents

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

Section 1: Chronology and list of key people – pages 2 to 3

Section 2: Notice of Proceedings and Response – pages 5 to 10

Section 3: NCTL witness statements – pages 12 to 14

Section 4: NCTL documents – pages 16 to 296

Section 5: Teacher documents – pages 298 to 318

Section 6: PCPM application – pages 321 – 322

Section 7: Statement of agreed facts and presenting officer representations – pages 324-328

Section 8: Teacher PCPM documents – pages 330 - 348

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

Statement of agreed facts

The panel received a statement of agreed facts signed by Mr Day and the presenting officer and dated 17 February 2016.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Richard Day was employed as a teacher at Nunnery Wood High School, Worcestershire until the summer of 2012 ('the school'). From 1 September 2012, he was employed as a teacher at Erasmus Darwin Academy ('the academy'). Whilst working

there, Mr Day became 'friends' and communicated via the social networking site, Facebook, with one or more of his former students from the school. At that time the former students continued to attend the school and were aged approximately 15 to 16 and included Student A.

In December 2012, Mr Day began to send direct messages to Student A via Facebook. These communications continued for 12 months until December 2013. During this period, the messages sent to Student A by Mr Day included the content referred to in allegations 2 a to f and 3 a to i.

Student A made a disclosure in December 2013 to his tutor at the college in that he had started attending. This was subsequently referred by the Worcestershire Children's service to the Staffordshire Local Authority Designated Officer and then on to the academy. A subsequent investigation resulted in a disciplinary hearing and Mr Day's dismissal in September 2014.

Findings of fact

Our findings of fact are as follows:

Whilst employed at Erasmus Darwin Academy, Staffordshire, you failed to maintain professional boundaries in that you:

- 1. Became "friends" and communicated with one or more of your former students via the social networking site Facebook whilst they continued to attend Nunnery Wood High School, Worcestershire where you had previously taught;**
- 2. Sent inappropriate messages to Student A via Facebook including messages where you:**
 - (a) called other pupils "dickheads";**
 - (b) told Student A that his cousin was "fit" and "hot";**
 - (c) asked Student A if his cousin was gay;**
 - (d) discussed meeting Student A in a nightclub;**
 - (e) discussed buying Student A alcohol at a nightclub;**
 - (f) discussed providing Student A with alcohol at his home;**
- 3. Sent inappropriate messages of a sexual nature to Student A via Facebook including messages where you:**
 - (a) discussed Student A's sexuality;**

- (b) asked Student A if he had pulled on one or more occasions;
- (c) asked Student A if he had had sex on a visit to Brighton;
- (d) discussed obtaining strangers' numbers and arranging "no strings" visits;
- (e) implied that Student A could have sex with his own cousin;
- (f) referred to having a threesome with Student A's cousin;
- (g) suggested that Student A masturbate himself;
- (h) referred to his birthday party to the effect that there was "lots of cock" there;
- (i) referred to a photograph of Student A with a pole in his mouth and said:
 - (i) "not the first time I'm sure";
 - (ii) "you can use it when ur on ur own lol";

4. In doing the conduct described at 1 and/or 2 and/or 3 your behaviour was sexually motivated.

Mr Day has admitted the alleged facts and signed a statement of agreed facts. The panel accepts the facts as proved on that basis.

Findings as to conduct that may bring the profession into disrepute

Mr Day admits that his conduct brought the profession into disrepute. The panel has taken this admission into account, but made its own judgment.

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 Mr Day in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Day 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;
- ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- 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 Mr Day fell significantly short of the standards expected of the profession.

The panel notes that the allegations took place outside of the education setting, albeit that the contact with Student A had been established because Mr Day was a former teacher of Student A and other students. The panel is satisfied that much of the content of the communications with Student A was increasingly over-familiar and became wholly inappropriate and sexually motivated.

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 conduct displayed by Mr Day would likely have a negative impact on his status as a teacher, potentially damaging the public perception of the profession.

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

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of 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 and the declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Day, there is a strong public interest consideration in respect of the protection of pupils given the findings about his electronic communications with Student A.

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

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 Day.

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 Day. 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 well-being of pupils;
- abuse of position of trust involving a vulnerable pupil;
- sexual misconduct, involving communication that was sexually motivated;

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.

Mr Day has a previously good record of teaching. Furthermore, the panel is satisfied that his initial actions, however ill-conceived, were intended to support and counsel a troubled pupil who had formerly been in his tutor group. Mr Day acknowledges he was immature in his judgements and conversations.

Mr Day has a previously good record of teaching and a previously unblemished record. The panel noted the positive character references from professional colleagues of Mr Day.

Notwithstanding these mitigating factors, 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 Day. 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 were mindful that a prohibition order applies for life, but there may be circumstances 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. These behaviours include serious sexual misconduct. Although the panel has found that Mr Day's communications with Student A were sexually motivated, the panel noted that this did not result in any physical contact and was limited to electronic communications with the student, some of which were of a sexual nature. The panel noted that Student A became troubled by the content of the communications to the extent that he disclosed the information to his tutor. No evidence was presented that Student A suffered any harm as a result of receiving these communications. In the light of the above, the panel can distinguish this case from the most serious forms of sexual misconduct. Furthermore, Mr Day has admitted all of the allegations and expressed remorse. He has also demonstrated some insight into his professional failings and given assurances as to his future conduct, including maintaining professional boundaries.

The panel felt these findings indicate that a review period would be appropriate. The panel were minded that it would be proportionate in all the circumstances for the prohibition order to be reviewed after a period of five years. The panel so recommends.

Decision and reasons on behalf of the Secretary of State

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

The panel have made findings of fact and found all allegations proven. The panel has also found unacceptable professional conduct and conduct that may bring the profession into disrepute.

The panel is satisfied that the conduct of Mr Day involved breaches of the Teachers' Standards.

There is a strong public interest consideration in this case, in respect of the protection of pupils given the findings about his electronic communications with a student.

I note the panel's consideration that Mr Day has a previously good record of teaching, and that panel is satisfied that his initial actions, however ill-conceived, were intended to support and counsel a troubled pupil. I note Mr Day acknowledges he was immature in his judgements and conversations.

I have taken into account, the need to balance the public interest with the interests of the teacher. I have also taken into account the need to be proportionate. I have read and taken into account the guidance published by the Secretary of State. The panel has decided that the public interest considerations outweigh the interests of Mr Day. I agree with the panel's view.

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

I have also considered the matter of a review period. The behaviours found proven include serious sexual misconduct. I note that the panel has found that Mr Day's communications with the student were sexually motivated, but that this did not result in any physical contact. No evidence was presented that the student suffered any harm as a result of receiving these communications. I agree with the panel that they can distinguish this case from the most serious forms of sexual misconduct. I note that Mr Day has admitted all of the allegations and expressed remorse, and that he also demonstrated some insight into his professional failings.

The panel has recommended a review period of 5 years. For the reasons set out above, I agree with the panel's decision.

This means that Mr Richard Day 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 2 March 2021, 5 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 Day remains prohibited from teaching indefinitely.

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

Mr Day 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 be 'J. Millions', with a small dot at the end.

Decision maker: Jayne Millions

Date: 25 February 2016