



National College for
Teaching & Leadership

Luke Howard: Professional conduct panel outcome

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

October 2015

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

Teacher: Mr Luke Howard
Teacher ref number: 9205389
Teacher date of birth: 20 November 1969
NCTL case reference: 12656
Date of determination: 6 October 2015

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 5 and 6 October 2015 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Luke Howard.

The panel members were Ms Carolyn Robson CBE (teacher panellist – in the chair), Professor Janet Draper (lay panellist) and Mr Anthony James (teacher panellist).

The legal adviser to the panel was Ms Patricia D’Souza of Eversheds LLP.

The presenting officer for the National College was Ms Rebekah Hummerstone of 2 Hare Court.

Mr Howard was not present and was not represented.

The hearing took place in public and was recorded, save for information relating to health matters which were heard in private.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 29 June 2015 as amended as set out below.

It was alleged that Mr Howard was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed at the School between April 2011 and May 2014:

1. He engaged in a sexual relationship with Pupil A whilst she was a student at the School.
2. He spent time with Pupil A outside of School hours, [redacted].
3. His conduct set out at paragraphs 1 and 2 was sexually motivated.
4. When questioned by the Headteacher in February 2013, he denied engaging in an inappropriate relationship with Pupil A.
5. In doing so, his conduct set out at paragraph 4 was dishonest.

In the Notice of Proceedings form, Mr Howard admitted the allegations set out in the Notice of Proceedings form, however this case is proceeding as a disputed case as the facts are not agreed.

C. Preliminary applications

The presenting officer made an application to proceed in the absence of Mr Howard.

The panel is satisfied that the National College has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel has determined to exercise its discretion under Paragraph 4.29 of the Procedures to proceed with the hearing in the absence of Mr Howard.

The panel understands that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that Mr Howard may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of R v Jones [2003] 1 AC1. The panel noted that more than 8 weeks' notice of today's hearing has been given to Mr Howard and Mr Howard has responded (in the Notice of Proceedings form signed 30 June 2015) and indicated he would not attend the hearing. The panel therefore considers that Mr Howard has waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

The panel has had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There is no indication that an adjournment might result in Mr Howard attending the hearing. Mr Howard, in a letter to the National College dated 9 February 2015 and the Notice of Proceedings form indicated that he would not be legally represented at the hearing.

The panel has had regard to the extent of the disadvantage to Mr Howard in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of Mr Howard's written representations and is able to ascertain the lines of defence. The panel has noted that all witnesses relied upon by the presenting officer are to be called to give evidence and the panel can test that evidence in questioning those witnesses, considering such points as are favourable to the teacher, as are reasonably available on the evidence. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard Mr Howard's account.

The panel also notes that there is a vulnerable witness present at the hearing, who is prepared to give evidence, and that it would be inconvenient and distressing for them to return again.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Howard and has accepted that fairness to Mr Howard is of prime importance. However, it considers that in light of Mr Howard's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; and taking account of the inconvenience an adjournment would cause to the witnesses; that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

Given the outcome of the case management hearing in this case, in which the panel decided inter alia that the name of the School should be anonymised throughout the proceedings, the panel were advised by the legal advisor that it was necessary to consider amending the reference to the School in the stem of the allegations under

paragraph 4.56 of the Procedures. The presenting officer did not oppose the amendment. The panel also noted that Mr Howard did not resist the initial application considered at the case management hearing. In light of this amendment not changing the substantive nature of the allegations the panel considered that no unfairness or prejudice would be caused to Mr Howard. The panel therefore decided that the School is to be referred to as the School in the stem of the allegations both within the hearing and in the published decision and then subsequently “the School” throughout the hearing.

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 5

Section 2: Notice of Proceedings and Response – pages 6 to 12

Section 3: National College witness statements – pages 13 to 22

Section 4: National College documents – pages 23 to 57

Section 5: Teacher documents – pages 58 to 62

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

Witnesses

The panel heard oral evidence from:

- Pupil A
- Parent Z – Pupil A’s father
- Ms X – the former headteacher of the School

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 hearing.

Mr Howard joined the School on 26 April 2011 as the director of music. He was responsible for teaching examination music such as GCSE and A-level. He also led the jazz band, orchestra, and choir and organised choir trips abroad. In addition, he also accompanied pupils if they were sitting a music examination for example by playing piano. Concerns about Mr Howard's relationship with Pupil A were first raised in February 2013, however following an investigation no further action was taken by the School. Mr Howard resigned from the School in September 2013, however it was agreed he would stay on longer to complete his support of examination classes and he ceased teaching in May 2014.

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 at the School between April 2011 and May 2014:

1. You engaged in a sexual relationship with Pupil A whilst she was a student at the School.

In her oral evidence, Pupil A confirmed that the first time she was taught by Mr Howard [redacted] was in September 2012. In the course of this academic year, Mr Howard also became her [redacted] tutor [redacted] throughout 2013 into 2014. Pupil A also stated in her oral evidence that she recalled being in a sexual relationship when she attended a School trip with Mr Howard in February 2013. However, the panel found that Pupil A was not entirely clear about the dates of specific events in her oral evidence.

The presenting officer submitted that by October 2013, Mr Howard had admitted to Pupil A's parents that his relationship with Pupil A had become sexual. This is not disputed by Mr Howard.

Parent Z confirmed that Mr Howard, whilst giving her [redacted] tuition in her home, behaved in a way that seemed "peer to peer" rather than a normal pupil/teacher relationship. Over time the relationship, as observed by Pupil A's parents, became more and more informal. It was clear to Parent Z that Mr Howard and Pupil A had a close relationship and spent a lot of time together both within and outside of the School.

When Mr Howard and Pupil A revealed the nature of their relationship to her parents in October 2013, Parent Z was very shocked and angry.

In both her witness statement and oral evidence, Pupil A stated that sexual activity took place at Mr Howard's home and at Pupil A's family home. Pupil A stated that she and Mr

Howard were in this sexual relationship at the time both she and Mr Howard were questioned by the headteacher of the School in February 2013. Mr Howard denies that a sexual relationship had developed by this point.

[Redacted]

On the balance of probabilities, the panel found this allegation proven.

2. You spent time with Pupil A outside of School hours, [redacted].

In her witness statement, Ms X indicated that Pupil A's parents had told her that Mr Howard had told Pupil A that she should "experience different [redacted] tutors". Mr Howard then cancelled all Pupil A's lessons with her current tutor and then took over Pupil A's lessons himself. Ms X believed that these lessons took place over a year. This account was affirmed by Parent Z in his oral evidence and that Mr Howard was responsible for all of Pupil A's [redacted] activities.

Pupil A's evidence was that Mr Howard taught her at school approximately two or three times a week and he was her [redacted] tutor [redacted]. The [redacted] lessons originally took place at School but they later moved to her home. Sometimes Pupil A's parents were at home when the lessons took place but occasionally they were not.

[Redacted]. They then exchanged personal email addresses and mobile numbers and thereafter they communicated by text messages. Pupil A's oral evidence was that she remembers kissing Mr Howard [redacted]. Pupil A considered them to be in a "boyfriend – girlfriend" relationship in [redacted], in that they regularly communicated in a personal manner.

Pupil A said that she and Mr Howard would see one another at School and also outside school hours [redacted].

In addition to school related matters, Pupil A stated that she would also meet with Mr Howard alone. Mr Howard would pick her up and would drive around in his car. They also went to Mr Howard's house a few times a month as she stated this was a place they could meet up without being seen by others for the purpose of continuing their relationship. Mr Howard has admitted their relationship became sexual in nature.

The panel considered that on the balance of probabilities that Mr Howard did meet with Pupil A outside of School hours [redacted]. This allegation is therefore found proven.

3. Your conduct set out at paragraphs 1 and 2 was sexually motivated.

The presenting officer submitted that if allegation 1 and 2 are found proved, then it may be that the panel find that allegation 3 is also proved, i.e. if a sexual relationship took place it would follow that Mr Howard's conduct towards Pupil A was sexually motivated.

The presenting officer submitted that the purpose of Mr Howard meeting up with Pupil A outside of school hours was for a sexual purpose. In his written representations, Mr Howard denies this.

The panel was advised by the legal advisor that the first question the panel needs to ask itself is whether reasonable persons would think the words/actions found proven against Mr Howard could be sexual i.e. an objective test. If so, the panel would then need to go on to ask itself a second question: whether, in all the circumstances of the conduct in the case, Mr Howard's purpose of such words/actions was sexual, i.e. the subjective test.

In his written submission to the National College dated 19 December 2014, Mr Howard states that they had formed a "strong emotional attachment" and that once Pupil A turned 18 their relationship became sexual. Pupil A's evidence conflicted, as she stated that the relationship had become sexual by February 2013. On either version of events, the panel considered that on an objective test, the reasonable person would consider that Mr Howard's actions towards Pupil A were sexually motivated. Also, the panel considered, on a subjective test, that Mr Howard's actions towards Pupil A included sexual motivation.

Therefore the panel found this allegation proven.

4. When questioned by the Headteacher in February 2013, you denied engaging in an inappropriate relationship with Pupil A.

Ms X stated in her witness statement that she questioned Mr Howard and Pupil A individually about their relationship. She stated that, in response, Mr Howard denied engaging in an inappropriate relationship.

In addition, Mr Howard states in his written representations to the National College that he denied that he had formed an inappropriate relationship with Pupil A. The panel therefore found this allegation proven.

The panel has found the following particular of the allegations against you not proven, for these reasons:

5. In doing so, your conduct set out at paragraph 4 was dishonest.

The panel noted that the allegation of dishonesty related specifically to the discussion that took place between Ms X and Mr Howard in February 2013 where Ms X sought clarification on the nature of Pupil A and Mr Howard's relationship.

Mr Howard states in his letter of 9 February 2015 to the National College that there was no inappropriate relationship between himself and Pupil A at the point when he spoke to Ms X in February 2013 (as referred to in allegation 4 above). At the meeting between Ms X and Pupil A, Pupil A similarly said that their relationship was appropriate and professional. Subsequently, in both her written and oral evidence, Pupil A states that

their relationship was personal and had indeed become sexual by this time. In contrast, Mr Howard states that their relationship became sexual at a later point.

The panel were mindful of the legal advice from the legal advisor that the first question the panel must ask itself is, were Mr Howard's actions dishonest by the standards of reasonable and honest teachers (the objective test). If the panel consider that his actions were dishonest by those standards then, and only then, must the panel ask themselves the second stage of the test, the subjective test. The panel has to consider whether Mr Howard must have known that what he did was dishonest by those standards, although a person should not escape a finding of dishonesty because he sets his own standards of dishonesty.

The panel found discrepancies in dates included in the bundle of documents and the oral evidence provided by Pupil A and Ms X. The chronology of events therefore remained unclear. Also given the conflicting evidence of Pupil A and Mr Howard noted above, the panel decided that it was not in a position to determine whether or not, the relationship was inappropriate at that time. Therefore the panel could not conclude, on either an objective or subjective basis, that Mr Howard's conduct was dishonest.

This allegation is therefore found not proven.

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

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct 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 Mr Howard in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Howard 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, 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 Howard fell significantly short of the standards expected of the profession by developing an intimate and sexual relationship with a pupil, thus disregarding his safeguarding responsibilities.

The panel has also considered whether Mr Howard's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of sexual activity is relevant. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel notes that the facts relating to some of the allegations took place outside of the education setting, [redacted]. Mr Howard's conduct led to pupils being exposed to or influenced by his behaviour in a harmful way, as his behaviour had a damaging effect on Pupil A and caused her great distress, despite her apparent commitment to the relationship.

Accordingly, the panel is satisfied that Mr Howard 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 Mr Howard's status as a teacher, potentially damaging the public perception of the profession. Mr Howard demonstrated his understanding of the inappropriateness of his actions in seeking to keep the relationship private and communicating with Pupil A by personal, rather than school, email and texts. [Redacted]. The panel therefore finds that Mr Howard'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 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 punitive effect.

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

In light of the panel's findings against Mr Howard, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of an inappropriate sexual relationship with Pupil A when she was a pupil of the School.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Howard were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Howard was outside that which could reasonably be tolerated.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order taking into account the effect that this would have on Mr Howard.

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 Howard. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

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. In light of the panel's findings there was no evidence that Mr Howard's actions were not deliberate. There was also no evidence to suggest that Mr Howard was acting under duress, and the panel found Mr Howard's actions to be sexually motivated.

There is very little information in the bundle which attests to Mr Howard's abilities as a teacher or his character. The panel noted that Ms X indicated in her oral evidence that Mr Howard was held in high regard by some pupils and parents, but others did not like his teaching style. Ms X had concerns about his punctuality and the quality of his marking and feedback.

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 Howard. Mr Howard's lack of awareness of the inappropriateness of his actions in that they posed a risk of harm to Pupil A 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 for them to decide to recommend that a review period of the order should be considered. The panel were mindful that the Advice indicates 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 serious sexual misconduct, e.g. where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons. The panel has found that Mr Howard used his professional position as a teacher to influence Pupil A and he created frequent opportunities to spend time alone with her including outside of school. Reflecting on the relationship, Pupil A's oral evidence was that she was distressed by it and the panel concluded that she had suffered harm as result of Mr Howard's sexually motivated behaviour. The panel found that Mr Howard had committed serious sexual misconduct.

The panel noted Mr Howard's expression of remorse in his written representations in that he "deeply" regrets his actions "throughout this time of his life". However, it did not appear that he fully appreciated the significance of his actions on Pupil A and her family. His behaviour was not an isolated incident, the relationship developed over time and he made efforts to seek private places in which Pupil A and he could continue their

relationship. Despite the concerns raised by Ms X with him in February 2013, on his own evidence, the relationship continued and developed further.

The panel did not consider that Mr Howard had fully recognised the damaging effect of his behaviour on Pupil A and that he had caused both her and her family considerable distress. The public also has a right to expect professional behaviour from teachers. The panel acknowledged that Mr Howard was undergoing personal issues, including health and relationship breakdown, but given the premeditated and deliberate nature of his actions, and his failure to fully acknowledge the consequence of his actions, the panel are concerned that Mr Howard may present a continuing risk to pupils.

In accordance with the Advice, the panel decided that it would be appropriate and proportionate in all the circumstances for the prohibition order to be recommended without provision 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 made by the panel both in respect of sanction and review period.

This is a serious case in which the panel has found Mr Howard guilty of conduct which fell significantly short of the standards expected of the profession, by developing an intimate and sexual relationship with a pupil.

Mr Howard's behaviour caused Pupil A and her family considerable distress. The panel are clear that this was a case of serious sexual misconduct.

I have taken into account the need to be proportionate and to balance the public interest with the interests of the teacher. I have also taken into account the guidance published by the Secretary of State.

In my judgement Mr Howard should be prohibited from teaching.

I have then considered the matter of a review period. I have taken into account the panel's comments on Mr Howard's health and also on the premeditated and deliberate nature of the actions.

I note that the panel consider that Mr Howard has failed to fully acknowledge the consequence of his actions and that he may present a continuing risk to pupils.

In my view this prohibition order should be without provision for a review period.

This means that Mr Luke Howard 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 Howard 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 Howard 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 'Alan Meyrick', with a stylized flourish at the end.

Decision maker: Alan Meyrick

Date: 13 October 2015

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