



National College for
Teaching & Leadership

Mr David Gordon Foster: Professional Conduct Panel outcome

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

August 2014

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher:	Mr David Gordon Foster
Teacher ref no:	9248697
Teacher date of birth:	15 July 1970
NCTL Case ref no:	0010919
Date of Determination:	12 August 2014
Former employer:	Derby Moor Community Sports College

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 12 August 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr David Gordon Foster.

The Panel members were Mr John Speller (Teacher Panellist and Chair), Ms Alison Walsh (Teacher Panellist) and Mr Martin Greenslade (Lay Panellist).

The Legal Adviser to the Panel was Mrs Luisa Gibbons of Eversheds LLP Solicitors.

The Presenting Officer for the National College was Laura Hackney of Browne Jacobson Solicitors. Mr Foster was unrepresented.

Convened as a meeting, neither the Presenting Officer, nor Mr Foster were present.

The meeting took place in private and was not recorded save for the public announcement of the Panel’s findings of fact and findings on unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

B. Allegations

The Panel considered the allegations set out in the Notice of Meeting dated 1 August 2014.

It was alleged that Mr Foster was guilty of unacceptable professional conduct and / or conduct that may bring the profession into disrepute, in that:

Whilst employed at Derby Moor Community Sports College during 2002 to 2013 he displayed a pattern of inappropriate and unprofessional behaviour towards staff and students, in that he:

- 1. Made inappropriate statements/comments on more than one occasion, including swearing and comments of sexual nature, towards pupils during lesson time;**
- 2. Made inappropriate physical contact with pupils whilst under his supervision within a classroom environment on more than one occasion;**
- 3. Acted in an inappropriate and harassing manner towards a colleague, individual A.**

In a Statement of Agreed Facts signed by Mr Foster on 25 July 2014, Mr Foster has admitted the allegations and has admitted that they amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

C. Preliminary applications

There were no preliminary applications.

The Panel considered at the outset whether the allegation should be considered at a public hearing at which the parties would be entitled to attend, or a private meeting without the parties present. The Panel considered the interests of justice and given that the facts of the allegation have been admitted, that Mr Foster has requested a meeting and the Panel has the benefit of Mr Foster's representations, the Panel was of the view that justice would be adequately served by considering this matter at a meeting.

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

D. Summary of evidence

Documents

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

Section 1: Chronology and Anonymised Pupil List	Pages 1- 3
Section 2: Notice of Referral, Response and Notice of Meeting	Pages 4 – 11
Section 3: Statement of Agreed Facts and Presenting Officer Representations	Pages 12 – 17
Section 4: National College for Teaching and Leadership Documents	Pages 18 – 145
Section 5: Teacher Documents	Pages 146 - 149

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

Witnesses

Convened as a meeting, the Panel heard no oral evidence.

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.

Summary of Evidence

Mr Foster was employed at Derby Moor Community Sports College (the “College”) since 8 April 2002 as a Science Teacher. In July 2005, a colleague, individual A, made a complaint against Mr Foster which was dealt with by the College informally. In December 2005, individual A submitted a second complaint. A disciplinary meeting held on 3 July 2006 concluded that the allegations could not be substantiated and it would not be appropriate to take any disciplinary action. A complaint was made by a pupil’s relative in March 2011 following which Mr Foster was given a formal oral warning confirmed in writing. A number of allegations regarding the behaviour of Mr Foster were raised by

students on 21 June 2013. The College carried out an investigation and Mr Foster was dismissed from his post with effect from 24 July 2013.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against Mr Foster proven, for these reasons:

1. Whilst employed at Derby Moor Community Sports College during 2002 to 2013 he displayed a pattern of inappropriate and unprofessional behaviour towards staff and students, in that he made inappropriate statements/comments on more than one occasion including swearing and comments of a sexual nature, towards pupils during lesson time;

The specific occasions on which it is alleged this behaviour occurred have not been set out in the allegations. This would usually be necessary in order for Mr Foster to understand, in detail, the nature and cause of the accusation against him.

However, there are a number of specific occasions set out within the Statement of Agreed Facts which Mr Foster has admitted to, and must therefore have sufficiently understood that those incidents were the subject of criticism in order to have specifically addressed them.

The Panel has therefore decided to treat this allegation as being confined to the specific comments that Mr Foster has specifically admitted to making.

Paragraph 4 of the Statement of Agreed Facts states that Mr Foster admits having used words such as “shit” and had made other crude and inappropriate comments including comments regarding peer to peer networking/ films/ private life. The paragraph goes on to state “see page 74 of the bundle for further details”. Page 74 contains a summary of a complaint made by a pupil in 2011. The Panel noted that this document contained the Head of Sixth Form’s summary of an email written by a pupil, and did not contain the pupil’s first hand evidence. There is no reference within this summary on page 74 to peer to peer networking/ films/ private life. There is, however, a reference to a summary of the concerns again on page 78 of the Bundle, and this states: “Making crude, inappropriate, pointless and immature comments – talking about irrelevant things such as peer to peer networking/ films/ private life”. There is no detail provided regarding the context of such comments, nor what was specifically said. Whilst Mr Foster has admitted making such comments, the Panel did not feel it had sufficient information in order to judge whether such comments amounted to inappropriate and unprofessional behaviour. The summary of the complaint states that Mr Foster used foul language “such as s**t and f**k almost every lesson”. There is an admission that Mr Foster used the word “shit”, but the Panel were unable to understand from the admission or the summary of the

complaint the extent and context in which this word was used. The Panel acknowledged that Mr Foster has made admissions in paragraph 4 of the Statement of Agreed Facts, but were unable to place significant weight on those admissions in its assessment of whether it formed part of a pattern of inappropriate and unprofessional behaviour, having no evidence of the context of the behaviour.

In paragraph 6 of the Agreed Statement of Facts, Mr Foster has admitted having said that he loved Pupil C to bits, or similar. Pupil C has provided a witness statement for the School's investigation in which the pupils has stated: "He tells me, 'he loves me to bits' on a regular basis". The Panel has found it proven that Mr Foster made this comment.

In paragraph 6 of the Agreed Statement of Facts, Mr Foster has admitted having said that Pupil B was shit at chemistry, or similar. Pupil B has provided a witness statement for the School's investigation in which the pupil has stated "Sir came over and said to me yeah you would make a good physics teacher but you would make a SHIT! Chemistry teacher". The Panel has found it proven that Mr Foster made this comment.

In paragraph 6 of the Agreed Statement of Facts, Mr Foster has admitted having spoken to the class about an "atomic wedgie". Pupil J has provided a witness statement for the School's investigation in which the pupil has stated "He then went on to say something along the lines of '.... I love you but I sometimes don't half want to kill you: atomic wedgie. They split you in half' ". The Panel has found it proven that Mr Foster made this comment.

In paragraph 6 of the Agreed Statement of Facts, Mr Foster has admitted having used the words "shit", "dick", "penis" and "bitch" in the presence of pupils in the classroom. Pupil I provided a witness statement for the School's investigation in which the pupil has stated: "I've personally heard of Mr Foster swearing when he messes up during lessons or when someone does something such as 'shit' ". Pupil D's witness statement stated: "Sometimes he swears if something goes wrong like 'shit'... but it's never directly aimed at someone. Except on Friday when he told Pupil B she was 'shit' at chemistry and is going to do shit at everything". Pupil E's witness statement stated: "He has also called me a 'dick' before as well". Pupil G's witness statement stated: "he would often refer to people as 'dicks' which I found very inappropriate and believed it was offensive". Pupil H's witness statement stated: "he has called me a penis". Pupil A's witness statement stated: "I have been called "bitch, whore, dick, dickhead and many more". Pupil D's witness statement stated: "Also he will swear at people saying things like 'dick', 'bastard', 'bitch' 'you hoe' and make you feel really low about yourself". The Panel has therefore found that Mr Foster used the words "shit", "dick", "penis" and "bitch" in the presence of pupils in the classroom.

In paragraph 6, Mr Foster has admitted having said "stop rubbing your boobs" to Pupil C. Pupil C's witness statement for the school investigation stated that: "He also mentions my breasts when playing with my hair (stop rubbing your boobs)". The Panel has therefore found that Mr Foster did say this.

In paragraph 6, Mr Foster has admitting having said words such as: “are you trying to make me your gigolo” whilst performing a rude dance, albeit that he states it was a metaphor for a chemical reaction. Pupil D’s witness statement for the school investigation stated that: “A more recent occurrence was when we were trying to work out an equation and he made up a dance to help remember it with a rude action at the end, trying to be funny. And when [Pupil C] asked for the actual equations he did the dance again, and went ‘what am I now your jiggalow (sic)’ ”. The Panel has found it proven that Mr Foster made this comment.

The Panel considered the comments that it had found proven and considered that they did amount to inappropriate statements including swearing and comments of a sexual nature. The Panel were satisfied that this evidenced a pattern of inappropriate and unprofessional behaviour and this allegation was found proven.

2. Whilst employed at Derby Moor Community Sports College during 2002 to 2013 he displayed a pattern of inappropriate and unprofessional behaviour towards staff and students, in that he made inappropriate physical contact with pupils whilst under his supervision within a classroom environment on more than one occasion;

The specific occasions on which it is alleged this behaviour occurred have not been set out in the allegations. This would usually be necessary in order for Mr Foster to understand, in detail, the nature and cause of the accusation against him.

However, there are a number of specific occasions set out within the Statement of Agreed Facts at paragraph 7 which Mr Foster has admitted to, and must therefore have sufficiently understood that those incidents were the subject of criticism in order to have specifically addressed them.

The Panel has therefore decided to treat this allegation as being confined to the specific acts of physical contact that Mr Foster has specifically admitted to in paragraph 7.

Mr Foster has admitted hitting pupils on their heads with books. Pupil A’s witness statement for the school investigation stated: “For example, numerous times have I been punched in the back, smacked around the face and head, with a book pulled hair a bit...Also the books around the head and punches in the back came to the point it hurts”. The Panel has found it proven that Mr Foster hit pupils on the heads with books. Mr Foster contends that he would have done this lightly, but the Panel noted Pupil A’s description of it having hurt.

Mr Foster has admitted poking pupils in their back. Pupil A’s witness statement referred to being punched in the back. Pupil I has stated in a witness statement: “Also I’ve saw him make contact with people by hitting them in their backs”. Pupil J referred to Mr Foster having slapped “our backs to get our attention/ pokes our sides which makes us jump”. The Panel has found it proven that Mr Foster made inappropriate contact with pupils in their back.

Mr Foster has admitted digging his fingers into a pupil's back. Pupil F's witness statement referred to Mr Foster digging his hands into his shoulder when Pupil F was stretching, which he described as weird. The Panel has found it proven that Mr Foster dug his fingers into a pupil.

Mr Foster has admitted pushing his elbow into a pupil's back. Pupil E's witness statement described Mr Foster having "dug his elbows in my back". The Panel has found it proven that Mr Foster pushed his elbow into a pupil's back.

Mr Foster has admitted having played with Pupil C's hair. Pupil C's witness statement refers to Mr Foster having mentioned her breast when "playing with my hair". The Panel noted from the notes of an investigatory meeting conducted by the School that Mr Foster was questioned whether he was saying that he had possibly played with Pupil C's hair and Mr Foster replied "yes". The Panel has found it proven that Mr Foster played with Pupil C's hair.

Mr Foster has also admitted video recording Pupil M whilst she was in detention. However, this did not amount to physical contact as alleged, and the Panel has not therefore taken this conduct into consideration in deciding whether this allegation is proven.

The Panel is satisfied that the incidents of physical contact referred to above constitute inappropriate physical conduct and are evidence of a pattern of inappropriate and unprofessional behaviour. This allegation is therefore found proven.

We have found the following particulars of the allegations against Mr Foster not proven, for these reasons:

3. Whilst employed at Derby Moor Community Sports College during 2002 to 2013 he displayed a pattern of inappropriate and unprofessional behaviour towards staff and students, in that he acted in an inappropriate and harassing manner towards a colleague, individual A.

The Panel noted that Mr Foster has admitted in the Statement of Agreed Facts:

- Asking individual A why she had made a previous written complaint and said that he would withdraw his support "ICT and otherwise";
- Telling individual A that she was selfish or not sharing work from her previous school;
- Raising his voice to individual A in the Hollybrook Tavern.

The Panel has carefully considered the evidence of what individual A complained of at the time, and Mr Foster's response to the complaints. The Panel noted that the School's investigation in 2006 concluded that the allegations could not be substantiated on either side and represented one person's word against another. The Panel, turning its own

independent minds to the evidence were also unable to determine, on the basis of the written evidence, whether individual A's description of the circumstances surrounding these events was correct. The Panel noted that these events were alleged to have taken place a long time ago, and that with the passage of time, it may be more difficult for Mr Foster to answer them now. The Panel has taken this into account in Mr Foster's favour when deciding whether the alleged facts are more likely than not to have happened. Despite Mr Foster's admission, the Panel did not consider that on the evidence before it, it could be satisfied on the balance of probabilities that Mr Foster's conduct constituted inappropriate and harassing behaviour, nor that it was inappropriate and unprofessional.

Findings as to Unacceptable Professional Conduct and/or Conduct that may bring the profession into disrepute

In considering the allegations that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'Guidance'.

The Panel is satisfied that the conduct of Mr Foster in relation to the facts found proven, involved breaches of the Teachers' Standards. The Panel considers that by reference to Part Two, Mr Foster has failed to demonstrate consistently high standards of personal and professional conduct. Mr Foster 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;
 - showing tolerance of and respect for the rights of others;
- 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;

Mr Foster's language towards the children and his acts of physical conduct demonstrated that he had failed to have respect for the pupils. The derogatory and abusive terms used towards pupils did not safeguard their well-being, and were likely to have affected their self-esteem. Mr Foster failed to have regard to the rights of pupils to be educated in a manner that was free from verbal abuse and fear of physical assault. The Panel were particularly concerned that in acting as has been found proven, Mr Foster had failed to follow a warning given by the school on 14 April 2011 regarding his use of inappropriate language in his lessons. The Panel is satisfied that the conduct of Mr Foster fell significantly short of the standards expected of the profession.

Accordingly, the Panel is satisfied that Mr Foster 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 Panel therefore finds that Mr Foster'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 unprofessional 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 Guidance and having done so has found all 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 Foster, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of his use of inappropriate language and inappropriate physical contact with pupils.

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

The Panel has balanced the public interest considerations both in favour of and against prohibition as well as the interests of Mr Foster. The Panel took further account of the

Guidance, 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
- a deep-seated attitude that leads to harmful behaviour
- abuse of position of trust or violation of the rights of pupils
- other deliberate behaviour that undermines pupils, the profession, or the school

The Panel considered that Mr Foster had displayed a deep-seated attitude that has led to harmful behaviour. The Panel note that Mr Foster had been issued with a formal oral warning, confirmed in writing on 14 April 2011 as he had used inappropriate language in lessons. Despite this, Mr Foster had continued to display a pattern of inappropriate and unprofessional behaviour towards pupils over a sustained period of time. The pupils were not referring to a one off incident.

Although 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, the Panel considers that Mr Foster's actions were deliberate, and formed a sustained pattern of behaviour. There was no evidence to suggest that the teacher was acting under duress. Mr Foster has described health problems but the Panel has no independent medical evidence that those health problems had any effect on his behaviour. Although the teacher had no previous regulatory findings against him, and the Panel noted that he had, in 2010, been promoted, there was no testimonial evidence before the Panel of Mr Foster's ability as a teacher and the Panel noted that he had received a previous warning for conduct of the same nature as that the Panel has found proven.

The Panel is of the view that Prohibition is both proportionate and appropriate. We have decided that the public interest considerations outweigh the interests of Mr Foster. The pattern of behaviour exhibited by Mr Foster 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 Guidance advises that a Prohibition Order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to

apply to have the prohibition order reviewed after a specified period of time that may not be less than two years.

The Panel were concerned by the pattern of behaviour, and the lack of insight demonstrated by Mr Foster in his representations. Although Mr Foster admitted the facts in the Statement of Agreed Facts, the representations he made in letter form stated that in his view the allegations were not part of a pattern of behaviour and that he was surprised by the statement. Mr Foster has not demonstrated any insight into the impact his behaviour may have had on the pupils. Having said that, the Panel felt that Mr Foster would benefit from a period of reflection and that he should have the opportunity to demonstrate his suitability to return to practise. In light of that, the Panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the Prohibition Order to be recommended with provision for a review period after four years.

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 in respect of both sanction and review.

This case has included findings of inappropriate statements by Mr Foster, including swearing and comments of a sexual nature. This forms a pattern of inappropriate and unprofessional behaviour. In addition the panel has found proven incidents of physical contact that constitute inappropriate physical conduct and are evidence of a pattern of inappropriate and unprofessional behaviour. It is clear that Mr Foster 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;
 - showing tolerance of and respect for the rights of others;
- 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.

Mr Foster's language towards the children and his acts of physical conduct demonstrated that he had failed to have respect for his pupils. The derogatory and abusive terms used towards pupils did not safeguard their well-being, and were likely to have affected their

self-esteem. This is of particular concern as Mr Foster had failed to follow a warning given by the school on 14 April 2011 regarding his use of inappropriate language in his lessons. In my view the conduct of Mr Foster fell significantly short of the standards expected of the profession.

I have considered the recommendation of the panel in respect of a prohibition order. I have also taken into account the public interest and the interests of Mr Foster. I have taken into account the need to be proportionate. On balance I consider that Mr Foster should be prohibited from teaching.

I have also given consideration to the matter of a review period. I have taken into account the pattern of behaviour, and the lack of insight demonstrated by Mr Foster. Mr Foster has admitted the facts in the Statement of Agreed Facts, although the panel are clear that the representations he made in letter form, stated that in his view the allegations were not part of a pattern of behaviour and that he was surprised by the statement.

It does not appear to me that Mr Foster has demonstrated any insight into the impact his behaviour may have had on pupils. That said, the panel have considered that Mr Foster would benefit from a period of reflection and that he should have the opportunity to demonstrate his suitability to return to practise. All prohibition orders are indefinite and a review period is no guarantee of a return to teaching. Mr Foster will need to demonstrate that he is a fit person to return.

I support the recommendation of the panel that a review period would be appropriate and I agree that it would be proportionate in all the circumstances for the Prohibition Order to be imposed with provision for a review period after four years.

This means that Mr David Foster 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 20 August 2018, 4 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 David Foster remains barred from teaching indefinitely.

This Order takes effect from the date on which it is served on the Teacher.

Mr David Foster 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.

NAME OF DECISION MAKER: Alan Meyrick



Date: 13 August 2014

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