



National College for
Teaching & Leadership

Ms Diana Ilingworth: Professional conduct panel outcome

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

August 2016

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

Teacher: Ms Diana Illingworth

Teacher ref number: 8765473

Teacher date of birth: 11 September 1965

NCTL case reference: 14251

Date of determination: 25 August 2016

Former employer: Easingwold School and Sixth Form, North Yorkshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 24 August 2016 to 25 August 2016 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT to consider the case of Ms Diana Illingworth.

The panel members were Mr John Pemberton (former teacher panellist – in the chair), Ms Kathy Thomson (teacher panellist) and Mr Jake Greenwood (lay panellist).

The legal adviser to the panel was Ms Harpreet Marok of Eversheds LLP.

The presenting officer for the National College was Mr Ian Perkins of Browne Jacobson.

Ms Diana Illingworth was present and was represented by Ms Diane Ellis title of NASUWT.

The hearing took place in public and the hearing was recorded.

B. Allegations

The panel considered the allegation(s) set out in the Notice of Proceedings dated 23 March 2016.

It was alleged that Ms Diana Illingworth was guilty of unacceptable professional conduct, in that whilst employed as a teacher at Easingwold School in York she:

- 1. In respect of the 2014 G.C.S.E. History examination breached confidentiality and/or gave improper assistance to candidates and/or colleagues in that:**
 - i. whilst working for the exam board, AQA, she obtained confidential information about the content of one or more future examination papers;**
 - ii. she disseminated a document detailing the likely content of the 2015 examination paper to one or more colleagues;**
 - iii. she shared her knowledge of the confidential information she had obtained working for the exam board with one or more colleagues in order to predict the likely content of the 2014 examination paper;**
 - iv. she held a revision session for pupils, the content of which was based on her knowledge of the confidential information she had obtained working for the exam board.**

- 2. Her conduct as stated at allegation (1) above was dishonest in that she used confidential information to provide pupils and/or colleagues with an advantage over those not privy to that information.**

C. Preliminary applications

The panel considered an application from Ms Illingworth to admit her witness statement dated 10 August 2016. The witness statement had not been submitted in accordance with Paragraph 4.20 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession (“the Procedures”) which requires each party to submit to the panel and the other party to the proceedings, a copy of the document at least four weeks prior to the hearing. However despite this the witness statement had made it into the hearing bundle. The presenting officer had no objections to the witness statement forming part of the hearing bundle.

The panel took the legal advisor’s advice on the late admissibility of evidence into consideration and were satisfied that the witness statement could be admitted.

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 – page 2

Section 2: Notice of Proceedings and Response – pages 4 to 11

Section 3: NCTL witness statements – page 13

Section 4: NCTL documents – pages 15 to 65

Section 5: Teacher documents – pages 67 to 96

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 – History Teacher at Easingwold School – Witness for The NCTL

The panel also heard oral evidence from Ms Illingworth herself.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Ms Diana Illingworth was employed at Easingwold School from September 1999.

On 9 May 2014, Ms Illingworth attended an AQA question writer's meeting and following this, on 15 May 2014, she disseminated a list of exam questions and held a revision session.

The AQA history examination took place on 16 May 2014 and on 1 August 2014, Ms Illingworth was suspended by AQA for malpractice.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegation(s) against you proven, for these reasons:

It was alleged that you were guilty of unacceptable professional conduct, in that whilst you were employed as a teacher at Easingwold School in York:

- 1. In respect of the 2014 G.C.S.E. History examination you breached confidentiality and/or gave improper assistance to candidates and/or colleagues in that:**
 - i. whilst working for the exam board, AQA, you obtained confidential information about the content of one or more future examination papers;**

Ms Illingworth admitted this allegation in her oral evidence. This admission is consistent with the evidence in the papers that Ms Illingworth did hold a role with AQA alongside her role as a teacher. It was as a result of her role with AQA that Ms Illingworth obtained confidential information about the content of one or more future examinations. Furthermore the panel heard evidence from Ms Illingworth that her role with AQA as an item writer involved her writing items, which are part of questions, for the exam board. After lengthy scrutiny, these items might be placed into a bank of questions to be used by the chief examiner in future examination papers. Ms Illingworth admitted that topics and the questions prepared for AQA both amounted to content of one or more future examination papers.

There was no evidence to the contrary in respect of this allegation.

The panel is therefore satisfied that this allegation was proven.

- ii. you disseminated a document detailing the likely content of the 2015 examination paper to one or more colleagues;**

Ms Illingworth attended a meeting, as part of her AQA role, on Friday, 9 May 2014. Ms Illingworth told the panel that, at this meeting, a number of items were agreed to be put forward for the 2015 examination paper.

Ms Illingworth has admitted that she produced the handwritten document, in which she lists the 2013 examination paper topics and the topics she remembered, from this meeting that might appear in the 2015 examination ("the document"). She also admits to disseminating the document to three of her colleagues. The panel

observed that the topics listed on the document matched the topics included in the 2015 history examination paper.

Therefore, Ms Illingworth produced the document based on the information she obtained at the meeting on Friday, 9 May 2014, which included the likely content of the 2015 examination paper. The panel concluded that, having attended this meeting, on the balance of probabilities, Ms Illingworth was more than likely to know what content would appear on the 2015 examination paper.

The panel is therefore satisfied that this allegation was proven.

iii. you shared your knowledge of the confidential information you had obtained working for the exam board with one or more colleagues in order to predict the likely content of the 2014 examination paper;

Ms Illingworth has admitted in oral evidence that she shared the document with three of her colleagues. There is also evidence produced by three of her colleagues themselves to this effect. Ms Illingworth said in evidence that she shared this information with these colleagues in order to ensure equity, as pupils, “have a tendency of comparing [sic] what one teacher does with another”. The panel concluded from this that Ms Illingworth considered that her pupils would receive an advantage, compared to pupils in her colleagues’ classes.

Further, in order to predict the likely content of the 2014 examination paper, Ms Illingworth did not specifically note down the topics she guessed for the 2014 paper, however by setting out the 2013 topics and using her knowledge of the 2015 topics, she was able to predict certain topics of the 2014 paper. The panel concluded that by sharing the information, not only did Ms Illingworth breach her duty of confidentiality, but she also allowed her colleagues the opportunity to predict the outcome of the 2014 examination paper.

The panel is therefore satisfied that this allegation was proven.

iv. you held a revision session for pupils, the content of which was based on your knowledge of the confidential information you had obtained working for the exam board.

Ms Illingworth admitted in oral evidence that she based her revision session, which was held on Thursday, 15 May 2014, on the document. The document was put together by using the knowledge and information she had obtained at the meeting on Friday, 9 May 2014. Therefore the panel determined that the content of the revision session was based on the confidential information, which Ms Illingworth was privy to as a result of her AQA role.

The panel is therefore satisfied that this allegation was proven.

Looking at the stem of allegation 1, the panel determined that, on the balance of probabilities, it was proven that Ms Illingworth had breached confidentiality and had given improper assistance to candidates and colleagues. Ms Illingworth admitted, in oral evidence, that she had breached confidentiality. Ms Illingworth said she wanted to put a document together that informed her afternoon revision session as to the likelihood of topics on the 2014 examination paper. The document that she put together listed the topics which had been on the 2013 paper and which were likely to be on the 2015 paper, thus allowing Ms Illingworth to 'join the dots' in respect of the 2014 paper. Improper assistance was given by Ms Illingworth through sharing this document with her colleagues, which meant that it was distributed to her three colleagues within the history department. As a serious consequence of her actions, AQA refused to mark the 2014 examination papers for history for this school and instead, applied a statistical calculation to award a grade. As a result 47 out of 66 pupils' grades were lower than their final tracking grades.

Overall, the panel is therefore satisfied that the whole allegation 1 was proven.

The panel has found the following particulars of the allegation(s) against you not proven, for these reasons:

2. Your conduct as stated at allegation (1) above was dishonest in that you used confidential information to provide pupils and/or colleagues with an advantage over those not privy to that information.

The panel received and accepted advice from the legal adviser that if it was satisfied, on a balance of probabilities, that Ms Illingworth used confidential information to provide pupils and colleagues with an advantage over those not privy to that information, then there was a further requirement to consider two limbs when deciding whether Ms Illingworth's actions were dishonest in doing so.

The panel was advised that the first limb of the traditional test to which panels are referred is "whether the panel is satisfied on the balance of probabilities that Ms Illingworth's actions would be regarded as dishonest according to the standard of a reasonable and honest man". This is the objective test.

The panel was informed of a High Court case of May 2015 concerning the appeal against a decision of a Professional Conduct Panel which stated that the tribunal should first determine whether, on the balance of probabilities, a defendant acted dishonestly by the standards of ordinary and honest members of that profession. If so, it was advised that it must then go on to determine whether or not it is more than likely that the defendant realised that what he or she was doing was, by those standards, dishonest. The panel accepted that only if the answer to both these questions is yes can the allegation of dishonesty be established in this case. The panel was also informed that the Court of Appeal, in an appeal against a criminal

conviction in December 2015, held that the required standard under the objective limb was the ordinary standards of reasonable and honest people. However, the Panel understands that it has yet to be seen whether that decision will be applied in the context of professional discipline proceedings, given the shift away from that test by the High Court.

If the panel finds the objective limb satisfied, it must go on to determine whether it is more likely than not that the defendant realised that what he or she was doing was by those standards, dishonest. This is the subjective test.

First the panel considered the objective limb of the two limb test. The panel did not determine that there would be any difference between the standards of the reasonable and honest person and the standards of the reasonable and honest teacher. In reaching this conclusion the panel considered that everyone, teacher or not, would view examinations as confidential and there should be no cheating. Due to the sacrosanct nature of examinations the panel concluded the reasonable and honest person (and teacher) would find Ms Illingworth's actions dishonest. In addition, the panel considered that the reasonable and honest person (and teacher) would compare Ms Illingworth's pupils with pupils within a school '30 miles away' and judge her actions to have been dishonest because the latter did not receive the benefit of the advantage.

The panel went on to consider the subjective limb of the test. On the balance of probabilities, the panel did not find that the subjective limb of the test was met. In arriving at this decision the panel took into account a number of factors. Ms Illingworth's state of mind on the morning of Thursday, 15 May 2014 was considered in detail. The panel accepted Ms Illingworth's evidence that she, "totally panicked" as she, "had made a huge fuss to get to do the revision session, had nothing special planned and had a full teaching day". Coupled with this was the feeling of guilt as she wanted to do the best by her pupils.

Ms Illingworth clearly produced the document at the last minute, which is evidenced by the fact that it is handwritten on a piece of paper. The panel considered that she did this against the background of a stressful period which included the history examination having been brought forward by a month, revision sessions having been taken away and given to core subjects and the very late notice of the revision session. Also, had Ms Illingworth been behaving dishonestly, the panel did not think she would have chosen to share the document with three of her colleagues. The panel concluded that Ms Illingworth clearly made a significant error of judgement, however the panel did not think that, at that particular moment, she realised that what she was doing was dishonest. Therefore, this allegation was not found proven by the panel.

Having reviewed all of the evidence, the panel does not find allegation 2, as a whole, proven.

Findings as to unacceptable professional conduct

Having found allegations 1 (i), (ii), (iii) and (iv) to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct.

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”. Furthermore, the panel also had regard to the admission made by Ms Illingworth in her oral evidence, that by admitting the facts of allegations 1 (i), she also admits that they amount to unacceptable professional conduct. By her own admission, Ms Illingworth thinks that her behaviour, with regards to the confidential information that she was privy to, amounts to a breach of confidentiality.

The panel is satisfied that the conduct of Ms Illingworth in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Ms Illingworth 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...;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that the conduct of Ms Illingworth fell significantly short of the standards expected of the profession with regards to all of allegation 1. Furthermore, as a direct result of her actions, and in particular, the improper assistance given, the 2014 cohort of history G.C.S.E pupils were worse off, as AQA refused to mark the examination papers for history for this school and instead, applied a statistical calculation to award a grade. As a result 47 out of 66 pupils’ grades were lower than their final tracking grades.

The panel has also considered whether Ms Illingworth’s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that none of these offences is relevant.

Accordingly, the panel is satisfied that Ms Illingworth is guilty of unacceptable professional conduct.

Panel’s recommendation to the Secretary of State

Given the panel’s findings in respect of unacceptable professional conduct, 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Illingworth were not treated with the utmost seriousness when regulating the conduct of the profession. The panel also considered that a public interest consideration in declaring proper standards of conduct in the profession was present as the conduct found against Ms Illingworth was outside that which could reasonably be tolerated.

The panel took into account that Ms Illingworth had not been wilfully dishonest, nor were her actions pre-meditated or planned and therefore did not consider that the public interest consideration of the protection of pupils and the public was relevant in this case.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate and appropriate to impose a prohibition order, taking into account the effect that this would have on Ms Illingworth and all the circumstances on the case.

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 Ms Illingworth. 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 Teacher's Standards; and
- 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.

Although there were behaviours that may point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

The panel has found that Ms Illingworth's actions in producing the document and disseminating it to three of her colleagues were deliberate. The panel has however, taken into account that Ms Illingworth was acting under duress. Ms Illingworth found herself in a, 'tight spot' on the morning of Thursday, 15 May 2014. This was due to the very late notice of the revision session. Ms Illingworth reacted to the situation she found herself in, in a discreet manner and she had never previously disclosed confidential information she was privy to as a result of her AQA role.

The panel has noted the evidence provided in support of Ms Illingworth's good character, her abilities as a teacher and her professionalism. In particular, the panel heard evidence from Witness A, a former, long term colleague in the history department, that she found Ms Illingworth to be, "a fantastic person," "very thorough and conscientious," "supportive," and she "wanted the best for her pupils, colleagues and the department." The panel found this testimonial to be convincing and persuasive. This supports the panel's view that the admitted misconduct was out of character and was a poor error of judgment on behalf of Ms Illingworth.

The panel has considered the extent to which Ms Illingworth has shown insight into and remorse for her actions. The panel considers that Ms Illingworth has now accepted that her actions were wrong and she has admitted this. Ms Illingworth fully engaged in the investigation process led by AQA and accepted the decision of the exam board.

In light of all the circumstances of this particular case, the panel does not consider that prohibition is a proportionate and appropriate response. The panel is mindful that its decision should not be punitive. Ms Illingworth has been suspended from her role, and from having any involvement in AQA's examinations, until after the 2017 examination session. Ms Illingworth has therefore, been punished for her actions by AQA, in that she has lost the income and status that came with that position. The panel has also carefully considered a number of significant factors:

- the nature and severity of the behaviour is at the less serious end of the possible spectrum;
- there is no evidence that Ms Illingworth behaved dishonestly;
- there has been no evidence of repetition – in fact Ms Illingworth has been open and honest with her employers since leaving Easingwold School with regards to her misconduct and the ensuing sanction imposed by AQA;
- there is no suggestion of continuing risk – the panel did not consider that there was a deep seated attitude suggesting that the public or profession were at harm; and
- the panel was not presented with any evidence that Ms Illingworth has anything other than a very good teaching record.

Balancing the public interest considerations both for and against prohibition and the interests of Ms Illingworth, the panel has determined that it would be disproportionate to prohibit Ms Illingworth and therefore makes a recommendation that no prohibition order be imposed.

Decision and reasons on behalf of the Secretary of State

I have considered very carefully the findings and recommendations of the panel in this case. The panel has found a number of the allegations proven, and where the panel has made no such findings I have put these allegations from my mind.

The panel is satisfied that Ms Illingworth is guilty of unacceptable professional conduct.

I note that the panel is satisfied that the conduct of Ms Illingworth fell significantly short of the standards expected of the profession with regards to allegation 1. I agree with the panel's view that Ms Illingworth is in breach of the following Teachers' Standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school...;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I have noted the panel's consideration of the public interest in this case, and I agree with the panel that public confidence in the profession could be seriously weakened if the conduct found proved in this case were not treated with the utmost seriousness. The panel found that Ms Illingworth's conduct was outside of that which could be reasonably tolerated.

I note the panel's careful consideration of the public interest both in favour of and against prohibition as well as the interests of Ms Illingworth. The panel has found that Ms Illingworth's actions in producing the document and disseminating it to three of her colleagues were deliberate. However, I note that the panel has taken into account that Ms Illingworth was acting under duress.

The panel has considered the extent to which Ms Illingworth has shown insight into and remorse for her actions.

The panel has considered and thoroughly documented the mitigating evidence which was presented in this case, so there is no need for me to reiterate here. The panel has concluded that it would be disproportionate to prohibit Ms Illingworth, and makes a recommendation that no prohibition order be imposed.

I differ in my view from that of the panel. I believe that the panel has not taken sufficient account of the public concern that would arise if no prohibition order were to be imposed.

I also think that in this case the panel has attributed too much weight to the element of duress that Ms Illingworth has described.

The guidance published by the Secretary of State sets out where a prohibition order is appropriate. The guidance says that a prohibition order aims to maintain public confidence in the profession. The public rightly expect the examination system to operate in a fair and transparent way. Ms Illingworth's admitted behaviour undermines that confidence and risks damaging public confidence in the profession.

As a result of Ms Illingworth's actions, and in particular, the improper assistance given, the 2014 cohort of history G.C.S.E pupils were worse off. AQA refused to mark the examination papers for history for this school, and instead applied a statistical calculation to award a grade. As a result 47 out of 66 pupils' grades were lower than their final tracking grades. Ms Illingworth's actions did not impact on only a few pupils.

In my view, Ms Illingworth breached the regard for confidentiality and the need to safeguard pupils' well-being, in accordance with statutory provisions. For these reasons, I have decided that prohibition is both appropriate and proportionate in this case, and I have decided that the minimum of a two year review period is appropriate.

This means that Ms Illingworth is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the prohibition order to be set aside, but not until 7 September 2018, 2 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Illingworth remains prohibited from teaching indefinitely.

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

Ms Illingworth has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this order.



NAME OF DECISION MAKER: Jayne Millions

Date: 30 August 2016

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