



National College for
Teaching & Leadership

Mr David Cox: Professional Conduct Panel outcome

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

December 2013

Contents

A.Introduction	3
B.Allegations	4
C.Preliminary applications	4
D.Summary of evidence	4
E. Documents	4
F. Witnesses	5
G.Decision and reasons	5
H.Panel's recommendation to the Secretary of State	8
I. Decision and reasons on behalf of the Secretary of State	10

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

Teacher:	Mr David Cox
Teacher ref no:	94/37196
Teacher date of birth:	7 August 1967
NCTL Case ref no:	0009738
Date of Determination:	5 December 2013
Former employer:	Codsall Middle School

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 4 and 5 December at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr David Cox.

The Panel members were Sue Netherton (Lay Panellist), Peter Cooper (Teacher Panellist) and Caroline Tobbell (Former Teacher Panellist).

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

The Presenting Officer for the National College was Louisa Atkin of Browne Jacobson LLP Solicitors.

Mr Cox was present and represented by Mr Tomson, a friend.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 10 September 2013.

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

1. Whilst employed at Codsall Middle School, Wolverhampton, between 2005 – 2009, he:
 - a. had inappropriate material on one of the school laptops in his possession, namely an indecent image of a child on Level 2 of the COPINE Scale;
 - b. had inappropriate material on his personal laptop, namely images which the police assessed as “being on the threshold of being classed as Level 1 images”,
 - c. failed and / or refused to follow instructions to return the school laptops to the school including;
 - i. following a request made by the Headteacher on 27 March 2009;
 - ii. following a meeting with the Headteacher on 2 April 2009;
 - iii. on at least one occasion in July 2009;
 - d. allowed and / or caused the inappropriate material on his school laptop to be deleted before returning it to the school.

C. Preliminary applications

- The Panel considered an application from Mr Cox that the hearing should be held in private. It decided that the public interest required that the hearing should be public.

D. Summary of evidence

Documents

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

Section 1	Chronology	Page 2
Section 2	Notice of Proceedings and Response	Pages 4 – 10
Section 3	National College for Teaching & Leadership Witness Statements	Pages 12 – 14
Section 4	National College for Teaching & Leadership Documents	Pages 16 – 64

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

In addition, the Panel agreed to accept and read the following:

Witness statement of Witness A dated 26 November 2013 Pages 64a-64c

producing earlier statement provided to the police on 21 September 2009

Attendance note of call with Witness A dated 19 July 2013 Pages 89 - 90

Witnesses

The Panel heard oral evidence from Witness B (the former Headteacher of Codsall Middle School), Witness A (former Network Manager at Codsall Middle School), called by the Presenting Officer. Mr David Cox gave oral evidence to the Panel, and the Panel also heard oral evidence from Witness C (a friend and colleague in a fellowship to which both he and Mr Cox belongs) , Witness D (a friend and teacher) and Witness E (a friend and former teacher), called by Mr Cox.

E. Decision and reasons

The Panel announced its decision and reasons as follows:

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

We confirm that we have read all the documents provided in the bundle in advance of the hearing and those admitted by the Panel.

Mr Cox was employed as an Assistant Head Teacher at Codsall Middle school. He is alleged to have had inappropriate material on one of the school laptops in his possession, namely an indecent image of a child, and also to have had inappropriate material on his personal laptop, namely images assessed by the police as being on the threshold of being classed as Level 1 images. Mr Cox is also alleged to have refused to follow instructions to return school laptops on at least three occasions and for having allowed and/ or caused the inappropriate material on his school laptop to be deleted before returning it to the school.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven on the balance of probabilities, for these reasons:

1 Whilst employed at Codsall Middle School, Wolverhampton, between 2005 – 2009, you

a. had inappropriate material on one of the school laptops in your possession, namely an indecent image of a child on Level 2 of the COPINE scale

The Panel has heard evidence from Witness B, Witness A and Mr Cox himself that he had two laptops that had been provided by the school in his possession. There is no dispute that the laptop that was no longer functioning was school property.

The Panel considered Mr Cox's contention that the other laptop was not a school laptop, but one given to him by the school as a reward for a positive OFSTED report. Mr Cox gave evidence that he ordered the laptop through the school. It was paid for from school funds on the instruction of the Head Teacher at the time. The Panel has seen no independent evidence, other than the oral evidence of Mr Cox that this laptop was a gift. Witness B's oral evidence was that he believed the laptop to be school property. The Panel did not find it credible that Mr Cox would have been gifted a laptop. The Panel is therefore satisfied on the balance of probabilities that both laptops were school property.

The Panel Bundle contains a letter from Individual A, the solicitor for Staffordshire and West Midlands Police, dated 14 May 2013, which confirms that a Level 2 image was found on one of the school laptops presented to the police. Although hearsay evidence, the Panel gave weight to the letter as it had been authored by the Solicitor for the Police and considered it therefore more likely than not that a Level 2 image had been found.

Mr Cox has said that two family members had access to the school laptops. Even, if that was so, the Panel considered Mr Cox was responsible for anything stored on them. Mr Cox was a member of the senior leadership team at the school and a former Head of ICT at the school. In such roles, he should have been well-versed in his responsibilities with regard to the use of school laptops.

The Panel heard submissions from the Presenting Officer that the COPINE scale was originally a means of grading images on a one to ten scale, with ten being the most serious. The Presenting Officer explained that the court modified the COPINE typology and adopted a 1 – 5 grading system in the case of R v Oliver, R v Hartrey, R v Baldwin in 2002. The Presenting Officer explained that the police continue to commonly refer to the grading as the COPINE scale, even though the Panel has received legal advice that the current 1 - 5 grading system is contained in the Sentencing Advisory Panel Guidelines. These have been effective for offences sentenced on or after 14 May 2007 ("the SAP Guidelines").

When the Presenting Officer made enquiries with the police she asked whether they were referring to level 2 of the COPINE scale, ie "Non-penetrative sexual activity between children, or solo masturbation by a child". The Panel has received legal advice that the quoted words are those which describe a Level 2 image under the SAP Guidelines. The solicitor for the police replied "level 2 is a reference to the COPINE scale". The Panel considers it more probable than not, that the Police solicitor was actually referring to

Level 2 of the SAP Guidelines, as these were the Guidelines in force, and since he did not dispute the accuracy of the quoted words.

b. Had inappropriate material on your personal laptop, namely images which the police assessed as “being on the threshold of being classed as Level 1 images”.

The evidence in support of this allegation is contained in the letter from Individual A, the police solicitor referred to above. This states that “*other images of children were also found upon examination of the laptop computer which had been seized from Mr Cox’s house. These images were assessed as being on the threshold of being classed as Level 1 images. There were 20 such images though some of them included duplicates. The images were of young males whose appearance indicated that they were between 12 and 16 years of age. The males were either fully or partially naked and in those images where their genitalia could be seen, there was an absence of pubic hair*”. The Panel considered it more probable than not, that the letter contained an accurate statement of the material found on Mr Cox’s personal laptop.

The Panel has received legal advice that Level 1 images, according to the SAP Guidelines, are those depicting erotic posing with no sexual activity. The Panel considered the images that were on the threshold of being classed as Level 1 images inappropriate, especially as the age of the young males depicted is estimated to be between 12 and 16 years old. Possession of such images is inappropriate for a teacher.

c. failed and/or refused to follow instructions to return the school laptops to the school including:

- i. following a request made by the Headteacher on 27 March 2009;
- ii following a meeting with the Headteacher on 2 April 2009;
- iii. on at least one occasion in July 2009;

The Panel heard evidence from Witness B that, on several occasions including the dates referred to in the charges, he requested the return of the school laptops. The Panel has, in their bundle, a copy of a letter dated 10 July 2009 to Mr Cox from Witness B requesting that both laptops be provided to Witness A on 14 July. The Panel considers these requests to be instructions that were not followed by Mr Cox. The Panel has heard evidence from Witness B that the laptops were not returned on 14 July 2009, so Mr Cox was sent home to locate them, and both were returned the following day.

Mr Cox in his oral evidence admitted that he had not returned the laptops as requested. His reasons were that the older laptop was not functioning and he therefore did not see the urgency in returning it. He viewed the other laptop as his own property as he considered he had been given it as a gift. Mr Cox has also given evidence that, as the former ICT Manager in the School, he was capable of performing the virus updates himself and that he did not have confidence in the abilities of Witness A to perform the updates without associated problems. As above, the Panel has found that both laptops were school property and should have been returned as requested.

Each part of this allegation is found proven.

c. allowed and/or caused the inappropriate material on his school laptop to be deleted before returning it to the school.

The Panel has heard evidence from Witness A that he was asked by the Headteacher to check the laptops when Mr Cox returned them. He told the Panel that on one of the laptops he found deleted files with names suggesting pornography. The letter from Individual A, the police solicitor stated that a level 2 image was found within a deleted section of one of the school laptops. Mr Cox told the Panel that he routinely deleted files to improve the speed of his laptop and that he deleted all of his personal files before returning the school laptops. The Panel therefore finds it more likely than not that Mr Cox deleted the Level 2 image that was later recovered by the police. The Panel does not consider it credible that anyone else could have been responsible for the deletion.

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

The Panel has carefully considered whether the facts found proved amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

The Panel has considered the current Teachers' Standards. The Panel is clear that teachers must uphold public trust in the profession and maintain the highest standards of ethics and behaviour within and outside school, and must have proper and professional regard for the ethos, policies and practices of the school in which they teach. Teachers must also have an understanding of, and always act within the statutory frameworks which set out their professional duties and responsibilities.

The Panel has found proven that Mr Cox had an indecent image on a school laptop in his possession and had inappropriate images of children on a personal laptop. Mr Cox therefore demonstrated a disregard for his duties regarding safeguarding by possessing such images. The Panel also considers that Mr Cox showed a disregard for the practices of the school in requiring their laptops to be updated. As a member of the school leadership team, Mr Cox should have provided a good example to other teaching staff.

The Panel is satisfied that Mr Cox's behaviour has fallen significantly and seriously short of the conduct expected of a teacher. Accordingly, the Panel finds Mr Cox is guilty of unacceptable professional conduct and of 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/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.

The Panel has taken account of the Teacher Misconduct – the Prohibition of Teachers Advice updated on 22 May 2013. The Panel was asked by the Presenting Officer to take account of the proposed revised Guidance currently subject to consultation. The Panel

decided not to take account of the proposed revised Guidance as this is not the extant Guidance.

Mr Cox is of previous good character and the Panel has taken into account the oral evidence as to Mr Cox's character given by Witness F, Witness E and Witness C and the written statements in the Panel Bundle of Witness F, Witness C, Witness G, Witness H, Witness I, Witness J and Witness K.

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 a 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 Teacher Misconduct – Prohibition of Teachers Advice and having done so has found a number of them to be relevant in this case, namely

- 1) the protection of children;
- 2) the maintenance of public confidence in the profession
- 3) declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr Cox which involved having inappropriate images of children on his laptop, including a Level 2 image, the Panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Cox were not treated with the utmost seriousness when regulating the conduct of the profession.

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 Cox. In forming a judgement in this respect, the Panel took account of the mitigation evidence that was presented to it which attested to Mr Cox's teaching and organisational skills, but noted that no statements appeared to have been provided by any of Mr Cox's teaching colleagues at Codsall Middle School.

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 Cox. The Panel took further account of the Teacher Misconduct – Prohibition of Teachers Advice, which suggests that a Prohibition Order may be appropriate if certain behaviours of a teacher have been proven. The list of such behaviours includes serious departure from the personal and professional conduct elements of the latest teachers' standards. The Panel has found that Mr Cox has fallen significantly and seriously short of those standards.

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. In light of the Panel's findings, the Panel considers that Mr Cox's actions in failing to follow instructions to return the school laptops were deliberate, that he deliberately deleted the inappropriate material and that there was no evidence that the

possession of the inappropriate material was anything other than deliberate. The Panel has taken into account the difficult relationship he experienced with Witness B. Whilst the Panel appreciates this may have been a factor that contributed to Mr Cox's failure to return the laptops on request, it would not have been a factor in Mr Cox's possession of the inappropriate material. The teacher did have a previously good history. Mr Cox's denial of the allegations indicates his lack of insight.

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 Cox. The seriousness of the facts found proven, and the particular public interest considerations referred to above were 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 Teacher Misconduct – Prohibition of Teachers Advice 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 Teacher Misconduct – Prohibition of Teachers 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. The Panel considers the possession of images of children including a Level 2 image is serious sexual misconduct.

The Panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the Prohibition Order to be recommended without provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to the findings and recommendations of the Panel in this case.

The Panel have found the allegations proven. Mr Cox had an indecent image on a school laptop in his possession and had inappropriate images of children on a personal laptop. Mr Cox therefore demonstrated a disregard for his duties regarding safeguarding by possessing such images. The Panel also considered that Mr Cox showed a disregard for the practices of the school in requiring their laptops to be updated.

The Panel is satisfied that Mr Cox's behaviour fell seriously short of the conduct expected of a teacher and found that his behaviour amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute.

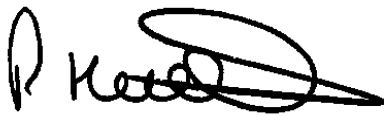
The Panel have balanced the public interest against the interests of Mr Cox and have concluded that a Prohibition Order would be an appropriate and proportionate sanction. I agree with that judgement.

The Panel further went on to consider whether it would be appropriate to provide Mr Cox with an opportunity to apply for the Order to be set aside at a future date. In view of the seriousness of the findings the Panel decided not to recommend a review period and I agree with that recommendation.

This means that Mr David Cox 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 David Cox 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 David Cox 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 'P Heathcote', with a large, sweeping flourish at the end.

NAME OF DECISION MAKER: Paul Heathcote

Date: 6 December 2013

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