



National College for  
Teaching & Leadership

# **Mr Matthew Fludgate: Professional Conduct Panel outcome**

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

**February 2014**

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

<b>Teacher:</b>	Mr Matthew Fludgate
<b>Teacher ref no:</b>	98/52404
<b>Teacher date of birth:</b>	8 May 1977
<b>NCTL Case ref no:</b>	0009344
<b>Date of Determination:</b>	26 February 2014
<b>Former employer:</b>	St Edmund Campion Catholic School

### **A. Introduction**

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 25 – 26 February 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Matthew Fludgate.

The Panel members were Dr Geoffrey Penzer (Lay Panellist and Chair), Mr John Pemberton (Teacher Panellist) and Mrs Margaret Simpson (Teacher Panellist).

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

The Presenting Officer for the National College was Ms Shannett Thompson of Kingsley Napley Solicitors.

Mr Matthew Fludgate was not present and was not represented.

The hearing took place in public and was recorded. The Panel heard representations in private regarding an application for anonymity/ the proceedings to take place in private. The Panel did not accede to either application and announced its decision in public.

## **B. Allegations**

The Panel considered the allegations set out in the Notice of Proceedings dated 17 December 2013.

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

Whilst employed at St Edmund Campion Catholic School, Birmingham following the sixth form night out after the Leavers prom on 28 May 2010 he:

1. Spent the night of 28 May 2010 / early morning of 29 May 2010 with a Year 13 female pupil, Pupil A, in his hotel room;
2. Had sexual intercourse with the same Year 13 student in his hotel room;
3. Sent text messages of an inappropriate nature to a different Year 13 pupil, Pupil D, on both 28 and 29 May 2010.

In Mr Fludgate's absence the allegations were taken to have not been admitted.

## **C. Preliminary applications**

The Panel considered whether this hearing should continue in the absence of Mr Fludgate.

The Panel was satisfied that the College has complied with the service requirements of Regulation 19a to c of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations").

The Panel was satisfied that the teacher has been provided with the requisite period of notice required by paragraph 4.10 of the Disciplinary Procedures for the regulation of the Teaching Profession ("the Procedures"). The teacher had received the notice as he had responded to it, in making representations regarding an application for anonymity in the hearing.

The Panel was also satisfied that the Notice of Proceedings contained the details required by paragraph 4.10 of the Procedures.

The Panel determined to exercise its discretion under Paragraph 4.28 of the Procedures to proceed with the hearing in the absence of the teacher.

In making its decision, the Panel noted that the teacher may waive his right to participate in the hearing. The Panel understood 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.

The Panel took account of the various factors drawn to its attention from the case of R v Jones. The teacher had not given any reason for his absence. The Panel therefore considered that the teacher had waived his right to be present at the hearing in the knowledge of when and where the hearing was taking place. There was no indication that an adjournment would result in the teacher attending the hearing, and the Panel noted that Mr Fludgate was given numerous opportunities to attend an investigatory meeting as part of the school disciplinary proceedings, but did not do so. The Panel had regard to the seriousness of this case, and the potential consequences for the teacher but considered, in light of the teacher's waiver of his right to appear, that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time was in favour of this hearing continuing.

The Panel also considered Mr Fludgate's application for anonymity. There are no specific provisions dealing with anonymity within the Procedures although it was recognised that the Chair of the Panel is able to determine the procedure at the panel hearing subject to the specific requirements set out in the Procedures.

The Panel had regard to Regulation 8(5) which requires the decision of the Secretary of State following the determination of a professional conduct panel to be published. If the panel hearing and decision of the Secretary of State results in a prohibition order being made, Regulation 15 requires information to be published including the teacher's name and the reasons for the decision.

The Panel therefore considered it does not have the power to provide anonymity to the teacher with regard to any publishing of the outcome of the hearing.

The Panel went on to consider whether to exercise its discretion under Regulation 11 and paragraph 4.56 of the Procedures to exclude the public from all or part of the hearing.

The Panel determined not to exercise its discretion under Regulation 11(3)(a) and 11(3)(b) and the bullet points of paragraph 4.56 of the Procedures to exclude the public from the hearing.

The Panel took account of Mr Fludgate's reasons as to why he considered he should be granted privacy. The Panel balanced the reasons why the teacher requested that the public be excluded against the competing reasons for which a public hearing is required.

The Panel did not consider that it would be in the interests of justice to exclude the public from the hearing. The Panel took into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. The Panel did not consider that there were circumstances in this case, that would justify excluding the public.

The Panel did consider that it would be contrary to the public interest to accede to the teacher's request for privacy. In addition to the reasons referred to above there is also

an interest in the hearing being held in public as it makes uninformed and inaccurate comment about the proceedings less likely.

The Panel also considered whether it would be necessary to exclude the public from a hearing in order to protect the interests of children, and the Panel was conscious of the representations made by Mr Fludgate in paragraph 3 of his letter of 12 January 2014 (page 394 of the Panel Bundle). However, the Panel did not consider that there would be any advantage in the hearing being heard in private, when the Regulations require that the ultimate decision of the Secretary of State has to be published. The Panel stated that it would, however, keep under review during the course of the hearing the representations made by Mr Fludgate. If it considers that at any point it is necessary to exclude the public in order to protect the interests of children, it would do so.

The Panel noted that any departure from the general rule has to be no greater than the extent reasonably necessary and considered whether granting anonymity to Mr Fludgate during the course of these proceedings was desirable. However, the Panel could not see that any useful purpose would be served by such a measure given that the decision of the Secretary of State is required to be published.

Finally, the Panel considered Mr Fludgate's letter before claim for judicial review dated 19 February 2014 (page 396 of the Panel Bundle). On the face of the letter, it appeared that Mr Fludgate was addressing the issue of publication of his name on the website in advance of the hearing and notifying the College of his intention to apply to the High Court should his name not be withdrawn from the website. The Panel was told by the Presenting Officer that the College had removed the notice, naming Mr Fludgate, from the website in order for his application for anonymity to be considered fully by the Panel. Mr Fludgate had not in his letter expressly stated that he intended to apply to the High Court if this Panel decided not to accede to his application.

The Panel were not, however, minded to allow Mr Fludgate an adjournment to apply to the High Court to review its decision. The Panel took account of the decision in Mahfouz Professional Conduct Committee of the General Medical Council and noted that in that case the Court of Appeal stated that the committee should have allowed an adjournment to allow the application to the High Court. However, the Panel considered that the facts of the present case were distinguished from the case of Mahfouz. First, there was no express statement by Mr Fludgate that he wished to apply to the High Court to review the Panel's decision. Second, it was apparent that an important factor in the Court of Appeal's decision in Mahfouz was that the Defence Counsel should not have been put in the invidious position of having to choose in which forum she could best represent her client's interests. Here Mr Fludgate was not present, having elected not to attend, and was therefore not faced with the choice of continuing to attend these proceedings or attending the High Court. The Panel was therefore of the view that these proceedings should take their course.

## **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 Proceedings and Response	Pages 4 – 10
Section 3: National College for Teaching and Leadership’s Witness Statements	Pages 11 and 22 – 27
Section 4: National College for Teaching and Leadership Documents	Pages 28 – 392
Section 5: Teacher Documents (cover sheet only)	Page 393

Pages 12 – 21 consisted of a further witness statement which was submitted late and was not accepted into evidence by the Panel since the Panel had no evidence that Mr Fludgate had received it or had sufficient opportunity to respond.

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

In addition, the Panel agreed to accept the following:

an email sent by the College to Mr Fludgate dated 27 January 2014	Page 392a
submissions prepared by the Presenting Officer in response to Mr Fludgate’s application for anonymity	Page 392b - c
letter dated 12 January 2014 from Mr Fludgate	Page 394- 395
letter dated 19 February 2014 from Mr Fludgate	Page 396.

All additional documents admitted were read by the Panel.

### **Witnesses**

The Panel heard oral evidence from the Headteacher of St Edmund Campion Catholic School (“the School”).

## 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 have also read all additional documents admitted.

### Summary of Evidence

Mr Fludgate was employed at the School as the Head of Physical Education since 1 September 2004. It was alleged that following a School Leavers Prom on 28 May 2010 he spent the night with a Year 13 female pupil ("Pupil A") in his hotel room and that he had sexual intercourse with her. It was also alleged that during the course of the evening of 28 May 2010 and on the following day, he sent text messages of an inappropriate nature, to a different Year 13 pupil, "Pupil D". A criminal trial relating to the events of the above night was held at Birmingham Crown Court in June 2011. Mr Fludgate was acquitted in that trial. Mr Fludgate was dismissed from the School for gross misconduct following a disciplinary hearing held on 22 March 2012. Mr Fludgate appealed that decision, but that appeal was rejected on 31 October 2012.

## Findings of Fact

Our findings of fact are as follows:

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

### **1. Whilst employed at St Edmund Campion Catholic School, Birmingham following the sixth form night out after the Leavers' prom on 28 May 2010 he spent the night of 28 May 2010 / early morning of 29 May 2010 with a Year 13 female pupil, Pupil A, in his hotel room.**

The panel accepted the evidence of the Headteacher that although Pupil A had been attending a "leavers" celebration, she had not yet left the School, as she had not yet completed her A level exams and was actually back in the School on the Monday following half term after the "leavers" celebration.

The Panel noted that during the school disciplinary hearing Mr Fludgate stated that he believed Pupil A no longer to be a student of the School. However, the Panel also noted that during his evidence in the criminal trial, the transcript shows that Mr Fludgate accepted that the sixth formers in attendance at the "leavers" celebration were still students (page 336 of the Panel Bundle). On page 299 of the Panel Bundle, the transcript shows that Mr Fludgate gave evidence that Pupil A had asked him whether there would be any more revision sessions at the school prior to her exams and that he



had told her he would email the students, including her, as to whether sessions would be run and who would be conducting them. On page 318 of the Panel Bundle, it is reported that Mr Fludgate acknowledged that his actions that evening would have serious ramifications for his job and career. At page 336 Mr Fludgate was asked if those students who had reached 18 but who were to return to do their A levels were still students at the school. Mr Fludgate agreed that they were still students. At page 340 of the Panel Bundle, the transcript shows that Mr Fludgate stated that what he did that night was obviously wholly inappropriate, regardless of whether Pupil A was 17 or 18, because he was her teacher.

The Panel were satisfied that Pupil A was a pupil of the school on the relevant dates.

Within the Panel Bundle there is a copy of a note of a conversation the Headteacher had with Mr Fludgate on 8 June 2010 (page 86 of the Panel Bundle). In this note it is recorded that Mr Fludgate admitted spending the night in the hotel room with Pupil A, but denied that sexual intercourse had taken place between them, and that it was for Pupil A to prove that sexual intercourse had taken place.

During the course of the criminal trial, the transcript of Mr Fludgate's evidence shows that he stated that, following the "Leavers" meal on 28 May 2010, he went into his hotel room with Pupil A at just before 3:30am (page 305 of the Panel Bundle) and that he left the hotel room with her just before 8:45am (page 312 of the Panel Bundle).

The Panel therefore finds this allegation proven.

**2. Whilst employed at St Edmund Campion Catholic School, Birmingham following the sixth form night out after the Leavers' prom on 28 May 2010 he had sexual intercourse with the same Year 13 student in his hotel room.**

During the course of the criminal trial, the transcript of that trial shows that Mr Fludgate stated, under oath, that he had sexual intercourse with Pupil A in his hotel room (pages 305 – 308 of the Panel Bundle). Pupil A also gave evidence under oath of having had sexual intercourse with Mr Fludgate (pages 232 – 233 of the Panel Bundle).

This allegation is therefore found proven.

**3. Whilst employed at St Edmund Campion Catholic School, Birmingham following the sixth form night out after the Leavers' prom on 28 May 2010 he sent text messages of an inappropriate nature to a different Year 13 pupil, Pupil D, on both 28 and 29 May 2010.**

A number of text messages were produced by the Headteacher in evidence which she stated had been obtained from the mobile phone of a pupil, who she believed to be Pupil D, to the best of her recollection. The Panel found the Headteacher to be a credible

witness. The photographs of those text messages were produced at pages 82 – 84 of the Panel Bundle. Although the Headteacher could not be certain, the Panel considered on the balance of probabilities that the text messages had indeed been sent to Pupil D.

Mr Fludgate was asked, during his criminal trial, about the text messages sent to Pupil D (page 289 of the Panel Bundle) and he confirmed that the message stating “Ive [sic] talked them into it” was sent to Pupil D out of “Male Bravado”.

The text messages sent by Mr Fludgate were signed off with a series of “xxx”s and during oral evidence he admitted being flirtatious with Pupil D and that he wanted some attention from her (page 343 of the Panel Bundle). He also admitted on page 287 of the Panel Bundle that it was completely wrong to have obtained a student’s mobile telephone number.

The Headteacher gave evidence that teachers had received training regarding the requirement not to share personal mobile numbers with pupils and the school had school mobile phones available for use in school trips. She also gave evidence that teachers had been reminded on the day of the “Leavers” meal that they should not go on to the same bar or club after the “Leavers” meal as the students. The Panel considered the messages to be inappropriate since they are messages sent to a pupil of the School arranging which bar to meet following the “Leavers” celebration. During his oral evidence at the criminal trial, Mr Fludgate had accepted that there was a directive in place that students and teachers were not to go off together after the “Leavers” meal.

The Panel therefore finds this allegation proven.

## **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 Fludgate in relation to the facts found proven, involved breaches of the Teachers’ Standards. The Panel considers that by reference to Part Two, Mr Fludgate 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 Fludgate fell significantly short of the standards expected of the profession. Mr Fludgate had received effective Safeguarding training from the School which had made its teachers alive to good practice.

The Panel notes that the allegations took place outside of the education setting. Mr Fludgate accepted that Pupil A had been drunk that evening (page 334 of the Panel Bundle). The Panel considered that he flagrantly breached his duty of care towards her. He had sexual intercourse with Pupil A despite being in a position of trust. The risk to Pupil A was exacerbated by the absence of the use of protection.

Accordingly, the Panel is satisfied that Mr Fludgate 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 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 Fludgate's status as a teacher, and would almost certainly damage the public perception of the profession.

The Panel therefore find that Mr Fludgate's actions constitute conduct that may bring the profession into disrepute.

## **Panel's recommendation to the Secretary of State**

### **THIS SECTION IS NOT ANNOUNCED DURING THE HEARING**

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 Teacher Misconduct – Prohibition of Teachers Advice 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 Fludgate, which involved having had sexual intercourse with a pupil, there is a strong public interest consideration in respect of the protection of pupils.

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

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 Fludgate. 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. In the list of such behaviours, the Panel considered the following to be relevant in this case;

- 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; and
- sexual misconduct 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. Mr Fludgate is of previous good character, and had been promoted to a level of Head of Faculty being responsible for the physical education of the pupils in the School. The Panel considered that during the criminal case, Mr Fludgate had accepted that his actions had been inappropriate given the relationship of trust between him and Pupil A. However, such expressions do not appear to have been repeated in the School disciplinary case nor were they repeated in these proceedings. Mr Fludgate at no point stated that he was sorry for his actions or that he would not do the same again. The Panel noted that Mr Fludgate gave evidence during the criminal trial that he had recently experienced an emotional upset due to relationship difficulties but the Panel did not consider this excused his conduct. There was no evidence that the teacher's actions were not deliberate. There was no evidence to suggest that Mr Fludgate was acting under duress.

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 Fludgate. 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 has found that Mr Fludgate has been responsible for having sexual intercourse with a pupil, which the Panel considers to be serious sexual misconduct. Mr Fludgate has not shown insight into his actions. The Panel were therefore of the view that 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 recommendations of the panel in this case, both in respect of the sanction and the review period.

The panel has found that Mr Fludgate's behaviours breached a number of the standards expected of teachers, namely:

- 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.

I am satisfied that the conduct of Mr Fludgate fell significantly short of the standards expected of the profession. In addition it is clear that Mr Fludgate had received effective Safeguarding training from the School.

I have considered whether it is in the public interest to accept the recommendation of the panel regarding sanction. Mr Fludgate's actions were deliberate and there was no evidence that he acted under duress. I have taken into account the previous good behaviour of Mr Fludgate alongside the need to maintain the reputation of the profession in the public interest. In my view it is proportionate and in the public interest to prohibit Mr Fludgate from teaching.

I have also given careful consideration to the matter of a review period. I have taken into account the Teacher Misconduct – Prohibition of Teachers Advice which indicates that there are behaviours that, if proven, would militate against a review period. One of these behaviours includes serious sexual misconduct. The Panel has found that Mr Fludgate has been responsible for having sexual intercourse with a pupil, which, like the panel, I consider to be serious sexual misconduct. Mr Fludgate has not shown insight into his actions. In my view therefore this is a case in which a review period would not be appropriate and as such I have decided that it would be proportionate in all the circumstances for the Prohibition Order to be without provision for a review period.

This means that Mr Matthew Fludgate 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 Matthew Fludgate 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 Matthew Fludgate 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 blue ink, appearing to read 'Alan Meyrick', with a stylized flourish at the end.

**NAME OF DECISION MAKER: Alan Meyrick**

**Date: 27 February 2014**

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