



National College for  
Teaching & Leadership

# **Mr David Lewis: Professional Conduct Panel outcome**

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

**August 2014**

# Contents

A. Introduction	3
B. Allegations	3
C. Preliminary applications	4
D. Summary of evidence	8
Documents	8
Witnesses	8
E. Decision and reasons	9
Panel's recommendation to the Secretary of State	12
Decision and reasons on behalf of the Secretary of State	14

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

<b>Teacher:</b>	Mr David Lewis
<b>Teacher ref no:</b>	6404528
<b>Teacher date of birth:</b>	7 May 1940
<b>NCTL Case ref no:</b>	0011110
<b>Date of Determination:</b>	4 August 2014
<b>Former employer:</b>	Retired in 2001

### **A. Introduction**

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 4 August 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr David Lewis.

The Panel members were Mr Colin Parker (Teacher Panellist– in the Chair), Mrs Alison Thorne (Lay Panellist) and Mrs Kulvinder Sandal (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 Katie Henderson of Nabarro Solicitors. Mr David Lewis was not represented.

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

The meeting took place in private and was not recorded save for the Panel’s announcement in public of its findings of fact and on conviction, at any time, of a relevant criminal offence.

### **B. Allegations**

The Panel considered the allegations set out in the Notice of Meeting dated 17 July 2014.

It was alleged that Mr David Lewis was guilty of a conviction of a relevant criminal offence, in that:

1. On 9 April 2013, at the Lavender Hill Magistrates Court, he was convicted of the following offences:

- a. Indecent assault on a female under age 14 on 09/07/75 to 06/07/75, contrary to Section 14(1) and Schedule 2 of the Sexual Offences Act 1956,
  - b. Indecent assault on a female under age 14 on 03/07/75 to 06/07/75, contrary to Section 14(1) and Schedule 2 of the Sexual Offences Act 1956,
  - c. Indecent assault on a female under age 14 on 03/07/75 to 06/07/75, contrary to Section 14(1) and Schedule 2 of the Sexual Offences Act 1956
2. In relation to the offences listed at paragraph 1 above, he was sentenced overall, on 17 June 2013 at Kingston-Upon-Thames Crown Court to:
- a. a Community Sentence Order, including:
    - i. a supervision requirement for three years,
    - ii. a requirement to participate in the Northumbria Sex Offenders Group Work Programme,
  - b. be placed on the Sex Offenders register for 5 years,
  - c. pay costs of £425.00.

Mr Lewis admitted the facts of the allegations in a Statement of Agreed Facts signed by him on 29 May 2014 and by the Presenting Officer on 13 May 2014. He also admitted in a Notice of Referral Form dated 30 April 2014 that the facts alleged and admitted amount to convictions of relevant offences.

The Panel made an amendment to allegation 1a to correct a typographical amendment as referred below.

## **C. Preliminary applications**

There were no preliminary applications, but the Panel considered a number of preliminary matters.

### **Should the Panel proceed with a Meeting?**

The Panel decided to admit an attendance note dated 1 August 2014 which referred to a telephone conversation between Mr Lewis and the Presenting Officer in which Mr Lewis confirmed that he wished these allegations to be dealt with in a meeting. The Panel decided to admit this in order to resolve an ambiguity in the Panel Bundle as to whether Mr Lewis requested the allegations to be considered in a meeting or a hearing. This document was numbered Page 44.

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 noted there was a lack of clarity as to whether Mr Lewis had requested a meeting, but that the attendance note of 1 August 2014 between Mr Lewis and the Presenting Officer clarified that Mr Lewis had requested a meeting. The Panel considered the interests of justice and given that the facts of the allegation have been admitted, that Mr Lewis has requested a meeting and the Panel has the benefit of Mr Lewis'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.

### **Jurisdiction**

The Panel considered as a preliminary point whether the Panel had jurisdiction to consider the case.

It is apparent that at the time of the offences for which Mr Lewis was convicted he was Head of Chemistry at a school in Bolton. The question is whether he is now subject to the jurisdiction of the Secretary of State as a letter from Mr Lewis stated that he retired from full time teaching in 1999 and has not taken any paid teaching employment since 2001.

The issue for the Panel to determine was whether the phrase "is employed or engaged to carry on teaching work" within section 141A and regulation 2 encompasses the situation in this case.

The Panel was advised that the legal meaning of an enactment is the meaning that corresponds to the legislator's intention in passing the enactment. The Panel was advised to consider the words used in section 141A and regulation 2 in the context of the enactment as a whole, and the Panel's attention was specifically drawn to section 141D which applies where an employer has ceased to use the services of a teacher or the teacher has ceased to provide those services.

The Panel was advised to consider whether it was of the view that the legal meaning of the phrase "is employed or engaged to carry on teaching work" was plain and unequivocal or ambiguous because there were alternative ways of interpreting the phrase.

The Panel was advised that if it considered the legal meaning of the phrase to be plain, then it would not need to interpret the phrase further.

However, if the Panel did consider the phrase to be ambiguous, then the Panel should consider what the intended legal meaning was, and that it should reach a balanced and common sense judgement. The Panel were directed to the following principles that it may wish to consider in determining this, including that the law should:

- serve the public interest;
- be just;
- be certain and predictable;
- be coherent and self-consistent.

The Panel was also told that it should be presumed that Parliament will have intended:

- for the provision to be given its literal meaning on an ordinary and natural interpretation;
- the provision to meet the legislative purpose and remedy the issue it was directed towards;
- the provision not to be interpreted in a way that produces an absurd, unworkable or impractical result;
- the provision not to be interpreted in a way that produces unjustifiable inconvenience in terms of unnecessary technicalities, inconvenience to business, taxpayers or legal proceedings;
- the provision not to be interpreted in a way that produces an anomaly;
- the provision not to be interpreted in a way that produces a futile, pointless or artificial result, including pointless legal proceedings.

The Panel's attention was drawn to a Professional Conduct Panel's decision in a previous case. In that case, the matters were alleged to have occurred in 2008, at the time the relevant person was teaching. The Panel came to consider the case in 2013, and the individual had not been engaged in teaching work since July 2010. In that case, the Professional Conduct Panel determined that it did have jurisdiction on the basis that:

- Parliament could not have intended only those currently teaching to be within the legislative regime;
- Someone who was not currently engaged in teaching, does not preclude them from returning to a teaching role in the future;
- To apply the regime only to someone who was currently teaching would introduce uncertainty as an individual could dip in and out of the jurisdiction;
- Parliament must have intended the phrase "is employed or engaged" to include individuals who were teaching at the time of the alleged incident even if they no longer work in the profession.

The Panel were reminded that each case should turn on its own facts.

The Panel has reviewed the legislative provision. It does not accept that the legal meaning of the provision is plain. It noted the ambiguity as to the point of time at which the phrase “is employed or engaged relates”. The Panel has therefore sought to achieve a balanced view and reach a common sense judgement as to the legal meaning of the phrase. It recognises that the legal meaning is Parliament’s intention.

Whilst the Panel recognises that normally it would be expected that the legal meaning would be the literal interpretation of the provision, it considers that such a meaning would not meet the legislative purpose and would give rise to absurdities, impracticalities and irrationalities. If the provision could only apply to teachers currently employed or engaged at the time of the proceedings, it would permit those with serious allegations against them to seek to escape the potential consequences of their alleged actions by resigning.

Furthermore, the Panel has had in mind that the fact that someone is not currently engaged in teaching, does not preclude them from returning to a teaching role in the future and that not being able to explore an allegation that has been made against an individual who is not currently teaching, would not be in the public interest. The Panel does not consider that this would have been Parliament’s intention.

The Panel considers that Parliament would have intended the regime to operate in a manner that was both certain and practical. For this case to not be within the jurisdiction of the Secretary of State, would mean that there would have to be some definitive point at which someone would dip out of the jurisdiction, leading to uncertainties as to when that would be. The Panel notes that Mr Lewis has not contended that his case is not eligible to be considered. The Panel considers that on a common sense view, the regulatory regime applies to Mr Lewis even if he has not engaged in teaching work since 2001, since he could return to teaching at any time, irrespective of his age or his retirement.

### **Amendment of Allegations**

The Panel noted that there appeared to be an error in the date range alleged in particular 1a, namely in the reference to the date “09/07/75”. The Panel has seen that the Statement of Agreed Facts also appears to refer to the same apparently erroneous date of 09/07/75.

The Panel noted that in a letter of 11 February 2014 in which Mr Lewis was notified of the referral, he was told that the date range for the offence was 03/07/75 to 06/07/75. The Panel noted that Mr Lewis admitted this in his response to the Notice of Referral Form. The Panel has also seen the PNC Record which states that the date range was 03/07/75 to 06/07/75. The Panel was therefore satisfied that the correct date range to which this allegation should refer was 03/07/75 to 06/07/75.

The Panel noted that the procedure at a meeting is to be determined by the Chair pursuant to paragraph 4.88 of the Teacher Misconduct – Disciplinary Procedures for the

Teaching Profession (the “Procedures”). The Panel noted, that had this case been convened as a hearing, the Procedures state that the Panel could amend an allegation or the particulars of an allegation at any time before making its decision about whether the facts of the case have been proved, in the interests of justice. The Panel considered whether it was necessary for a hearing to be convened in order to hear representations on the amendment, but decided that this was not necessary in the interests of justice. It was apparent that the amendment was required to correct a typographical error and there was no unfairness or prejudice caused since the amendment did not make the allegation any more serious than it was before. The Panel therefore decided to amend “09/07/75 in allegation 1a to “03/07/75”.

## **D. Summary of evidence**

### **Documents**

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

Section 1: Chronology	Page 2
Section 2: Notice of Referral and Response	Pages 3 – 7b
Section 3: Statement of Agreed Facts and Presenting Officer Representations	Pages 8 - 15
Section 4: National College for Teaching and Leadership Documents	Pages 16 – 29
Section 5: Teacher Documents	Pages 30 - 43

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

A further document was produced for the meeting by Mr Lewis, namely a letter dated 23 July 2014 from Mr Lewis together with an enclosure. The Presenting Officer did not object to its admission. The Panel decided to admit the document on the basis that it was fair to do so, given that the Presenting Officer did not object. The document was considered to be relevant.

### **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 together with the additional documents admitted.

### Summary of Evidence

Mr Lewis began teaching in 1961. On 9 April 2013, Mr Lewis was convicted, having pleaded guilty, in the Lavender Hill Magistrates' Court to three charges of indecent assault on an 11 year old girl, those assaults having taken place in July 1975 when Mr Lewis was 35 years old and had been a teacher for around 14 years. He was sentenced on 17 June 2013 by the Crown Court at Kingston Upon Thames. The National College for Teaching and Leadership ("the College") received a referral regarding this conviction on 3 January 2014.

### Findings of Fact

Our findings of fact are as follows:

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

**1. On 9 April 2013, at the Lavender Hill Magistrates Court, he was convicted of the following offences:**

**a. Indecent assault on a female under age 14 on 03/07/75 to 06/07/75, contrary to Section 14(1) and Schedule 2 of the Sexual Offences Act 1956.**

**b. Indecent assault on a female under age 14 on 03/07/75 to 06/07/75, contrary to Section 14(1) and Schedule 2 of the Sexual Offences Act 1956.**

**c. Indecent assault on a female under age 14 on 03/07/75 to 06/07/75, contrary to Section 14(1) and Schedule 2 of the Sexual Offences Act 1956.**

The Panel has in its bundle a Certificate of Conviction confirming that Mr Lewis was convicted on 9 April 2013 of "indecent assault on a female contrary to section 14(1) and Schedule 2 of the Sexual Offences Act 1956". It is apparent from this Certificate that there were three Counts. The Panel has seen the Sentencing Remarks which confirms that the three charges to which Mr Lewis pleaded guilty were of indecent assault on an 11 year old girl, those assaults having taken place in July 1975. The Panel Bundle also contains a PNC Record which states that Mr Lewis has been convicted of three counts of

indecent assault on a female under 14 on 03/07/75 to 06/07/75 under Section 14 of the Sexual Offences Act.

Mr Lewis admitted this in his response on the Notice of Referral Form for these proceedings signed on 30 April 2014 and in a Statement of Agreed Facts, albeit that the Statement of Agreed Facts appears to contain a typographical error. It is apparent from the PNC record that the date range in which the offences occurred was 03/07/75 – 06/07/75, and not 09/07/75 to 06//07/75 as appears in the Statement of Agreed Facts in respect of the first offence.

The Panel noted that Mr Lewis did not accept some of the facts put to him in the Statement of Agreed Facts. However, the Panel did not consider that those denials were pertinent to the Panel's findings on the facts alleged.

The Panel did not re-examine the facts of the case, accepting the conviction as conclusive proof that establishes the relevant facts.

The Panel therefore finds Allegation 1 proven in its entirety.

**2. In relation to the offences listed at paragraph 1 above, he was sentenced overall on 17 June 2013 at Kingston-Upon-Thames Crown Court to:**

- a. a Community Sentence Order including:
  - i. a supervision requirement for three years,**
  - ii. a requirement to participate in the Northumbria Sex Offenders Group Work Programme,****
- b. be placed on the Sex Offenders register for 5 years**
- c. pay costs of £425.00.**

The Panel Bundle contains the Sentencing Remarks which stated that the court sentenced Mr Lewis to a Community Sentence Order for 3 years, including supervision for three years and a requirement to attend the Northumbria Sex Offender Group Work Programme. The Remarks state that he had been convicted of three offences which attracted the obligation for Mr Lewis to be placed on the Sex Offenders Register which would last for 5 years. The Remarks finally required Mr Lewis to pay the costs of the prosecution in the sum of £425 within 6 months.

Mr Lewis admitted this allegation in both his response to the Notice of Referral Form and in the Statement of Agreed Facts.

The Panel therefore finds Allegation 2 proven in its entirety.

## Findings as to Conviction of a Relevant Offence

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 Lewis in relation to the facts it has found proved, involved breaches of the Teachers’ Standards. We consider that by reference to Part Two, Mr Lewis failed to demonstrate consistently high standards of personal and professional conduct. The Panel considered Mr Lewis to be 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
  - ...building relationships rooted in mutual respect at all times observing proper boundaries appropriate to a teacher’s professional position;
  - showing tolerance of and respect for the rights of others;
  - .....the rule of law, individual liberty and mutual respect.

The Panel noted that the Judge’s Sentencing Remarks commented that the victim was a daughter of friends of Mr Lewis and as he was a teacher, he could therefore be trusted by the parents and allowed unrestricted access to the victim. Mr Lewis abused that trust for his own sexual gratification on three occasions. The Panel therefore did not consider Mr Lewis to have observed proper boundaries appropriate to his professional position. He acted with no regard to the victim’s wellbeing. The matters for which Mr Lewis was convicted were contrary to the rule of law and significantly below the personal and professional conduct standards expected of a teacher.

The Panel noted that the individual’s actions were relevant to teaching, working with children and / or working in an education setting given that in the event of him returning to teaching, Mr Lewis could have regular and frequent contact with children.

The Panel noted that the offences for which Mr Lewis was convicted had a lasting impact on the victim’s wellbeing. The Panel noted that the Sentencing Remarks state that the victim suffered loss of confidence in her professional and family life and that her childhood memories were tarnished by these events.

The Panel has also taken account of how the teaching profession is viewed by others. The Panel considered that the offences committed by Mr Lewis could affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.

This is a case involving an offence involving sexual activity which the Guidance states is likely to be considered a relevant offence.

In considering the relevance of these convictions to Mr Lewis's ongoing suitability to teach, the Panel has had regard to any mitigating circumstances as suggested in the Guidance. The Panel has taken into account that Mr Lewis continued as a teacher until his retirement in 2001 without further incident and that written evidence has been adduced attesting to Mr Lewis's exemplary record as a teacher from former colleagues and former female pupils who refer to his behaviour having been appropriate. The Panel has also taken into consideration a Structured Assessment of Risk and Need Report of July 2009 which states that since meeting his wife 6 months after the offences occurred he has managed his risk not to reoffend. The Panel noted that Mr Lewis was assessed as posing a low risk of reoffending.

Although the Panel finds the evidence of Mr Lewis's teaching proficiency to be of note, the Panel has found the offending behaviour that led to the conviction to be so serious that it considers that it must be relevant to his ongoing suitability to teach. The Panel considers that a finding that this conviction is a relevant offence is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

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

Given the Panel's findings in respect of conviction of a relevant offence, 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 a number of them to be relevant in this case, namely the protection of pupils; the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr Lewis, there is a strong public interest in respect of the protection of pupils given that Mr Lewis has been convicted of offences of indecent assault on an 11 year old girl.

Similarly, the Panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Lewis was not treated with the utmost seriousness when regulating the conduct of the profession. The fact that the offences were committed many years ago does not diminish their seriousness.

The Panel considered there was a strong public interest in declaring and upholding proper standards of conduct in the profession as the allegations found proven were in direct contravention to the personal and professional conduct standards expected of a teacher.

Notwithstanding the clear public interest, 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 Lewis. In balancing this, the Panel considered the public interest as well as the interests of Mr Lewis and took further account of the Guidance, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been found proven. In the list of such behaviours are

- serious departure from the personal and professional conduct elements of the teachers' standards
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils
- sexual misconduct, eg 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
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

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. The offences were sexually motivated. There was no evidence to suggest that the teacher was acting under duress. The Panel noted that the offences were committed at a time when Mr Lewis stated that he was single and lonely. However, the Panel considered his actions were a highly inappropriate response to those feelings. The Panel accepted that Mr Lewis was otherwise of good history and had regard to four character references provided by former female pupils and former colleagues.

The Panel noted from the Sentencing Remarks that the Judge stated that Mr Lewis "had not quite come to terms with the seriousness" of what he did. The Panel also noted that the Structured Assessment of Risk and Need report referred to Mr Lewis having started to address his attitudes and beliefs. The Panel noted that the Report concluded that Mr Lewis was at risk of reoffending, albeit the risk was low. For the proceedings before this Panel, Mr Lewis has provided clarification around the matters put to him in the proposed Statement of Agreed Facts and has sought to provide explanatory details. Mr Lewis's comments gave the Panel concerns about the level of insight he has demonstrated as the Panel did not consider that these details in any way reduced the seriousness of his conduct.

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 Lewis. Given that this conviction concerned indecent assault on three occasions of an 11 year old girl, the Panel considered this to be fundamentally incompatible with his continuing status as a teacher. 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 guidance indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes serious sexual misconduct. Mr Lewis's actions were sexually motivated and had a lasting impact on the victim. Mr Lewis abused the trust placed in him as a result of his professional position.

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 careful consideration to the recommendations of the panel both in respect of sanction and review period.

This case involves convictions for serious sexual offences with a female under the age of 14. This case clearly shows behaviour that is fundamentally incompatible with Mr Lewis continuing to be able to hold the status of a teacher. The offences were sexually motivated. There was no evidence to suggest that the teacher was acting under duress.

I have carefully considered the balance of the public interest and the interest of Mr Lewis himself. I have also given careful consideration to the issue of proportionality. In this case it is clear that Mr Lewis's behaviour falls into the category where a prohibition order is appropriate and proportionate.

I have also given careful consideration to the matter of a review period. The panel have been clear that Mr Lewis's comments gave them concerns about the level of insight he has demonstrated. I have therefore supported the recommendation of the panel that there should be no review period. This clearly sits within the guidance and is in the public interest and is proportionate.

**This means that Mr David Lewis 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 Lewis 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 Lewis 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: 6 August 2014**

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