



National College for
Teaching & Leadership

Mr Felix Magomo: Professional Conduct Panel outcome

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

December 2014

Contents

A. Introduction	3
B. Allegations	4
C. Preliminary applications	4
D. Summary of evidence	8
Documents	8
Witnesses	8
E. Decision and reasons	8
Panel's recommendation to the Secretary of State	11
Decision and reasons on behalf of the Secretary of State	13

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

Teacher:	Mr Felix Magomo
Teacher ref no:	0949648
Teacher date of birth:	3 August 1957
NCTL Case ref no:	0010700
Date of Determination:	9 December 2014
Former employer:	Barford Care Children's Home

A. Introduction

A Professional Conduct Panel ("the Panel") of the National College for Teaching and Leadership ("the National College") convened on 9 December 2014 at the Village Urban Resorts Coventry, Dolomite Avenue, Coventry Business Park, Canley, West Midlands, CV4 9GZ, to consider the case of Mr Felix Magomo.

The Panel members were Jean Carter (Lay Panellist in the Chair), Luke Graham (Teacher Panellist), and Kulvinder Sandal (Teacher Panellist).

The Legal Adviser to the Panel was Patricia D'Souza of Eversheds LLP.

The Presenting Officer for the National College was Ben Bentley of Browne Jacobson LLP.

Mr Felix Magomo was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 26 August 2014.

It was alleged that Mr Felix Magomo was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed at Barford Care, a residential children's home, he caused inappropriate images to be transferred onto a work computer.

C. Preliminary applications

As Mr Magomo was not in attendance today, the Presenting Officer made an application for the hearing to proceed in Mr Magomo's absence.

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

The Panel is also satisfied that the Notice of Proceedings contains the details required by paragraph 4.11 of the Procedures.

The Panel has determined to exercise its discretion under Paragraph 4.29 of the Procedures to proceed with the hearing in the absence of Mr Magomo.

In making its decision, the Panel has noted that Mr Magomo may waive his right to participate in the hearing. The Panel understands that its discretion to commence a hearing in the absence of Mr Magomo has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

The Panel has taken account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. Mr Magomo has indicated in the Notice of the Proceedings that he did not intend to appear or be represented at the hearing. The Panel therefore considers that Mr Magomo has waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place. The Panel has had regard to the requirement that it be only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. The Panel considers that Mr Magomo has plainly waived his right to appear. There is no indication that an adjournment would result in Mr Magomo attending the hearing. Mr Magomo has also indicated that he does not wish to be legally represented at the hearing. The Panel has had regard to the seriousness of this case, and the potential consequences for Mr Magomo but considers, in light of Mr Magomo'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 is in favour of this hearing continuing today.

In addition, the Panel also considered whether it had jurisdiction to hear this case. The Presenting Officer outlined that Mr Magomo obtained Qualified Teacher Status (“QTS”) on 21 July 2009, he then worked as a supply teacher during the period September 2004 and July 2011 (during a 7 year period) in various schools. Under the current Education Act 2011, there is no register for qualified teachers, however, there is an ability to obtain QTS and teachers are required to complete an induction period. If a teacher with QTS fails to complete their induction in the relevant period of time they are prohibited from teaching in schools. However, the Presenting Officer’s clearly explained that Mr Magomo is still able to undertake teaching work in schools as an unqualified teacher whether or not he has QTS and whether or not he completed an induction period.

The Panel was directed to Regulation 7 of the Teachers’ Disciplinary (England) Regulations 2012 (“the Regulations”) which states that a professional conduct panel must consider cases referred to it by the Secretary of State. Regulation 5 is the provision that covers the referral by the Secretary of State to the Panel, and cases only fall under the consideration of the Secretary of State if they involve a teacher.

The Panel was directed to consider as a question of fact whether Mr Magomo was a teacher within the definition of the Regulations and that it was for the National College to prove on the balance of probabilities.

The issue for the Panel to determine was whether the phrase “is employed or engaged to carry on teaching work” encompasses the situation.

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 of the Education Act 2011 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 a 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 the fact that in other cases, where an individual was teaching at the time of the allegations but was no longer in the teaching profession, a Professional Conduct Panel has 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.

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

The Panel was also advised that Regulation 3 defines teaching work as a) planning and preparing lessons and courses for pupils; b) delivering lessons to pupils; c) assessing the development, progress and attainment of pupils; and reporting on the development, progress and attainment of pupils. This is subject to the proviso that these activities are not teaching work if the person carrying out the activity does so

subject to the direction and supervision of a qualified teacher or other person nominated by the head teacher to provide such direction and supervision.

The Panel has reviewed the legislative provision. It does not accept that the legal meaning of the provision in regulation 2 and s141A of the Act 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 or not currently working in the teaching profession.

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 considered that by virtue of Mr Magomo’s indication in the documents before the Panel that he is a teacher implicitly indicates that he regards this regulatory regime is applicable to him. The Panel also, on a common sense view, regard the regulatory regime as applicable to Mr Magomo, since he could return to “teaching work” at any time, irrespective of the fact that he has not worked as a teacher for several years.

For the reason stated in the paragraph above, the Panel considered Mr Magomo falls within the jurisdiction of the National College by virtue of his previous teaching work, regardless of whether he was a teacher at the time of the alleged events.

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 Referral, Response and Notice of Proceedings and Response | Pages 3 – 18 |
| Section 3: | National College for Teaching and Leadership Statement of Agreed Facts | Pages 19 – 21 |
| Section 4: | National College for Teaching and Leadership Documents | Pages 22 – 102 |
| Section 5: | Teacher Documents (NONE PROVIDED) | |

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

Witnesses

There were no witnesses present.

E. Decision and reasons

The Panel announced its decision and reasons as follows:

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

The Panel confirm that it has read all the documents provided in the bundle in advance of the hearing.

Summary of Evidence

Mr Magomo had been employed by Barford Care to work as Waking Night Worker since on or around January 2012 at the Beech Trees House Children's home initially

through an employment agency then under a permanent position. On or around 26 June 2013, a colleague found inappropriate images had been downloaded by Mr Magomo onto a work computer. The images found were investigated by the police, who found the images to be inappropriate but not indecent. Following Mr Magomo being voluntarily interviewed by the police on 29 June 2013 no further police or criminal action was taken. In a meeting with his employer, Mr Magomo admitted that the images were downloaded onto a work computer from his mobile phone and that this was inappropriate. Mr Magomo resigned from his position on 9 July 2013.

Findings of Fact

Our findings of fact are as follows:

The Panel has found the following particulars of the allegations against you proven, for these reasons:

Whilst employed at Barford Care, a residential children's home, you caused inappropriate images to be transferred onto a work computer

The Panel noted that Mr Magomo has admitted in the Notice of Referral form the facts of the allegations set out in the Notice of Referral form (which differs to the allegation set out above but not in a substantive way) in that this allegation relates to two specific pseudo images of children. The allegations were amended subsequently by the National College, as set out in the Notice of Proceedings (referred to above) following notification by the police that the imagery of the photographs did not fall within the classification of indecent images of children. Therefore "pseudo images of children" formed no part of the allegations considered by the Panel and was not taken into account in its deliberations. The Panel noted that the police took no further action against Mr Magomo. The Panel also noted from the Presenting Officer's submissions that Mr Magomo accepted advice provided by the police. In addition, the minutes of a meeting with his employer indicates that Mr Magomo accepts that the images transferred were "not suitable at all".

The Statement of Agreed Facts signed by Mr Magomo on 16 March 2014, which contained the substance of the current allegations refers to Mr Magomo accepting that he had been responsible for transferring images from his mobile phone to the office computer and accepting that those images were inappropriate. Although the subsequent Statement of Agreed Facts is not signed by either Mr Magomo or the National College, which contains the current allegations referred to above, the Panel did not consider that this meant the content of the former Statement of Agreed Facts should not be taken into account. The Panel considered this information was

corroborated by the content of the Officer's report included in the bundle of documents, which refers to Mr Magomo downloading images from his mobile handset onto the office computer and that the images were inappropriate.

This allegation is therefore found 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 Teachers' Misconduct – Prohibition of Teachers Advice, which it refers to as the 'Guidance'.

The Panel is satisfied that the conduct of Mr Magomo in relation to the facts found proven, involved breaches of the Teachers' Standards. The Panel considers that by reference to Part Two, Mr Magomo is in breach of the following standard:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:

“.....at all times observing proper boundaries appropriate to a teacher's professional position.”

The Panel is satisfied that the conduct of Mr Magomo fell significantly short of the standard expected of the profession. The Panel noted that Mr Magomo has a PGCE and has attended child protection and safeguarding training and ought to have been familiar with the expectations of his employer and should not have placed himself in a situation where his professional integrity was compromised. As a result, the Panel consider that Mr Magomo would have been aware of the appropriate standards of behaviour expected of a teacher.

The Panel recognised that none of the images transferred by Mr Magomo to an office computer were regarded by the police as indecent under the current criminal sentencing guidelines. However, given the nature of Mr Magomo's work (in supporting young people) and the importance of maintaining professional trust, the Panel considered it was inappropriate for Mr Magomo to be in possession of such images in a professional setting even if it is outside the education environment.

The Panel notes that the allegation took place when Mr Magomo was employed as a Waking Night Worker, however this role involved working with children and in doing so, Mr Magomo needed to apply appropriate professional standards. Bringing inappropriate material which is pornographic in nature into this setting is in breach of the Teachers' Standards (as referred to above). Accordingly, the Panel is satisfied that Mr Magomo 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 considers its findings are serious and the conduct displayed would likely have a negative impact on Mr Magomo's status as a teacher, potentially damaging the public perception. Whilst the images were not indecent, the setting in which those images were discovered would seriously undermine public confidence in the teaching profession. The Panel therefore finds that Mr Magomo's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the Panel's findings in respect of unacceptable unprofessional conduct and conduct that may bring the profession into disrepute, it is necessary for the Panel to go on to consider whether it would be appropriate to recommend the imposition of a Prohibition Order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a Prohibition Order should be made, the Panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition Orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The Panel has considered the particular public interest considerations set out in the Teacher Misconduct – The Prohibition of Teachers Advice and having done so has found the maintenance of public confidence in the profession to be relevant. The Panel went on to consider whether public confidence in the profession would be seriously weakened if conduct such as that found against Mr Magomo was not treated with the utmost seriousness when regulating the conduct of the profession. The Panel was mindful of the need to balance the risk of a Prohibition Order being unnecessarily punitive as against the need to uphold public confidence in the profession.

The Panel did not consider that the protection of pupils and other members of the public and declaring and upholding proper standards of conduct were relevant public interest considerations, as a result of there being no impact on the pupils or young people in Mr Magomo's care. This was a one-off incident which was significantly short of the standards expected of a teacher, but taken as a whole, was not a serious departure from those standards.

Notwithstanding the public interest consideration that is present, namely the maintenance of public confidence in the profession, the Panel considered carefully whether or not it would be proportionate to impose a Prohibition Order taking into account whether this would have an unnecessarily punitive effect on Mr Magomo. In

forming a judgement in this respect, the Panel took particular account of the character evidence that was presented to it by two referees who knew Mr Magomo in his role as a supply teacher. Such referees consider Mr Magomo to be professional and hardworking and that the feedback from schools at which Mr Magomo undertook supply work, was positive. Colleagues who knew Mr Magomo as a supply teacher indicate he was flexible and reliable and that students responded well towards him. It is stated that he always tried his best to make activities fun and worthwhile for students and he was very punctual and friendly.

The Panel was also mindful of the fact that prior to these findings being made against him, that Mr Magomo was considered to be a person of good character with no criminal or previous disciplinary sanctions recorded against him.

The Panel accepts Mr Magomo's evidence that his actions were not deliberate. Mr Magomo did not intentionally download the inappropriate images (he had only intended to download a photograph of himself). However it is of concern to the Panel that Mr Magomo brought inappropriate images into a professional setting where children were present. Following the police investigation there was no further action taken against him and the images were not considered by the police to be indecent images of children.

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 Magomo. The Panel took further account of the guidance contained within the Teacher Misconduct – The 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 are:

- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one-off incidents; and
- serious departure from the personal and professional conduct elements of Teachers' Standards;

Even though there were behaviours which may point to a Prohibition Order being appropriate, the Panel carefully considered the information provided by the police in that Mr Magomo's behaviour did not amount to activity relating to any "indecent photograph or image or pseudo photograph or image of a child". Although the Panel found that Mr Magomo's conduct fell significantly short of the standards expected of a Teacher, the Panel did not consider that his behaviour represented a serious or sustained departure from the personal and professional conduct elements of the Teachers' Standards. This was at the lower end of the spectrum, considering the

classification of the images by the police as inappropriate but not indecent images of children. The Panel noted that this was a one-off incident.

The Panel went on to consider whether or not there were sufficient mitigating factors against a Prohibition Order being an appropriate and proportionate measure to impose, particularly taking into account the nature of the behaviour in this case. The Panel concluded that Mr Magomo's actions were foolish, however they were not deliberate as he attempted to delete the inappropriate images, having recognised that they were not suitable and had no intention to download them to a work computer. Once the images were discovered, it appears from the bundle, that he openly participated in the investigations that followed by the police and his employer. The Panel took into account that throughout those investigations, Mr Magomo demonstrated insight in that he recognised the inappropriate nature of the images he had inadvertently transferred to a work computer. The Panel noted that Mr Magomo accepted responsibility for his actions.

On balance, the Panel is of the view that Prohibition is not a proportionate and appropriate response. Given that the nature and severity of the behaviour is at the less serious end of the possible spectrum and in light of the mitigating factors that were present in this case, the Panel has determined that a recommendation for a prohibition order will not be appropriate as this would have an unnecessarily punitive effect. The Panel considers that its findings of unacceptable professional conduct and conduct which may bring the profession into disrepute sends a sufficiently robust message about the impact of such behaviour, therefore maintaining public confidence in the profession.

Decision and reasons on behalf of the Secretary of State

I have carefully considered the findings and recommendations of the panel in this case.

The panel have found the revised allegation proven namely that whilst employed at Barford Care, a residential children's home, Mr Magomo caused inappropriate images to be transferred onto a work computer. The police investigated the images and found them to be inappropriate, but not indecent for the purposes of the current criminal sentencing guidelines. No further police or criminal action was taken.

Whilst Mr Magomo is a qualified teacher, he was employed by Barford Care as a 'waking night worker'; he was not engaged in a teaching role.

The panel have found that the facts proven amount to both unacceptable professional conduct and conduct that may bring the profession into disrepute. In doing so they have referenced the Teachers' Standards, specifically:

- Teachers uphold trust in the profession and maintain high standards of ethics and behaviours, within *and outside* school.

The panel also concluded that, whilst the images were not indecent, the setting in which those images were discovered could undermine public confidence in the teaching profession.

The panel went on to consider whether a prohibition order would be an appropriate and proportionate sanction. They have balanced the interests of the public with those of the teacher. They have judged that the maintenance of public confidence in the profession is a relevant public interest consideration in this case.

In considering the interests of Mr Magomo and the mitigating factors in this case the panel have taken into account that his actions were not deliberate and that prior to this event Mr Magomo was considered to be a person of good character. They have seen positive character evidence from two referees. Mr Magomo has co-operated with the police and his employer throughout the investigations and has demonstrated insight and remorse, recognising the inappropriate nature of the images.

The panel have recommended that findings of unacceptable professional conduct and conduct that may bring the profession into disrepute are of themselves sufficient in this case.

I have paid very close attention to the Secretary of State's advice, *Teacher misconduct: the prohibition of teachers*. It is clear from that advice that where a panel find behaviour involving 'any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting any such activity, including one-off incidents', then they should consider imposing a prohibition order without provision for an application to have the order set aside.

The panel have taken careful note of the fact that the police have not defined the images as indecent against current criminal sentencing guidelines.

However, the advice is clear that 'a panel may consider that a teacher's behaviour will be considered to be incompatible with being a teacher if there is evidence that they have viewed, taken, made, possessed, distributed, or published any photograph or image that would not be considered indecent for the purposes of the current criminal sentencing guidelines'.

Whilst the police did not find the images indecent, they were nonetheless totally inappropriate, particularly in the context of them being downloaded to a computer in the setting described.

I have taken into account the mitigation provided and sought to balance the public interest with that of Mr Magomo. I have also taken into account the need to be proportionate. On balance I consider that the panel has not paid sufficient attention

to the advice on images or sufficiently taken into account the need to ensure the protection of the reputation of the teaching profession.

I have therefore decided to impose a prohibition order without provision for an application for the order to be set aside. This decision reflects the serious light in which the public view this type of behaviour.

This means that Mr Felix Magomo 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 Felix Magomo 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 Felix Magomo 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: 12 December 2014

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