



National College for
Teaching & Leadership

Mr Robert Harrington: Professional conduct panel outcome

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

February 2017

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

Teacher: Mr Robert Harrington
Teacher ref number: 0210356
Teacher date of birth: 26 March 1976
NCTL case reference: 15183
Date of determination: 27 February 2017
Former employer: St John Fisher Catholic School

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 27 February at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Robert Harrington.

The panel members were Mr Adam Nichols (lay panellist - chair), Mrs Mary Speakman (teacher panellist) and Ms Margaret Windsor (teacher panellist).

The legal adviser to the panel was Miss Laura Ellis of Eversheds Sutherland (International) LLP.

The presenting officer for the National College was Ms Louisa Atkins of Browne Jacobson LLP.

Mr Harrington was not present and was not represented at the hearing.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 8 November 2016.

It was alleged that Mr Robert Harrington was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher:

1. He was in possession of one or more indecent images of a child/children on or around 8 March 2016;
2. His behaviour as referred to at 1 above constituted a criminal offence pursuant to section 160 of the Criminal Justice Act 1988, for which he accepted a caution on 20 May 2016.

C. Preliminary applications

Proceeding in absence:

The panel has considered whether this hearing should continue in the absence of the teacher.

The panel is satisfied that NCTL has complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (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 the teacher.

The panel understands 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.

In making its decision, the panel has noted that the teacher may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. Mr Harrington previously responded to the Notice of Proceedings to state that he did not intend to attend the hearing, and the panel understands that he has subsequently confirmed this in email correspondence to the National College. The panel therefore considers that the teacher 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 is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. Mr Harrington has also not requested an adjournment, and there is no indication that an adjournment might result in him attending the hearing. He has also indicated that he does not wish to be legally represented at the hearing.

The panel has had regard to the extent of the disadvantage to Mr Harrington in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of written representations made by Mr Harrington (including a witness statement from him) and is able to ascertain the lines of defence. This includes Mr Harrington's evidence addressing mitigation and the panel is able to take this into account at the relevant stage. The panel has not identified any significant gaps in the documentary evidence provided to it and should such gaps arise during the course of the hearing, the panel may take such gaps into consideration in considering whether the hearing should be adjourned for such documents to become available and in considering whether the presenting officer has discharged the burden of proof. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard Mr Harrington's account from him in person. The panel also notes that all of the evidence in this case is documentary, as there are no witnesses.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Harrington and has accepted that fairness to Mr Harrington is of prime importance. However, it considers that in light of Mr Harrington's waiver of his right to appear; by taking such measures referred to above to address that unfairness insofar as is possible; 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.

Admission of additional documents:

The panel considered an application by Ms Atkin to admit additional documents to the hearing bundle, namely a case summary from the police regarding Mr Harrington's caution dated 8 April 2016. Ms Atkin explained that these documents were not received from the police until 15 February 2017, when they were immediately sent to Mr Harrington's legal representative by the National College. Mr Harrington's representative confirmed that Mr Harrington has no objections to the inclusion of this document, by email dated 17 February 2017. The panel considers that this document is relevant to the proceedings, and as Mr Harrington has confirmed (via his legal representative) that he is content for it to be admitted, the panel grants this application to admit it to the bundle under its discretion to do so pursuant to paragraph 4.18 of the Procedures.

The documents are added as pages 74 to 79 of the hearing bundle.

Application for the hearing to be held in private:

The panel has considered whether to exercise its discretion under paragraph 11 of the Teachers' Disciplinary (England) Regulations 2012 (the "Regulations") and paragraph 4.57 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession (the "Procedures") to exclude the public from all or part of the hearing. This is due to the fact that although Mr Harrington is not present at the hearing, on his Response to the Notice of Proceedings form dated 8 November 2016, he has indicated that the hearing (or part of it) should not be held in public, although he has not given any reasons for this.

The panel has determined not to exercise its discretion under paragraph 11(3) (b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures that the public should be excluded from the hearing.

The panel has taken 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 has noted that there are concerns about confidential matters relating to the teacher's health being placed in the public domain. The panel has balanced this against the competing reasons for which a public hearing is required.

The panel notes that any departure from the general rule has to be no greater than the extent reasonably necessary and that interference for a limited period of the hearing is preferable to a permanent exclusion of the public. The panel has therefore, considered whether there are any steps short of excluding the public that would serve the purpose of protecting the confidentiality of matters relating to Mr Harrington's health, and considers that to the extent it becomes necessary during the course of the hearing to discuss such matters, the panel can consider at that stage whether to exclude the public from that portion of the hearing only.

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: NCTL witness statements N/A

Section 4: NCTL documents – pages 13 - 70

Section 5: Teacher documents – pages 72 - 73

In addition, the panel agreed to accept the following:

Section 6: Police Case Summary and email from Mr Harrington's legal representative confirming he is content for this to be added to the bundle – pages 74 - 79

The panel members confirmed that they had read all of the documents in advance of the hearing.

Witnesses

There were no witnesses who gave verbal evidence at the hearing.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Harrington was employed at St. John Fisher Catholic School (the "School") from 1 July 2014 to 31 May 2016 as an English teacher and subsequently Deputy Head of English. On 8 April 2016 he was arrested by Kent Police on suspicion of possessing an indecent photograph of a child on 8 March 2016, contrary to section 160 of the 1988 Criminal Justice Act. Consequently, he was suspended from the School on 11 April 2016. He accepted a police caution for the offence on 20 May 2016 and resigned from the School on 31 May 2016.

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:

You are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed as a teacher:

- 1. You were in possession of one or more indecent images of a child/children on or around 8 March 2016;**
- 2. Your behaviour as referred to at 1 above constituted a criminal offence pursuant to section 160 of the Criminal Justice Act 1988, for which you accepted a caution on 20 May 2016.**

The panel must decide whether the facts of the case have been proved on the balance of probabilities.

In relation to the first allegation, Mr Harrington accepted a police caution for the activity described in the allegation on 20 May 2016, which carries significant evidential weight. The Police Case Summary states that he admitted the activity to the police when he was arrested and consequently received a caution. The Statement of Agreed Facts (signed by Mr Harrington on 8 September 2016) also states that he admits carrying out the activity.

The panel is mindful of the fact that Mr Harrington's subsequent witness statement to the NCTL dated 14 September 2016 states Yahoo notified the police that he had accessed illegal material on the internet, and that he does not remember doing so. However, the statement then goes on to describe 'vigilante-type online behaviour', contains an admission that he accepted a police caution for the behaviour and states that he accepted responsibility for his actions.

Similarly, Mr Harrington's statement that he sent to the head teacher of the school at which he was previously employed (attached to an email dated 14 June 2016) admitted that he had accepted the police caution for the activity, and stated that he felt he had been 'very stupid' in relation to his behaviour and deeply regretted his actions. Therefore, in considering all of the documents in the bundle together, the panel considers that Mr Harrington appears to have admitted the allegation.

In relation to the second allegation, this is intrinsically linked with the first. The panel has seen the police PNC report that details the offence and caution. The letter from the head teacher to the NCTL dated 21 June 2016 also states that she was informed of the caution by the police. As explained above, Mr Harrington has confirmed that he received the caution in various documents in the bundle.

The panel is satisfied on the balance of probabilities that this allegation is proven.

Taking all evidence into account, the panel finds these allegations proven.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as "the Advice".

The panel is satisfied that the conduct of Mr Harrington in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Harrington is in breach of the standards to 'uphold public trust

in the profession and maintain high standards of ethics and behaviour, within and outside school’.

The panel is satisfied that the conduct of Mr Harrington fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Harrington’s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of ‘an 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’, is relevant. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual’s conduct would amount to unacceptable professional conduct.

The panel notes that the allegations took place outside of the education setting. However, the panel still considers that it demonstrates a lack of standards in relation to Mr Harrington’s personal and professional conduct.

Accordingly, the panel is satisfied that Mr Harrington 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 uniquely 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 the individual’s status as a teacher, potentially damaging the public perception.

The panel therefore finds that Mr Harrington’s actions constitute conduct that may bring the profession into disrepute.

Having found the facts of particulars 1 and 2 proved, we find that Mr Harrington’s conduct amounts to both unacceptable professional conduct and 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 professional 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.

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

The panel has considered the particular public interest considerations set out in the Advice and having done so has found a number of them to be relevant in this case, namely the maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Harrington, which involved possessing one or more indecent photographs of a child/children, the panel considers that public confidence in the profession could be seriously weakened if conduct such as this were not treated with the utmost seriousness when regulating the conduct of the profession.

In view of 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 Harrington.

In carrying out this balancing exercise, the panel has considered the public interest considerations both in favour of and against prohibition, as well as the interests of Mr Harrington. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- 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
- 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 (which applies in this case).

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.

There was no evidence that Mr Harrington's actions were not deliberate. However, the panel recognises his assertions (from a number of the documents in the bundle) that he feels remorse for his actions and recognises the impact that it has had upon others (in particular, his family and the school at which he was previously employed). The panel considers that this indicates a degree of insight (albeit this could not be tested as Mr

Harrington was not present during the hearing) and the panel has seen no evidence that Mr Harrington has any previous history of misconduct. The panel also notes that in mitigation, Mr Harrington's statement states that he has suffered from health issues, his actions did not harm any individual, and that they did not constitute an abuse of his position of trust as a teacher. He also states that his behaviour was motivated by a desire to report others who were distributing illegal material on the internet. However, there is no independent verification of any of this as Mr Harrington was not present (and unrepresented) at the hearing, called no witnesses and submitted no documentary evidence to support these statements. There are also no references regarding Mr Harrington's abilities as a teacher or his character, and no evidence that Mr Harrington has taken any specific steps to prevent similar behaviour from occurring in the future (such as obtaining support for health issues).

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the Panel is sufficient.

The panel is of the view that in applying the standard of the ordinary intelligent citizen, recommending no prohibition order is not a proportionate and appropriate response. A recommendation that publication of adverse findings alone is sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for Mr Harrington of prohibition.

The panel is of the view that prohibition is both proportionate and appropriate, and that the public interest considerations outweigh the interests of Mr Harrington in this case. Significant factors in forming that opinion are that the offence is of a serious nature (of the type listed in section 5(iii) of the Advice) and no evidence has been presented by Mr Harrington to suggest that he has addressed the personal issues to which he refers in his statement. Without this, there appears to be a risk that he may engage in similar behaviour in the future. 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 to recommend that a review period of the order should be considered. The panel were mindful that the Advice states 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, which may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. Mr Harrington has received a police caution for accessing one or more indecent images of children on the internet contrary to section 160 of the Criminal Justice Act 1988, which falls into this category.

The panel therefore felt that the findings indicated a situation in which a review period would not be appropriate and as such, has 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 this case very careful consideration and have given careful consideration to the recommendations made to me by the panel in respect of both sanction and review period.

I have also read the advice that is published by the Secretary of State on factors relating to decisions leading to the prohibition of teachers from the teaching profession.

In making my decision I have weighed up the public interest elements relating to upholding and maintaining the standards of the teaching profession, and the interests of the individual teacher. I have in particular weighed the fact that in some cases the finding of unacceptable professional conduct or conduct that may bring the profession into disrepute is itself a serious one. I have in this case considered whether such a finding is itself sufficient to uphold the standards of the teaching profession.

In weighing these matters I have taken into account the need to be proportionate and to recognise that prohibition should not be given simply in order to be punitive, although a prohibition order is likely to have a punitive effect.

In this case the panel has found that the conduct of Mr Harrington in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Harrington is in breach of the standards to 'uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school'.

I am satisfied that the conduct of Mr Harrington fell significantly short of the standards expected of the profession.

Moreover by reference to the guidance, the panel has found that Mr Harrington's conduct displayed behaviours associated with the offences listed on pages 8 and 9 of the Advice. The panel found that the offence of 'an 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', is relevant. The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel has recommended a prohibition order in this case. The advice published by the Secretary of State indicates that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- 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.

I have also considered the panel's advice to me in respect of mitigating factors that might be relevant in this case. The advice is that although there is some insight that on balance this is not sufficient to weigh the balance against the imposition of a prohibition order.

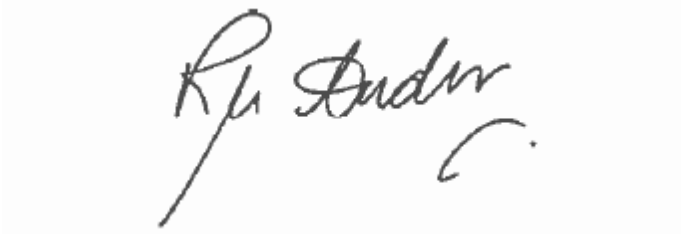
I have also gone on to consider the recommendation of the panel in respect of a review period. I have also considered the published advice which states that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. Mr Harrington has received a police caution for accessing one or more indecent images of children on the internet contrary to section 160 of the Criminal Justice Act 1988, which falls into this category.

In my view it is both in the public interest and proportionate to impose a prohibition order with no review period.

This means that Mr Robert Harrington 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 Robert Harrington 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 Robert Harrington 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 "R. Andrews", is centered at the top of the page. The signature is written in a cursive style with a large initial 'R' and a distinct flourish at the end.

Decision maker: Russell Andrews

Date: 3 March 2017

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