



National College for
Teaching & Leadership

Mr Simon Adrian Smith Professional conduct panel outcome

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

October 2016

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

Teacher:	Mr Simon Adrian Smith
Teacher ref number:	7440462
Teacher date of birth:	13 January 1955
NCTL case reference:	14639
Date of determination:	21 October 2016
Former employer:	Wyvern College, Wiltshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 21 October 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Simon Adrian Smith.

The panel members were Mr Luke Graham (teacher panellist – in the chair), Mr Tony Heath (lay panellist) and Ms Gill Tomlinson (lay panellist).

The legal adviser to the panel was Mr Harry Rasmussen of Eversheds LLP.

The presenting officer for the National College was Mr Ben Chapman of Browne Jacobson LLP.

As this was a meeting, the parties were not present.

The meeting took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegation(s) set out in the Notice of Meeting dated 7 October 2016.

It was alleged that Mr Simon Adrian Smith was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed at Wyvern College, he:

- 1. Accessed inappropriate content using school equipment, including material which included but is not limited to the following descriptions:**
 - a. Sexy wife and husband swingers seduce teen for fun**

- b. Tabu forcibly fucked by her uncle**
 - c. Jobless Russian fucks for money**
 - d. Indian wife handcuffed and fuck in ass**
 - e. Incest stepson seduces mother**
 - f. Innocent girl seduced and strip while sleeping in train**
 - g. Hot sleeping girl alone in bedroom people**
 - h. Nervous young virgins seduced by sexy mature housewife**
 - i. Mastram sex scene with his teacher**
 - j. Betsy Russell private school nudes**
 - k. Son seduces his mum to have sex**
 - l. Mom seducing her step son for sex father not at home short films**
- 2. One or more of the items in allegation 1 were pornographic;**
- 3. One of more of the items in allegation 1 and/or 2 were accessed during teaching periods.**

In the agreed statement of facts, Mr Smith admitted the facts of the allegations and that they amounted to unacceptable professional conduct and conduct which may bring the profession into disrepute.

C. Preliminary applications

Whilst there were no preliminary applications, the panel considered at the outset whether the allegation should be considered at a public hearing which the parties would be entitled to attend, or a private meeting without the parties present. The panel considered the interests of justice and given that the facts of the allegations have been admitted, that Mr Smith had requested a meeting and the panel had the benefit of his 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 were 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.

D. Summary of evidence

Documents

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

Section 1: Chronology, anonymised pupil list and list of key people – pages 2 to 3

Section 2: Notice of Referral, Response and Notice of Meeting – pages 5 to 9

Section 3: Statement of Agreed Facts and presenting officer representations – pages 11 to 15

Section 4: NCTL documents – pages 17 to 155

Section 5: Teacher documents – pages 157 to 160

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

Witnesses

The matter was convened as a meeting and no oral evidence was heard.

E. Decision and reasons

The panel announced its decision and reasons as follows:

We have 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.

Mr Smith was employed as a teacher at Wyvern College from 1 September 1978. On 30 June 2015 an allegation was made that Mr Smith has been accessing pornography using school equipment and during school time.

On 3 July 2015 Wiltshire Police were contacted regarding the matter, following which a LADO referral was made on 6 July 2015. Following a disciplinary hearing on 12 October 2015 Mr Smith was dismissed from his position on 14 October 2015.

Findings of fact

Our findings of fact are as follows:

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

- 1. Accessed inappropriate content using school equipment, including material which included but is not limited to the following descriptions:**
 - a. Sexy wife and husband swingers seduce teen for fun;**
 - b. Tabu forcibly fucked by her uncle**
 - c. Jobless Russian fucks for money**
 - d. Indian wife handcuffed and fuck in ass**
 - e. Incest stepson seduces mother**
 - f. Innocent girl seduced and strip while sleeping in train**
 - g. Hot sleeping girl alone in bedroom people**
 - h. Nervous young virgins seduced by sexy mature housewife**
 - i. Mastram sex scene with his teacher**
 - j. Betsy Russell private school nudes**
 - k. Son seduces his mum to have sex**
 - l. Mom seducing her step son for sex father not at home short films**

In respect of allegations 1 a – l above, in his response (dated 15 April 2016) to the Notice of Referral letter dated 11 April 2016, Mr Smith stated that he admitted the allegations set out in the Notice of Referral letter, which include these allegations. In a Statement of Agreed Facts signed by Mr Smith on 10 August 2016, he again admitted these allegations.

The panel therefore finds these allegations proved.

- 2. One or more of the items in allegation 1 were pornographic;**

In his response (dated 15 April 2016) to the Notice of Referral letter dated 11 April 2016, Mr Smith stated that he admitted the allegations set out in the Notice of Referral letter,

which include this allegation. In a Statement of Agreed Facts signed by Mr Smith on 10 August 2016, he again admitted this allegation.

Additionally, the panel decided that it was reasonable to conclude that the content identified in allegations 1 a – I satisfied the the definition of ‘pornographic’ used at paragraph three of the Statement of Agreed Facts, signed by Mr Smith on 10 August 2016.

The panel therefore finds this allegation proved.

3. One of more of the items in allegation 1 and/or 2 were accessed during teaching periods.

In his response (dated 15 April 2016) to the Notice of Referral letter dated 11 April 2016, Mr Smith stated that he admitted the allegations set out in the Notice of Referral letter, which include this allegation. In a Statement of Agreed Facts signed by Mr Smith on 10 August 2016, he again admitted this allegation.

Additionally, and with reference to the evidence arising from the school disciplinary investigation regarding the dates, times and locations of when Mr Smith accessed the relevant content, the panel found it reasonable to conclude that one or more of the items in allegation 1 were accessed during teaching periods.

The panel therefore finds this allegation proved.

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

Having found a number of the allegations to have been proved, the panel has gone on to consider whether the facts of those proved 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 we refer to as “the Advice”.

The panel is satisfied that the conduct of Mr Smith in relation to the facts found proved, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Smith 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 having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions;
- 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 Smith fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr Smith's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice; the panel has found that none of these offences are relevant.

Accordingly, the panel is satisfied that Mr Smith 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 panel therefore finds that Mr Smith's actions constitute conduct that may bring the profession into disrepute.

Having found the facts of particulars 1, 2 and 3 proved, we further find that Mr Smith'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 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 a 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 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 Smith, which involved accessing and viewing pornographic material using school equipment and during the school day, 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 Smith 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 Smith 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 Smith.

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 Smith. 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 proved. In the list of such behaviours, the relevant behaviour is: serious departure from the personal and professional conduct elements of the Teachers' Standards.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. In light of the panel's findings there was no evidence that the teacher's actions were not deliberate and there was no evidence to suggest that the teacher was acting under duress.

Mr Smith has referred to the circumstances surrounding his behaviour. He stated that looking back on the relevant period of time he was seriously depressed and felt surplus to requirements in his role, humiliated, belittled and let down. Additionally, Mr Smith referred to his receipt of good / outstanding Ofsted reviews over the course of his career. He also referred to his limited IT skills as a factor contributing to his conduct. The panel concluded that whilst Mr Smith displays genuine remorse for his actions, this derives from being caught, rather than from an appreciation that what he did was wrong and potentially damaging to the pupils under his care.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Smith. The panel concluded that Mr Smith's lack of insight for the potential damage his actions could have caused pupils in his care was a significant factor in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for them to decide to recommend that a review period of the order should be considered. The panel were mindful that the 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 2 years.

The panel felt that the behaviour of Mr Smith was serious, particularly given the school setting in which he accessed the offending content. The panel recognised that his accessing of such content outside of a school setting would not in itself be illegal. The panel noted that Mr Smith has been open with the investigations into his conduct, and also considered his long and successful teaching career. The panel concluded that Mr Smith should be given the opportunity to show greater insight into his actions and an understanding of his responsibilities to keep pupils safe.

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provision for a review period of two years.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation made by the panel in respect of both sanction and review.

In this case the panel has found all of the allegations proven. Mr Smith has been found guilty of unprofessional conduct and conduct that may bring the profession into disrepute.

The panel has found that the behaviours exhibited by Mr Smith involved breaches of the Teachers' Standards. The panel considered that Mr Smith was 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 having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- 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 Smith fell significantly short of the standards expected of the profession.

I have taken into account the recommendation made by the panel. I have also taken into account the guidance published by the Secretary of State. I have taken into account the need to balance the interests of the public with those of Mr Smith and the need to be proportionate.

I note the panel felt that the behaviour of Mr Smith was serious, particularly given the school setting in which he accessed the offending content. I also note that the panel recognised that his accessing of such content outside of a school setting would not in itself be illegal.

Mr Smith has been open with the investigations into his conduct, and I note that the panel considered his long and successful teaching career.

In my judgement the panel's recommendation is the right one. Mr Smith's behaviour is such that a prohibition order is appropriate and proportionate.

I have gone on to consider the matter of a review period. The panel has given this matter careful consideration. The panel concluded that whilst Mr Smith displays genuine remorse for his actions, this derives from being caught, rather than from an appreciation that what he did was wrong and potentially damaging to the pupils under his care.

The panel concluded that Mr Smith should be given the opportunity to show greater insight into his actions and an understanding of his responsibilities to keep pupils safe. I agree with the panel's view.

Although this is a prohibition order for life, I support the recommendation that Mr Smith be able to apply for a review after two years, the minimum review period.

This means that Mr Simon Adrian Smith is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 1 November 2018, two years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr Smith remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Mr Smith 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 be 'J. Millions', written on a light-colored background.

Decision maker: Jayne Millions

Date: 25 October 2016

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