



National College for
Teaching & Leadership

Ms Kay Johnston: Professional conduct panel outcome

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

January 2016 (amended July 2016)

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

Teacher: Ms Kay Johnston
Teacher ref number: 7662117
Teacher date of birth: 17 June 1956
NCTL case reference: 13029
Date of determination: 20 January 2016
Former employer: The London Teaching Pool , London

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 18-20 January 2016 at Ramada Hotel, Coventry to consider the case of Ms Kay Johnston.

The panel members were Ms Gail Goodman (teacher panellist – in the Chair), Mr Martin Greenslade (lay panellist) and Mr Michael Lesser (teacher panellist).

The legal adviser to the panel was Mr Nick Leale of Blake Morgan Solicitors.

The presenting officer for the National College was Mr Harry Bentley of 2 Hare Court Chambers, instructed by Nabarro Solicitors.

Ms Kay Johnston was present and was not represented.

The hearing took place in public and was recorded.

Please note that, at an appeal to the High Court on 13 July 2016, the Court overturned the panel’s decision in relation to allegation 2.d). However, the Court upheld the Secretary of State’s decision to prohibit Mrs Johnston from teaching indefinitely, with the opportunity to apply for the prohibition order to be set aside 4 years from the date of the order at the earliest.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 16 October 2015.

It was alleged that Ms Kay Johnston was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst working as a supply teacher at East Wickham Primary Academy:

1. On or around 29 January 2014 she acted inappropriately towards Pupil A, a vulnerable pupil, in that she:
 - a) struck Pupil A,
 - b) caused Pupil A to fall on the floor by pushing him off his chair;
2. On or around 31 January 2014 she acted inappropriately towards Pupil A, vulnerable pupil, in that she:
 - a) allowed and/or took no action to prevent a teaching assistant under her supervision from:
 - i) tying together Pupil A's shoelaces,
 - ii) manhandling Pupil A;
 - b) failed to untie Pupil A's shoelaces, which remained tied together for approximately two hours, causing Pupil A to fall over;
 - c) failed to instruct the teaching assistant to untie Pupil A's shoelaces, which remained tied together for approximately two hours, causing Pupil A to fall over;
 - d) inappropriately excluded and/or allowed Pupil A to be excluded from classroom activities on one or more occasions.

C. Preliminary applications

The panel considered an application from Ms Johnston that the hearing should be held in private due to the potential for exaggerated press coverage emerging of the hearing. The panel decided that the public interest required that the hearing should be public and that it would be contrary to the public interest for the public to be excluded. The interests of any child/vulnerable witness are sufficiently safeguarded by the protection of their anonymity during the course of the hearing.

The panel also considered an application by Ms Johnston to submit an additional statement provided by a character witness Individual A. The Presenting Officer did not object to this application. The panel decided to admit the document to the bundle (at page 92) on the basis that it was relevant and fairly admitted evidence.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 2 to 3;

Section 2: Notice of Proceedings and Response – pages 5 to 10;

Section 3: NCTL witness statements – pages 12 to 17;

Section 4: NCTL documents – pages 19 to 69;

Section 5: Teacher documents – pages 71 to 91.

In addition, the panel agreed to accept the character statement of Individual A as outlined in section C above. This became page 92 of the bundle.

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

Witnesses

The panel heard oral evidence from :

1) Witness A – statement at bundle pages 12 to 17 – Headteacher at East Wickham Primary Academy.

2) Ms Kay Johnston.

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.

This case relates to a supply teacher who was responsible for the teaching of a small class of complex needs children within the infant department of a primary academy in

Kent. The affected child was 5 years of age at the relevant time. He, like other children at the setting, suffered from complex learning difficulties. Ms Johnston had spent 2 weeks observing the class and was in her first week of actual teaching of the class. It was alleged that she, on separate occasions and 2 different dates in January 2014, struck the relevant child; pushed him off his chair thus causing him to fall to the ground; allowed his shoelaces to be tied together by a teaching assistant and remain tied together for nearly 2 hours without intervention and inappropriately excluded the child from classroom activities.

Findings of fact

Our findings of fact are as follows:

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

1. On or around 29 January 2014 you acted inappropriately towards Pupil A, a vulnerable pupil, in that you:

a) Struck Pupil A

We are satisfied that Pupil A was a vulnerable pupil. The nature of the setting confirms this when considered alongside the information sheet for Pupil A which is at page 19 of the bundle. We have carefully and repeatedly viewed the CCTV recording of the alleged 'strike' (29 January 2014 10.40.33) and are satisfied on the balance of probabilities that Ms Johnston did strike Pupil A at the relevant time. We note particularly that Ms Johnston is seen to raise her hand at the relevant time and very shortly thereafter, with Ms Johnston's hand in shot and very close to Pupil A's head, Pupil A's head/upper body is seen to jerk to the side. On the basis of the CCTV footage, as opposed to the commentary provided by Witness A in oral evidence, we reject Ms Johnston's suggestion that she did not strike Pupil A at the relevant time. Clearly the conduct of Ms Johnston in this instance was inappropriate in the circumstances.

b) Caused Pupil A to fall on the floor by pushing him off his chair

We have carefully and repeatedly viewed the CCTV recording of the alleged 'push' (29 January 10.41.15) and are satisfied on the balance of probabilities that Ms Johnston did push Pupil A off his chair thus causing him to fall to the floor at the relevant time. We note particularly that Ms Johnston is seen to lift his leg and tip the chair, causing him to fall to the floor. On the basis of the CCTV footage, as opposed to the commentary provided by Witness A in oral evidence, we reject Ms Johnston's suggestion that she did not cause him to fall to the floor as a result of a push. Clearly the conduct of Ms Johnston in this instance was inappropriate in the circumstances.

2. On or around 31 January 2014 you acted inappropriately towards Pupil A, a vulnerable pupil, in that you:

a) Allowed and/or took no action to prevent a teaching assistant under her supervision from:

ii) manhandling Pupil A

On the balance of probabilities we find this allegation proved. It is clear from the CCTV footage that Pupil A is manhandled by teaching assistants at various times during the relevant period on the relevant day and Ms Johnston makes no effort to prevent these events from occurring or being repeated. For example, Pupil A is at one time spun on his back by the feet, on another occasion is carried across the room and on another occasion is roughly returned to the classroom from the sensory room. The inaction of Ms Johnston was inappropriate in all the circumstances.

2. On or around 31 January 2014 you acted inappropriately towards Pupil A, a vulnerable pupil, in that you:

b) Failed to untie Pupil A's shoelaces, which remained tied together for approximately two hours, causing Pupil A to fall over

We are satisfied on the balance of probabilities that Ms Johnston should have taken steps to untie Pupil A's shoelaces and failed to do so. The CCTV evidence is clear that for approximately two hours Pupil A's shoelaces are tied up and throughout that period he moves around with some discomfort, falling over on a number of occasions. The shoelaces are finally untied by one of the teaching assistants. We are satisfied that it is beyond belief that Ms Johnston was not aware that Pupil A's laces were tied up for that period and therefore reject Ms Johnston's evidence in this regard. She was with him alone for around 30 minutes while his laces were tied together. We find that it was inappropriate for Pupil A's laces to be tied together and for Ms Johnston to take no steps to untie them.

c) Failed to instruct the teaching assistant to untie Pupil A's shoelaces, which remained tied together for approximately two hours, causing Pupil A to fall over

For similar reasons as laid out above we find this particular proved. Ms Johnston clearly failed to instruct her teaching assistant to untie Pupil A's shoelaces during the relevant period. If she had given such an instruction they would have been untied. It is of course Ms Johnston's evidence that she was not aware that Pupil A's laces were tied together. We reject that evidence in light of what we see on the CCTV footage and Pupil A's actions and movements in the room during the relevant period in the presence of Ms Johnston.

d) Inappropriately excluded and/or allowed Pupil A to be excluded from classroom activities on one or more occasions.

We find this particular proved on the balance of probabilities. We find that Pupil A was inappropriately excluded from classroom activities on more than one occasion, including for 30 minutes on the floor while other activities continued for the other children, 15 minutes while the other children ate their snack and while in the corner after being pushed off his chair by Ms Johnston. All of these exclusions were without justification in their duration and were therefore inappropriate.

We have found the following particulars of the allegation against you not proven, for these reasons:

2. On or around 31 January 2014 you acted inappropriately towards Pupil A, a vulnerable pupil, in that you:

a) Allowed and/or took no action to prevent a teaching assistant under her supervision from:

i) tying together Pupil A's shoelaces,

On the balance of probabilities we find this particular not proved. We are satisfied on the balance of probabilities that, due to the positions in the room of the teaching assistant and Pupil A in relation to Ms Johnston, she would not have been aware at the time that the teaching assistant was tying together Pupil A's shoelaces.

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 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.

The panel is satisfied that the conduct of Ms Kay Johnston, in relation to the facts found proved, involved serious breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Ms Kay Johnston is in breach of the following standards:

- Teachers must uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
 - showing tolerance of and respect for the rights of others;

- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.
- 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 Ms Johnston fell significantly short of the standards expected of the profession.

Accordingly, the panel is satisfied that Ms Johnston 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 Ms Johnston'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 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 decided to recommend that a Prohibition Order should be imposed in this case. We consider that the facts that have been found proved engage the public considerations listed in the prohibition guide and that prohibition is the only outcome that ensures the protection of pupils, the maintenance of public confidence in the profession and declares and upholds proper standards of conduct.

Ms Johnston acted in a violent manner towards Pupil A and failed to prevent him from being adversely affected by the inappropriate actions of teaching assistants for a

sustained period. She failed to protect pupil A's dignity or safeguard his well-being. There has been a serious departure from the personal and professional conduct elements of the Teachers' Standards. Ms Johnston abused her position of trust in relation to a vulnerable 5 year old child who had complex educational and emotional needs. The panel does also take into account his challenging behavioural habits but the psychological effects on Pupil A of Ms Johnston's behaviour are likely to have been significant.

While Ms Johnston has a previous exemplary history as a teacher over a very long period of time, she has indicated limited insight into her behaviour. Her denials as to the conduct demonstrated by the CCTV footage are ongoing and she continues to blame others for her predicament.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found proved in Ms Johnston's case was not treated with the utmost seriousness when regulating the conduct of the profession.

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 Ms Johnston.

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 Ms Johnston. 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, the one that is most relevant in this case is violence, albeit that these incidents were at the low end of the scale.

The panel is of the view that prohibition is both proportionate and appropriate. 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 proposes 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 Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of those behaviours is violence, which has been proved in this case.

However, the following factors support future review of Ms Johnston's prohibition. The violence was relatively low on the scale of seriousness in an environment where Ms Johnston was faced with potentially aggressive pupils. We have heard that Ms Johnston

had suffered an assault by a pupil shortly before these events. In addition, Ms Johnston's actions were not pre-meditated and occurred in circumstances of an apparent lack of management support that verged on hostility towards her. Ms Johnston was a temporary supply teacher at the school which will have heightened her sense of abandonment. To her partial credit Ms Johnston has indicated her acceptance that she did mismanage the teaching assistants with whom she worked.

In light of the above factors, the Panel have concluded that a review period would be appropriate and proportionate in this case and therefore recommend that review of the prohibition order should be allowed after a period of 2 years.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendations of the panel in respect of the sanction and the review period.

I have noted in particular those allegations where the panel has found the facts proven and where they have found the facts do and do not amount to unacceptable professional conduct, and conduct that may bring the profession into disrepute.

Ms Johnston was working as a supply teacher at the time of the allegations, and was responsible for teaching a small class of complex needs children within a primary academy.

Ms Johnston acted in a violent manner towards a pupil and failed to prevent him from being adversely affected by the inappropriate actions of teaching assistants for a sustained period.

I have noted the panel's consideration of the public interest in this case, and that public confidence in the profession could be seriously weakened if the conduct found proved in this case was not treated with the utmost seriousness. I support the recommendation of the panel that Ms Johnston be prohibited.

I now turn to the matter of the review period. The panel has set out very clearly their thinking on this matter, and has recommended a review period of 2 years.

The panel has argued that: the violence was relatively low on the scale of seriousness; Ms Johnston's actions were not pre-meditated; and to her partial credit she has indicated her acceptance that she did mismanage the teaching assistants.

However, I differ in my view from that of the panel. Ms Johnston has indicated limited insight into her behaviour. One of those behaviours is violence, which has been proved in this case. Her denials as to the conduct demonstrated by the CCTV footage are ongoing, and she continues to blame others. I believe that the panel has not taken sufficient

account of the public concern that would arise were a review of the prohibition order be allowed after two years. For these reasons, I have decided to extend the review period to four years.

This means that Ms Kay Johnston is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the prohibition order to be set aside, but not until 1 February 2020, 4 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Johnston remains prohibited from teaching indefinitely.

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

Ms Johnston has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this order.

A handwritten signature in black ink, appearing to read 'J. Millions', with a small dot at the end of the signature.

NAME OF DECISION MAKER: Jayne Millions

Date: 25 January 2016

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