



National College for
Teaching & Leadership

Mr James Gillingham: Professional conduct panel outcome

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

June 2015

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

Teacher:	Mr James Gillingham
Teacher ref no:	9938136
Teacher date of birth:	10 March 1977
NCTL case ref no:	12725
Date of determination:	23 June 2015
Former employer:	Ellen Wilkinson School for Girls, London

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 23 June 2015 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr James Gillingham.

The panel members were Mr Colin Parker (teacher panellist and chair), Mrs Mary Speakman (teacher panellist), and Ms Nicolé Jackson (lay panellist).

The legal adviser to the panel was Miss Eszter Horvath-Papp of Eversheds LLP.

The presenting officer for the National College was Lucy Coulson of Browne Jacobson Solicitors.

Mr Gillingham was not present and was not represented.

The meeting took place in private and the panel’s decision was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 3 March 2015 and amended in the note of meeting dated 4 June 2015.

It was alleged that Mr Gillingham was guilty of unacceptable professional conduct in that, whilst employed at The Ellen Wilkinson School for Girls, Acton, between July 2013 and July 2014, he:

1. Failed to maintain professional boundaries by engaging in an inappropriate relationship with a female student, Student X, including:
 - a. engaging in inappropriate physical contact with Student X including:
 - i. kissing
 - ii. hugging
 - b. inviting her into his house
 - c. engaging in inappropriate communications with Student X including:
 - i. texting
 - ii. sending Whatsapp messages
 - iii. emailing from his personal email account
2. And in doing so at allegation 1 above his actions were sexually motivated;
3. Contacting Student X on 14 July 2014, in contravention of the terms of his suspension, asking her to “just please say that we were just taking the mics back”, which was false information; and
4. In so doing at allegation 3 above, his actions were dishonest in an attempt to mislead the school’s investigations.

Mr Gillingham has admitted the facts of the allegations and that they amount to unacceptable professional conduct.

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 at 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 allegation have been admitted, that Mr Gillingham has requested a meeting and the panel has 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 was convened, there would be a cost to the public purse, which may not be justified if the matter could be determined in a meeting. The panel also had regard to the delay that would be caused by convening a hearing and considered it to be in the public interest to reach a final determination in this matter without further delay. The panel therefore decided to proceed with a meeting, but noted that it could, at any stage of the meeting, reconsider this issue.

Separately, the panel noted a typographical error in the numbering of the allegations in that allegation 1(b) was missing. The panel was content to re-label allegations 1(c) and 1(d) as 1(b) and 1(c) respectively. The panel was satisfied that this was an administrative amendment and would not cause any prejudice to Mr Gillingham.

D. Summary of evidence

Documents

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

Section 1 – Anonymised pupil list and chronology – pages 2 to 3

Section 2 – Notice of referral, response and notice of meeting – pages 6 to 10b

Section 3 – Statement of agreed facts and presenting officer's representations – pages 12 to 16

Section 4 – NCTL documents – pages 18 to 137

Section 5 – Teacher documents – page 139

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:

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

The panel confirmed that it had read all the documents provided in the bundle in advance of the meeting.

In brief, Mr Gillingham was employed as a teacher of Drama and English at the Ellen Wilkinson School for Girls between September 2000 and October 2014. In July 2013, Student X, who was then aged 18, gave him a lift after a school production. They stopped at Mr Gillingham's home where he invited Student X in for tea, where they were alone. In December 2013, after the school's Christmas concert, Student X again gave Mr Gillingham a lift, and they again went in his house for tea. On this occasion, Mr Gillingham and Student X kissed. Further, in July 2014, after the school production, Mr Gillingham and Student X were in her car, where they hugged and told her he would miss her. Mr Gillingham had also communicated with Student X via text messages, Whatsapp messages and emails.

In July 2014, Student X disclosed her relationship with Mr Gillingham to another member of staff. Mr Gillingham was suspended on 14 July 2014 and told not to contact Student X. In the afternoon of that day, he emailed Student X to ask her "Just please say we were just taking the mics back". Following a disciplinary process, Mr Gillingham was dismissed from the school on 14 October 2014.

Findings of fact

The panel's findings of fact are as follows. The panel noted Mr Gillingham's admissions of the facts of the allegations. However, the panel also turned its own independent mind to considering whether or not the facts of the allegations have been proven.

The panel has found the following particulars of the allegations proven, for these reasons:

1. Failed to maintain professional boundaries by engaging in an inappropriate relationship with a female student, Student X, including:

(a) engaging in inappropriate physical contact with Student X including:

(i) kissing

(ii) hugging

(b) inviting her into his house

The panel noted that Student X's statement (page 52) confirmed that Student X had been to Mr Gillingham's house and that they had engaged in kissing and hugging. The panel also noted that Mr Gillingham admitted in his disciplinary hearing of 14 October 2014 (page 130) that he had conducted an inappropriate relationship with a student, and had inappropriate physical contact and communications with her.

The panel was satisfied that there was sufficient evidence to support Mr Gillingham's admission and it therefore found these allegations proven.

(c) engaging in inappropriate communications with Student X including;

(i) texting

(ii) sending Whatsapp messages

(iii) emailing from his personal email account

The panel noted the record of Mr Gillingham's admission in his police interview on 18 September 2014 (pages 61-62) that he had engaged in communications with students, including Student X, using his personal email address and his personal mobile phone. Mr Gillingham also admitted in his disciplinary hearing on 14 October 2014 that he had inappropriate communication with a student using his personal mobile telephone and email address. The panel also saw printouts of messages on Whatsapp (pages 53-54 of the bundle) and had no reason to believe that these were not genuine.

The panel was therefore satisfied that there was sufficient evidence to support Mr Gillingham's admission and it therefore found this allegation proven.

2. In carrying out the conduct at allegation 1, his actions were sexually motivated

The panel noted the following exchange between the police and Mr Gillingham in his police interview on 18 September 2014 (page 63):

"[police officer]: What were your intentions towards this pupil?"

JG: I didn't think about it. I was stupid. I was being weak. Someone was being friendly and lovely. It was complete stupidity and I will regret it forever. It is horrendous that it happened but I am not going to lie. I was weak, male and flattered."

Further, the panel noted Mr Gillingham's Whatsapp message that "it just hurts to think of not seeing you xx".

In light of these comments, the panel was satisfied that Mr Gillingham's state of mind in engaging with Student X as found in allegation 1 was that he was sexually motivated. It was evident that he viewed the contact as a potentially sexual relationship, so there could have been no other motivation on his part.

The panel was therefore satisfied that there was sufficient evidence to support Mr Gillingham's admission and it therefore found this allegation proven.

3. Contacting Student X on 14 July 2014, in contravention of the terms of his suspension, asking her to "just please say that we were just taking the mics back", which was false information

The panel saw the letter dated 14 July 2014 confirming Mr Gillingham's suspension from the school, and noted that this included the instruction that "You must not communicate with any of, [sic] your colleagues, members of the governing body, parents or students about this matter or the allegations unless authorised by [Individual A]" (pages 55-56). The panel also saw the email dated the same day in which Mr Gillingham said to Student X "Please delete this immediately. I have been suspended. We can't communicate. Just please say that we were just taking the mics back. I am sorry." (page 57), to which Student X replied "it's too late. [Individual B] knew everything".

In light of this, the panel was satisfied that there was sufficient evidence to support Mr Gillingham's admission and it therefore found this allegation proven.

4. In carrying out the conduct at allegation 3 above, his actions were dishonest in an attempt to mislead the school's investigations.

In light of the findings of the facts of allegation 3, the panel was satisfied that Mr Gillingham was asking Student X to give misleading information to the school's investigation, in the knowledge that he had been instructed not to communicate with Student X or anyone else about the matter. The panel also noted Mr Gillingham's further admission in this respect, in his statement dated 21 April 2015, which noted that his conduct was carried out in a state of considerable distress and panic. Whilst the panel accepted that Mr Gillingham might have been distressed at the time, it was satisfied that he knew what he was doing, that what he was asking Student X to do was wrong, and he therefore would have known that his actions were dishonest, both on an objective and on a subjective basis.

The panel was therefore satisfied that there was sufficient evidence to support Mr Gillingham's admission and it therefore found this allegation proven.

Findings as to unacceptable professional conduct

Having found the facts of all the allegations against Mr Gillingham proven, the panel went on to consider whether Mr Gillingham's conduct amounted to unacceptable professional conduct. The panel had regard to the definitions in Teacher Misconduct – the Prohibition of Teachers advice (the "guidance").

The panel was satisfied that the conduct of Mr Gillingham in relation to the facts found proven, involved breaches of the Teachers' Standards, in particular the following:

- Teachers 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

Whilst the panel noted that Student X was over the age of 18 at all relevant times, she was nevertheless a pupil at the school and Mr Gillingham had been her teacher since September 2011, when she would have been 16. In addition, Mr Gillingham had attended staff training on child protection on 2 September 2013, signed the school's code of conduct on 5 September 2011 and the school's acceptable use policy on 2 May 2013. The panel also noted that he was the school professional tutor for student teachers, and he would have been advising trainee teachers on professional standards.

The panel was therefore satisfied that the conduct of Mr Gillingham fell significantly short of the standards expected of the profession, particularly in light of the findings of sexual motivation and dishonesty.

The panel also considered whether Mr Gillingham's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the guidance. The panel found that behaviours associated with offences relating to sexual activity were engaged, given the finding of conduct involving hugging and kissing, which had been sexually motivated. The panel noted that the guidance indicated that in such circumstances panels were likely to conclude that an individual's conduct would amount to unacceptable professional conduct. The panel saw no reason to depart from this default position.

Accordingly, the panel was satisfied that Mr Gillingham was guilty of unacceptable professional conduct.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct, it was 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 had to consider whether it was an appropriate and proportionate measure, and whether it was in the public interest to do so. The panel was mindful that prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they were likely to have punitive effect.

The panel considered the particular public interest considerations set out in the guidance and found the following to be relevant:

- the protection of pupils,
- the maintenance of public confidence in the profession, and
- declaring and upholding proper standards of conduct.

The panel's findings against Mr Gillingham involved sexually motivated conduct towards a pupil, which was compounded by dishonest action when his conduct was discovered. This gave rise to significant public interest considerations regarding the protection of pupils, to ensure that similar conduct did not happen. Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Gillingham was not treated with the utmost seriousness when regulating the conduct of the profession. Further, the panel considered that there was a strong public interest consideration in declaring proper standards of conduct in the profession, as the conduct found against Mr Gillingham 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 Gillingham. In carrying out the balancing exercise the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Gillingham. In particular, the panel bore in mind the representations by Mr Gillingham as to the impact of his conduct on his well-being and that of his family.

The panel also took account of the guidance, which suggested that a prohibition order might be appropriate if certain behaviours of a teacher have been proven. The panel found relevant to this case the following:

- serious departure from the personal and professional conduct elements of the Teachers' Standards
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up; and
- sexual misconduct, eg involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position.

Even though there were behaviours that pointed to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. The panel took into consideration Mr Gillingham's statement of mitigating factors (page 139). The panel noted that the statement was expressed to have been made with sincerity and contrition.

However, the panel was not convinced by this statement. The panel was of the view that Mr Gillingham had sought to partly deflect responsibility for his actions on the basis that Student X "was over 18... and therefore legally an adult and responsible for her own actions". The panel was concerned to note that this appeared to demonstrate a fundamental misunderstanding of the teacher – student relationship, where the teacher was in a position of trust, and any relationship, regardless of age, was inappropriate. Further, Mr Gillingham's statement did not include any comments on his insight into the potential impact on Student X of the inappropriate relationship. Whilst the panel noted Mr Gillingham's reference to his "exemplary" record of teaching, the panel did not have any supporting evidence of this. In addition, the panel noted that Mr Gillingham's account of events differed from that of Student X's in that he claimed that she had made the advance towards him, and he "didn't stop it and [he] should have done" (page 63).

Overall, the panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr Gillingham. Accordingly, the panel made 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 it to decide to recommend that a review period of the order should be considered. The panel was mindful 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 noted that the guidance indicated that it should consider recommending that no provision for set aside is to be made in cases involving serious sexual misconduct, eg, where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person, particularly where the individual had used their professional position to influence or exploit a person.

Whilst the panel was of the view that the sexual misconduct itself (allegations 1 and 2) was at the lower end of the spectrum of seriousness, his wrongdoing had been compounded by Mr Gillingham's subsequent dishonesty. Immediately upon being told not to contact anyone about his suspension, he emailed Student X asking her to lie about their interactions. His behaviour had the real potential to result in harm to Student X.

The panel was further concerned that Mr Gillingham was an experienced teacher, and in a position where he was the school's professional tutor for student teachers, and he would have been involved in advising trainee teachers on professional standards. Nevertheless, he put himself in a position of risk by accepting lifts from Student X. Moreover, the evidence before the panel indicated that he had looked to create other opportunities to be alone with her, for example by inviting her to join him whilst filming in Wales and asking her to participate in a one-to-one meeting in connection with his film company (page 51). These indicate a pattern of behaviour over a period of time that was inappropriate and carried the risk of harm to Student X.

The panel felt its findings therefore indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

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

This is a case in which the panel has found Mr Gillingham guilty of both sexual misconduct and of dishonesty in relation to that conduct.

The panel has found that Mr Gillingham's behaviour involved breaches of the Teachers' Standards, in particular the following:

- Teachers 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach...

I have also noted that although the panel found that the sexual misconduct itself (allegations 1 and 2) was at the lower end of the spectrum of seriousness, the wrongdoing was compounded by Mr Gillingham's subsequent dishonesty. Immediately upon being told not to contact anyone about his suspension, he emailed Student X asking her to lie about their interactions. His behaviour had the real potential to result in harm to Student X.

I have taken into account the need to balance Mr Gillingham's interests with the wider public interests. I have also taken into account the need to be proportionate. I have read the guidance published by the Secretary of State concerning prohibition.

I support the recommendation of the panel that Mr Gillingham should be prohibited.

I have also considered the matter of a review period. Mr Gillingham's dishonesty is a factor here. I have noted that the panel was of the view that Mr Gillingham had sought to partly deflect responsibility for his actions on the basis that Student X "was over 18... and therefore legally an adult and responsible for her own actions". Like the panel I am concerned to note that this appears to demonstrate a fundamental misunderstanding of the teacher – student relationship, where the teacher was in a position of trust, and any relationship, regardless of age, was inappropriate. I also note the panel's comments that Mr Gillingham's statement did not include any comments on his insight into the potential impact on Student X of the inappropriate relationship. I have also taken into account the fact that the panel noted Mr Gillingham's reference to his "exemplary" record of teaching, but that the panel did not have any supporting evidence of this.

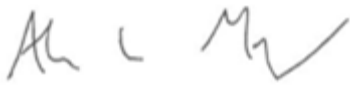
I therefore support the recommendation that there should be no review period.

This means that Mr James Gillingham 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 James Gillingham 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 James Gillingham 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.

NAME OF DECISION MAKER: Alan Meyrick

A handwritten signature in dark ink, consisting of stylized letters and a checkmark-like flourish at the end.

Date: 26 June 2015

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