



National College for
Teaching & Leadership

Mr Allan Cundick: Professional conduct panel outcome

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

March 2016

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

Teacher: Mr Allan Cundick
Teacher ref number: 5803145
Teacher date of birth: 19 February 1936
NCTL case reference: 14540
Date of determination: 31 March 2016

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 31 March 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Allan Cundick.

The panel members were Mr Mike Carter (teacher panellist – in the chair), Mrs Mary Speakman (teacher panellist) and Ms Nicolé Jackson (lay panellist).

The legal adviser to the panel was Mr Graham Miles of Blake Morgan LLP, solicitors.

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 allegations set out in the Notice of Meeting dated 29 February 2016.

It was alleged that Mr Allan Cundick is guilty of a conviction at any time of a relevant offence in that:

1. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female aged 16 or over on 26 March 2004 contrary to section 14 of the Sexual Offences Act 1956. He was imprisoned for three months (to run concurrently with the sentence set out at paragraph 8).
2. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female aged 16 or over between 31 December 1993 and 1 January 1995 contrary to section 14 of the Sexual Offences Act 1956. He was imprisoned for one month (to run concurrently with the sentence set out at paragraph 8).
3. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female under 16 between 1 September 1972 and 7 July 1973 contrary to section 14 of the Sexual Offences Act 1956. He was imprisoned for six months (to run concurrently with the sentence set out at paragraph 8).
4. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female aged 16 or over between 1 September 1972 and 7 July 1973 contrary to section 14 of the Sexual Offences act 1956. He was imprisoned for three months (to run concurrently with the sentence set out at paragraph 8).
5. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. He was imprisoned for 30 months (to run concurrently with the sentence set out at paragraph 8).
6. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. He was imprisoned for three years (to run concurrently with the sentence set out at paragraph 8).
7. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. He was imprisoned for three years (to run concurrently with the sentence set out at paragraph 8).
8. On 15 January 2015, at Guildford Crown Court, he was convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. He was imprisoned for four years, given a sex offenders notice indefinitely and a sexual offences prevention order indefinitely.

It is further alleged that Mr Cundick is guilty of unacceptable professional conduct/ conduct that may bring the profession into disrepute in that:

1. He received a caution from Surrey Police on 13 June 2011 for indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956.

Mr Cundick admitted that he was convicted of offences 1 to 8 and that he received the caution referred to. Mr Cundick also admitted that the convictions were for relevant offences and further that his conduct in committing the offence for which a caution was administered amounts to unacceptable professional conduct.

C. Summary of evidence

Documents

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

Section 1: Chronology – pages 1 to 2

Section 2: Notice of Proceedings and Response – pages 3 to 14B

Section 3: Statement of Agreed Facts and presenting officer representations – pages 15 to 22

Section 4: NCTL documents – pages 24 to 36

Section 5: Teacher documents – pages 44 to 49

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

Statement of Agreed Facts

The panel received and considered a Statement of Agreed Facts signed by Mr Cundick on 2 February 2016.

D. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Allan Cundick is a qualified teacher who worked as a science teacher. He retired in 1989. Mr Cundick was a preacher in his church. He withdrew from the church fellowship in June 2011. On 13 June 2011, Mr Cundick received a police caution for an offence of indecently assaulting a female under the age of 14 between 1 January 1990 and 1 January 1994. On 15 January 2015, Mr Cundick was convicted at Guildford Crown Court of eight counts of indecently assaulting a female contrary to section 14 of the Sexual Offences Act 1956. In respect of four of these offences, the female concerned was under 14 years of age. In respect of one of the other four offences, the female concerned was under 16 years of age. The offences were committed on various dates between 1 September 1972 and 26 March 2004. Mr Cundick was sentenced to imprisonment and ordered to sign the sex offenders register indefinitely. He was also given a sexual offences prevention order indefinitely.

Findings of fact

Our findings of fact are as follows:

It was alleged that you are guilty of having been convicted of a relevant offence, in that:

- 1. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female aged 16 or over on 26 March 2004 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for three months (to run concurrently with the sentence set out at paragraph 8).**
- 2. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female aged 16 or over between 31 December 1993 and 1 January 1995 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for one month (to run concurrently with the sentence set out at paragraph 8).**
- 3. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female under 16 between 1 September 1972 and 7 July 1973 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for six months (to run concurrently with the sentence set out at paragraph 8).**
- 4. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female aged 16 or over between 1 September 1972 and 7 July 1973 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for three months (to run concurrently with the sentence set out at paragraph 8).**

5. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for 30 months (to run concurrently with the sentence set out at paragraph 8).
6. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for three years (to run concurrently with the sentence set out at paragraph 8).
7. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for three years (to run concurrently with the sentence set out at paragraph 8).
8. On 15 January 2015, at Guildford Crown Court, you were convicted of indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956. You were imprisoned for four years, given a sex offenders notice indefinitely and a sexual offences prevention order indefinitely.

It is further alleged that you are guilty of unacceptable professional conduct/ conduct that may bring the profession into disrepute in that:

1. You received a caution from Surrey Police on 13 June 2011 for indecent assault on a female under 14 between 1 January 1990 and 1 January 1994 contrary to section 14 of the Sexual Offences Act 1956.

Mr Cundick admits that he was convicted of the offences concerned and that he received the police caution referred to and he has signed a Statement of Agreed Facts. The panel has also been provided with a copy of the certificate of conviction from Guildford Crown Court. It appeared to the panel that the actual sentence imposed was four and a half years rather than the four years referred to in the statement of agreed facts. However, the panel did not consider this inconsistency to be material to its consideration of the case. The panel, therefore, finds the facts proved on the basis of Mr Cundick's admissions, the statement of agreed facts and the certificates of conviction.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute and/or conviction of a relevant offence

In relation to the caution, Mr Cundick admits unacceptable professional conduct and conduct that may bring the profession into disrepute. He also admits that the convictions were for relevant offences. The panel has taken these admissions into account, but has formed its own judgment.

Dealing firstly with the caution, the panel noted that the offence was an indecent assault on a female under 14. Although the female was not Mr Cundick's pupil, she was of school age.

The panel is satisfied that the conduct of Mr Cundick in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to part two, Mr Cundick 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:
 - 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;

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

The panel has also considered whether Mr Cundick's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel has found that the offence of sexual activity applies.

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 offence for which he was cautioned took place outside of the education setting. However, the panel is satisfied that the conduct affects the way the person fulfils their teaching role or may lead to pupils being exposed to or influenced by the behaviour in a harmful way.

Accordingly, the panel is satisfied that Mr Cundick is guilty of unacceptable professional conduct.

As to conduct that may bring the profession into disrepute, 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 finding of misconduct is 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 Cundick's actions constitute conduct that may bring the profession into disrepute.

Regarding allegations 1 to 8, the panel is satisfied that the conduct of Mr Cundick in relation to the facts it has found proved, involved the same breaches of the Teachers' Standards as referred to earlier.

The panel noted that the individual's actions were relevant to teaching, working with children and/or working in an education setting. The offences were of a sexual nature and were committed when he was in a position of trust within his church community. Some of the offences involved children of school age.

The panel noted that the behaviour involved in committing the offences had an impact on the safety and well-being of the victims. According to the sentencing transcript, this involved psychological trauma, including inability to trust people, loss of religious faith, self-harm and suicide attempts.

The panel has also taken account of how the teaching profession is viewed by others. The panel considered that Mr Cundick's behaviour in committing the offences could affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community.

The panel has noted that Mr Cundick's behaviour has ultimately led to him receiving a significant sentence of imprisonment which is indicative of the seriousness of the offences committed. In addition, Mr Cundick was placed on the sex offenders register indefinitely and was also made the subject of a sexual offences prevention order indefinitely.

This is a case involving offences of sexual activity, which the Advice states are likely to be considered relevant offences.

The panel, therefore, considers these convictions are relevant to Mr Cundick's ongoing suitability to teach and are relevant offences.

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 and convictions of relevant offences, 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 protection of pupils and other members of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct.

There is a strong public interest consideration in respect of the protection of pupils and other members of the public given the seriousness of the behaviour which involved four separate victims over a period between 1972 and 2004.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Cundick 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 Cundick 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 Cundick. The panel has taken into account the fact that Mr Cundick retired from teaching in 1989 and is now 80 years of age and states that he has no intention of returning to teaching.

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 Cundick. 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:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position or trust (particularly involving vulnerable individuals);
- sexual misconduct, involving actions that were sexually motivated or of a sexual nature and that use or exploit the trust, knowledge or influence derived from the individual's professional position;
- the commission of serious criminal offences, resulting in convictions and a caution.

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 the teacher's actions were not deliberate.

There was no evidence to suggest that the teacher was acting under duress.

In the absence of any evidence to the contrary, the panel has assumed that Mr Cundick had a previously good history in his teaching career.

The panel notes from the sentencing transcript that the judge refers to Mr Cundick's lack of insight, which included attempts to minimise the offence which led to the caution and also Mr Cundick's description of his behaviour as a 'momentary lapse.' The judge also referred to Mr Cundick's assertion that there was no evidence of severe psychological harm suffered by victims, when the judge's conclusion was to the contrary.

The panel has also noted from the sentencing transcript that his pre-sentence report assessed Mr Cundick as posing a high risk of committing such offences in the future if the opportunity arose. The court concluded that it was necessary to impose a sexual offences prevention order under sections 104 and 106 of the Sexual Offences Act 2003 to prevent Mr Cundick from committing further offences.

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 Cundick. The panel considers that the behaviour of an individual with such convictions, who is on the sex offenders register and subject to a sexual offences prevention order indefinitely, is fundamentally incompatible with being a teacher. 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 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 Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include serious sexual misconduct, where the act was sexually motivated and resulted in or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons. The judge noted that it was significant in this case that Mr Cundick was a 'highly respected member and integral part of a close knit church community.' The panel notes also the judge's remarks that Mr

Cundick's position in the church community provided him with the opportunity to behave as he did.

The panel felt the findings in relation to Mr Cundick's lack of insight and his risk of further offending, in particular, indicated a situation in which a review period would not be appropriate. The panel decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with no provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have considered very carefully the findings and recommendations of the panel in this case. The panel has found all the allegations proven, given Mr Cundick has been convicted as alleged of relevant offences. The panel is satisfied that Mr Cundick is guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute.

I note the panel is satisfied that the conduct of Mr Cundick in relation to the facts found proved, involved breaches of the Teachers' Standards.

Mr Cundick has been convicted of indecent assault . In respect of four of these offences the female concerned was under 14 years of age. Mr Cundick was sentenced to imprisonment and ordered to sign the sex offenders register indefinitely.

I have considered the public interest in this case. I agree with the panel that there is a strong public interest consideration of the protection of pupils and other members of the public given the seriousness of the behaviour. I agree with the panel that the conduct found against Mr Cundick was outside that which could be reasonably tolerated. 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 Cundick. I note there was no evidence that Mr Cundick's actions were not deliberate nor any evidence to suggest that he was acting under duress.

The panel has also noted from the sentencing transcript that the judge refers to Mr Cundick's lack of insight, and that his pre-sentence report assessed Mr Cundick as posing a high risk of committing such offences in the future if the opportunity arose.

The panel has decided that the public interest considerations outweigh the interests of Mr Cundick. I agree with that view. I agree with the panel that the behaviour of an individual with such convictions is fundamentally incompatible with being a teacher. I therefore agree with the panel that prohibition is both proportionate and appropriate.

I now turn to the matter of a review period. I agree with the panel that the findings that Mr Cundick's lack of insight, his risk of further offending, and the serious sexual misconduct involved indicated a situation in which a review period would not be appropriate.

Due to the serious sexual misconduct in this case and for the reasons set out above, I agree with the panel's recommendation, that a prohibition order should be imposed and that no review period should be allowed.

This means that Mr Allan Cundick 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 Cundick 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 Cundick 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', with a small dot at the end of the signature.

Decision maker: Jayne Millions

Date: 4 April 2016

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