



National College for
Teaching & Leadership

Mr Richard Withecombe: 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 Richard Withecombe
Teacher ref no:	9706434
Teacher date of birth:	21 April 1954
NCTL case ref no:	12297
Date of determination:	26 June 2015
Former employer:	Broadhurst Primary School, Manchester

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 24 to 26 June 2015 at 53-55 Butts Road, Earlsdon Park, Coventry CV1 3BH and the Ramada Hotel, The Butts, Earlsdon, Coventry CV1 3GG to consider the case of Mr Richard Withecombe.

The panel members were Peter Cooper (teacher panellist – in the chair), Geoffrey Penzer (lay panellist) and Martin Greenslade (lay panellist).

The legal adviser to the panel was Mr Robin Havard of Blake Morgan LLP, solicitors.

The presenting officer for the National College was Samantha Paxman of Browne Jacobson.

Mr Richard Withecombe was present and was represented by Ms Sarah Gill, NUT Solicitor.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 17 March 2015.

It was alleged that Mr Withecombe was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that:

In the week commencing Monday 10 September 2012, whilst employed as a Teacher at Broadhurst Primary School, Manchester he:

1. Inappropriately touched a three year old, Pupil A, a child with special educational needs [redacted], in that he:
 - a. Was sat on a bench on his own with Pupil A at lunchtime;
 - b. Reached around from behind Pupil A and put his hand inside down the front of his trousers;
 - c. Was seen by a colleague with his hand down Pupil A's trousers and commented with words to the effect that Pupil A "*seemed to be walking funny like he had wet himself but that he wasn't wet*"; and
 - d. Denied each of the matters set out at allegations 1.a. to 1.c. when given a reasonable opportunity to explain his actions.
2. In doing so, his behaviour was sexually motivated.

The allegations were denied by Mr Withecombe.

C. Preliminary applications

Application to Amend

The presenting officer applied for an amendment to Particular 1c of the allegation so that the word "hands" was amended to "hand". Ms Gill did not object and the panel allowed the amendment.

D. Summary of evidence

Documents

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

- Section 1: Anonymised Pupil List, Chronology and List of Key People, pages 2 - 4
- Section 2: Notice of Proceedings and Response, pages 6 to 13
- Section 3: NCTL Witness Statements, pages 15 to 26
- Section 4: NCTL Documents, pages 28 to 232

Section 5: Teacher documents, pages 234 to 278

The transcripts (pages 69–103) had been corrected and the corrected versions were included at pages 69A to 103A.

Colour photocopies of the photographs at 236–241 of the bundle had been provided and were numbered 236A to 241A.

In the course of providing his evidence, Mr Withecombe provided a sketch plan which was numbered page 279.

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

Witnesses

The panel heard oral evidence from the following witnesses called by the presenting officer:

Witness A (headteacher)

Witness B (teaching assistant)

Witness C (teaching assistant)

Witness D (teaching assistant)

Mr Withecombe gave evidence on his own behalf.

E. Decision and reasons

The panel announced its decision and reasons as follows:

We have now 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.

Brief Summary

Broadhurst Primary School is a school which takes pupils at nursery stage (i.e. children aged 3-4 years) through to Year 6. In or about 2012, it had approximately 220 pupils.

Mr Withecombe had been employed at the school since 1995, fulfilling a variety of roles up to September 2012. At this time, he reduced his commitment to 2.5 days per week covering PPA and was also involved in interventions at Foundation Stage.

On 13 September 2012, a teaching assistant at the school, Witness B, reported an incident to the Child Protection Officer, Individual A, involving Mr Withecombe allegedly having inappropriate physical contact with a three year old pupil, Pupil A, which led to an investigation by the School and the Police.

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:

In the week commencing Monday 10 September 2012, whilst employed as a Teacher at Broadhurst Primary School, Manchester you:

- 1. Inappropriately touched a three year old, Pupil A, a child with special educational needs [redacted], in that you:**
 - a. Were sat on a bench on your own with Pupil A at lunchtime;**
 - b. Reached around from behind Pupil A and put your hand inside down the front of his trousers;**
 - c. Were seen by a colleague with your hand down Pupil A's trousers and commented with words to the effect that Pupil A "*seemed to be walking funny like he had wet himself but that he wasn't wet*"; and**
 - d. Denied each of the matters set out at allegations 1.a. to 1.c. when given a reasonable opportunity to explain your actions.**

The only person who gave direct evidence in support of the particulars at 1 a - c above was Witness B. The conduct as alleged in those particulars is based entirely on what Witness B said that she saw when standing in the nursery playground. Her account was firmly disputed by Mr Withecombe. He stated that not only did the incident not take place, but also it was not his habit to sit on the bench in the nursery playground.

Lunchtime for those pupils attending nursery would take place between 11.45 a.m. and 1 p.m. As the pupils were of such a young age, some of them from time to time would become upset in the communal dining area because of the noise and general level of activity and so Mr Withecombe was known to sometimes take those pupils who had become upset out of the dining area so that they could calm down and become more settled. Other members of staff would do the same as and when the need arose.

Pupils of that sort of age, i.e. 3-4 years, also often have "accidents" with their toileting. The School had a recognised, albeit unwritten, Toileting Policy of which the staff was aware. It stipulated that if a pupil had either wet or soiled him or herself, or if a member of staff suspected that a pupil had done so, it was appropriate for that member of staff to help the pupil change and there should always be a second member of staff present. If that was not possible, the school should contact the child's parents and ask them to come to the school.

It is true that Witness D stated in her evidence that there had been occasions when there had not been adherence to the policy when, for example, there were insufficient staff available. However, the panel finds that staff, including Mr Withecombe, were aware of the policy and what was required in such circumstances.

Pupil A, [redacted], was described as a likeable child but who was particularly vulnerable in that he had developmental issues which were both physical and mental. [Redacted]. He would become easily upset in noisy surroundings and required frequent attention and reassurance.

Turning to the events giving rise to the allegations against Mr Withecombe, the panel finds that Witness B was a credible and reliable witness. It is true that there were some inconsistencies in her evidence which we consider below but with regard to what she says she witnessed taking place involving Mr Withecombe's conduct towards Pupil A in the nursery playground, the panel prefers Witness B evidence to that of Mr Withecombe.

The panel accepts that there was no advantage to be gained by Witness B telling anything other than the truth. Indeed, by reporting the matter, it was clear that Witness B recognised that she would be embarking on a difficult and serious course.

Witness B confirmed that she had a good working relationship with Mr Withecombe. She confirmed how much assistance she had received from Mr Withecombe when she joined the school. [Redacted]. She also recognised that she had only been a teaching assistant at the school for approximately one year whereas Mr Withecombe had been a teacher at the school since 1995, was vastly experienced and, so far as she was aware, had a good reputation. Witness B realised that what she had witnessed would, if she reported it, be considered to be extremely serious and "...did not want to get Mr Withecombe into trouble". Witness B stated, and the panel finds, that she did not report the matter until 13 September 2012 as she was agonising about what she should do. She knew that what she had seen was entirely inappropriate behaviour and she struggled with her conscience, knowing that the right thing to do was to report it to the Child Protection Officer but she hesitated for the reasons set out above.

In the end, Witness B reported the incident to the Child Protection Officer, Individual A, on 13 September 2012 and investigations ensued by both the School and the Police.

Much had been made of the fact that there was no definitive evidence of when the incident involving Mr Withecombe and Pupil A actually took place.

When Witness B reported the matter, she said that it had occurred on 10 September 2012. Indeed, when giving evidence, Witness B reiterated that she was convinced that it had taken place on that Monday. However, she was told by the Headteacher that Mr Withecombe only worked on Tuesday, Wednesday and Thursday of each week. For this reason, Witness B stated that it must therefore have taken place on 11 September 2012. It later transpired that, in fact, Mr Withecombe had attended school on Monday 10 September 2012 on a voluntary basis assisting the new nursery pupils in the transition process. There was no signing-in procedure at the school and so, when Witness A made enquiries, it was not possible to establish from any records that Mr Withecombe had indeed attended on the Monday.

The unfortunate consequence was that enquiries made of Mr Withecombe centred around his activities and movements on Tuesday 11 September 2012. He constructed a time line of his actions on 11 September 2012, and provided details of the weather on that day, to illustrate that he could not have been sitting on the bench in the nursery playground at lunchtime when the incident is alleged to have happened.

It was not until the disciplinary hearing the following year that it was suggested to him that the incident may have taken place on the previous day. Whilst it finds that to be unfortunate, the panel is not convinced that Mr Withecombe's memory of events are as sketchy as he suggested in his evidence, both written and oral. Indeed, when giving his evidence, there were a number of occasions when it appeared to the panel that he had a good recollection of events save for the event giving rise to these proceedings. There were also elements of Mr Withecombe's account which conflicted with the evidence of other members of school staff.

For example, Mr Withecombe stated that he had met with the headteacher, Witness A, on Monday 10 September 2012, but this was denied by Witness A.

With regard to the incident, and by reference to the photograph (237A), Witness B stated and the panel finds that she was standing in the nursery playground looking after about 10 pupils who were playing by, or on, the pole with her back to the bench on which she had seen Mr Withecombe sitting with Pupil A. The bench can be observed in photographs 238A and 239A. The distance from the position where Witness B was standing to the bench on which Mr Withecombe was sitting was in the region of 2-3 metres.

Mr Withecombe initially denied sitting on the bench. Indeed, he indicated to the Police at interview (page 77A) that he would never sit on the bench.

Not only is this contradicted by the evidence of Witness B, but also Witness D (page 131) who attended to give oral evidence, Individual B (page 89) and Individual C (page 130).

When cross-examined, Mr Withecombe did accept that he would sit on the bench in the nursery playground from time to time.

When she turned around, Witness B noticed Mr Withecombe sitting on the bench with Pupil A standing in front of him with his back to Mr Withecombe. In her initial account provided to the School on 13 September 2012 and then to the Police on 17 October 2012, Witness B stated that she observed Mr Withecombe with both of his hands inside the trousers of Pupil A. However, on 19 October 2012, and of her own volition, Witness B attended the Police and provided a further statement in which she stated that, on considerable reflection, she realised that Mr Withecombe had only put his right hand down Pupil A's trousers with his left hand resting on the bench.

Again, whilst Mr Withecombe had initially maintained that he had not accompanied Pupil A to the nursery playground, he does accept in his statement (paragraphs 31 and 32, pages 260-261) that he may have done so, having taken Pupil A away from the canteen as Pupil A had become upset as a result of the noise and level of activity. Furthermore, whilst unsure of the exact day, Witness C recalled seeing Mr Withecombe walking with Pupil A up to the nursery playground, that Pupil A was upset, and that Mr Withecombe had explained that it was too noisy for Pupil A in the canteen (page 23).

Witness B turned away and was shocked by what she had seen. She turned back some seconds later to find that Mr Withecombe still had his hand down the front of Pupil A's trousers. Mr Withecombe said to Witness B "He (Pupil A) seems to be walking funny, like he has wet himself, but he doesn't seem to be wet". Even though Witness B was still watching him, Mr Withecombe continued to leave his hand down Pupil A's trousers. He then removed his hand and Pupil A walked off, apparently unconcerned.

As stated, Mr Withecombe denied having put his hand down Pupil A's trousers. In the course of the hearing, through his representative, he produced a pair of trousers purporting to be similar to the ones which would have been worn by Pupil A. He then attempted a re-enactment of what was alleged to have taken place, in an effort to illustrate that it would have been physically not at all easy to reach around Pupil A and then to insert his hand down the trousers of Pupil A. The panel was not satisfied that such a re-enactment was in any way realistic or representative and discounted it as evidence to support Mr Withecombe's denial.

The panel is also concerned that, in the course of his evidence, Mr Withecombe, who stated that he was familiar with the toilet policy at the school and had undergone safeguarding

training, would on occasion pull the waistband of pupils and look down the front of their trousers to determine whether they had wet or soiled themselves.

For all of these reasons, and on the basis of its findings of fact, the panel finds particulars 1a, b and c proved.

The panel also finds particular 1d proved in that the conduct alleged had been denied by Mr Withecombe in the course of the investigations by the School and the Police and in this hearing. However, the panel does not consider that this particular is relevant to the allegation itself nor does it take the matter any further.

Consequently, having found particulars 1a, b and c proved, the panel finds allegation 1 proved in that, in the week commencing 10 September 2012, he inappropriately touched a three year old, Pupil A.

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

2. In doing so, your behaviour was sexually motivated.

The panel was not satisfied that the conduct found proved under allegation 1 above was sexually motivated.

Mr Withecombe had worked at the school for some 18 years. Whilst there was reference to an incident in 2009, no allegations arose out of it and this was only relevant to the extent that Mr Withecombe was reminded to exercise great care to comply with the safeguarding policies of the school not only in the interests of the pupils but for his own protection as well, so as to avoid any risk of his conduct being misinterpreted.

Whilst he had not produced any character references or testimonials, Mr Withecombe gave evidence about his background, both personal and professional. Even though the panel had not accepted his account of events in September 2012, nevertheless he strikes the panel as someone who had meant well but who had illustrated a gross lack of judgment as opposed to anything more sinister.

From his familiarity with the school, Mr Withecombe was aware that CCTV covered the area in which the incident took place but was not aware that the footage of the week commencing 10 September 2012 had not been preserved (the failure to do so being a cause of considerable concern to the panel).

The incident took place in the playground at lunchtime when many other pupils and members of staff were milling around and potentially in sight of staff in the school buildings. There was nothing furtive about Mr Withecombe's behaviour. Indeed, despite being observed by Witness B, he continued to leave his hand down Pupil A's trousers for a short period after Witness B had seen what he was doing.

Whilst no excuse for Mr Withecombe's behaviour, and although the level of knowledge appeared to be adequate amongst the staff, there did seem to be a lax approach to adherence to safeguarding policies at the school and the school's own toileting procedures and they were not enforced with the requisite rigour.

Findings as to unacceptable professional conduct

The panel is satisfied that the misconduct of Mr Withecombe was of a serious nature, falling significantly short of the standard expected of a teacher. The fact that Mr Withecombe had been found to touch in an inappropriate way an extremely young and vulnerable child was extremely serious. In doing so, he had failed:

1. To demonstrate consistently high standards of personal and professional conduct;
2. To observe proper boundaries appropriate to his position as a teacher;
3. To have regard for the need to safeguard Pupil A's well-being, bearing in mind the vulnerability of Pupil A;
4. To comply with the policies and practices of the school, of which he accepted he was aware, in relation to safeguarding and communication with pupils.

Panel's recommendation to the Secretary of State

The panel gave very serious consideration to the submissions put forward on behalf of Mr Withecombe. It also bore in mind what Mr Withecombe had had to say when he gave his evidence with regard to not only his contribution to the school but also in other areas of his life. The panel had listened to the evidence of other staff at the school. With one exception, they spoke in positive terms of his commitment and experience as a teacher.

For the purposes of considering its recommendation to the Secretary of State, the panel approached it on the basis that Mr Withecombe is a person of previous good character.

The panel is also aware that looking after pupils of such a young age, particularly when those pupils may have special educational needs, is a sensitive and sometimes complex process.

Consequently, it is critical that a school must have well-formulated policies in respect of safeguarding including the toileting of children. It is then equally important that staff working at that school must be properly trained in respect of the activities covered by such policies.

In this case, there appears to have been an understanding on the part of the staff, including Mr Withecombe, a senior teacher of very considerable experience, with regard to the policy of toileting of children even though a written policy could not be produced and even though on occasion that policy was not followed.

Notwithstanding that, and despite having been informed very clearly of the dangers of failing to follow proper procedure after an incident in 2009, Mr Withecombe acted in a way which illustrated a gross lack of judgment when checking to see whether Pupil A had had an accident and had wet himself. Furthermore, it is the panel's view that anyone, let alone a teacher, should not need to be trained to know that placing one's hand down the trousers of a three year old pupil is wholly inappropriate, however well-intentioned.

It suggests to the panel that, unfortunately, Mr Withecombe had not learned from past advice and, despite his many years of experience as a teacher, he does not have the necessary judgment when confronted with a situation such as that in September 2012.

Indeed, the panel is concerned to hear of the steps Mr Withecombe volunteered he would take when checking if a pupil was in difficulties with his or her toileting to include pulling on the child's waistband to look down the pupil's trousers.

The panel bore in mind its obligation to act in a way that protected the public interest. The panel had a responsibility to ensure that the welfare of children was protected, that public confidence in the profession was maintained, and that proper standards of conduct were upheld.

Mr Withecombe's actions represented a serious departure from the personal and professional conduct elements of the Teachers' Standards. The panel had no doubt that his behaviour put at risk the reputation of the profession.

The panel concluded that the proportionate and appropriate outcome was for it to recommend to the Secretary of State that a prohibition order should be imposed.

The panel has considered very carefully what Mr Withecombe had had to say and that he had denied the conduct alleged. The panel had not been convinced by Mr Withecombe that there was no risk of a repetition of this sort of behaviour.

Although Mr Withecombe had indicated that he had no intention of returning to teaching, the panel further considered whether to recommend that he should be able to apply for the prohibition order to be set aside after a specified period or whether there should be no such provision.

On balance, the panel recommends that, taking account of the nature and seriousness of the conduct giving rise to the allegations and for the reasons outlined above, Mr Withecombe should be permitted to apply for the prohibition order to be set aside after a period of 2 years has elapsed.

The panel believed that this length of time was sufficient to mark to the general public and the profession that such behaviour was wholly inappropriate. It may also be sufficient for Mr Withecombe to demonstrate that, in those two years, he has developed sufficient insight into his conduct so as to reassure any panel reviewing the order that he would not repeat the sort of conduct which has given rise to these proceedings.

Decision and reasons on behalf of the Secretary of State

I have carefully considered the findings and recommendations of the panel in this case.

The panel have found the allegations relating to Mr Withecombe's inappropriate touching of a 3 year old with special educational needs proven. They did not find proven the allegation that his actions were sexually motivated.

The panel went on to determine that the allegations found proved amounted to unacceptable professional conduct.

The panel went on to consider whether they should recommend prohibition as an appropriate and proportionate sanction. They paid due regard to the public interest considerations present in this case namely, the protection of pupils, the maintenance of public confidence in the profession and the upholding of proper standards of conduct.

Mr Withecombe's actions show a gross lack of judgment and are wholly inappropriate and I agree that prohibition is both proportionate and appropriate in this case.

Whilst the panel have not been convinced by Mr Withecombe that there is currently no risk of repetition, they have judged that a period of 2 years might be long enough for him to show that he has developed sufficient insight into his behaviour to reassure any panel reviewing the order that he would not repeat this sort of conduct again. I agree that Mr Withecombe should be allowed to apply to have the order set aside after a minimum of 2 years has passed.

This means that Mr Richard Withecombe 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 6 July 2017, 2 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 Richard Withecombe remains prohibited from teaching indefinitely.

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

Mr Richard Withecombe 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 'P Heathcote', with a large, stylized flourish at the end.

NAME OF DECISION MAKER: Paul Heathcote

Date: 30 June 2015

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