



National College for  
Teaching & Leadership

# **Mr Philip Ellis: Professional conduct panel outcome**

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

**July 2017**

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

**Teacher:** Mr Philip Ellis  
**Teacher ref number:** 8038886  
**Teacher date of birth:** 17 December 1958  
**NCTL case reference:** 15216  
**Date of determination:** 24 July 2017  
**Former employer:** The Paddington Academy, London

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 24 July 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Philip Ellis.

The panel members were Mrs Gill Goodswen (former teacher panellist – in the chair), Ms Karen McArthur (lay panellist) and Mr Tony Bald (teacher panellist).

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

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

Mr Philip Ellis was not present and was not represented.

The hearing took place in public and was recorded.

## **B. Allegations**

The panel considered the allegation set out in the Notice of Proceedings dated 18 April 2017.

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

Whilst employed as a teacher:

1. He was in possession of an indecent DVD containing photographs or pseudo-photographs of one or more children on or around 27 February 2015;
2. His behaviour as referred to at 1 above constituted a criminal offence pursuant to section 160 of the Criminal Justice Act 1988 for which he accepted a caution on 10 July 2015.

Mr Ellis admitted the facts alleged in paragraphs 1 and 2 in his response to the Notice of Proceedings and in a statement of agreed facts. In both of these documents, he also admitted unacceptable professional conduct and conduct that may bring the profession into disrepute.

## **C. Preliminary applications**

### **Application to proceed with the hearing in the absence of Mr Ellis**

Mr Ellis was not present and not represented. After hearing submissions from the presenting officer and receiving legal advice, the chair announced the decision of the panel as follows:

'The panel has decided to proceed with the hearing in the absence of Mr Ellis for the following reasons:

- The panel is satisfied that the Notice of Proceedings was sent to Mr Ellis in accordance with paragraph 4.11 of the Teacher Misconduct - Disciplinary procedures for the teaching profession.
- Mr Ellis confirmed in his letter dated 28 June 2017 that he does not intend to be present at the hearing to answer any questions. The panel is satisfied that Mr Ellis has voluntarily waived his right to be present.
- No application for an adjournment has been made for the purpose of Mr Ellis attending or being represented at a hearing at a later date. No purpose would be served by an adjournment.

- There is a public interest in these proceedings being concluded reasonably promptly.

## **Application for the hearing to be in private**

Application was made by Mr Ellis in his written submission dated 28 June 2017 for the hearing to take place in private. In his written submission, Mr Ellis drew attention to the fact that the the case had originally been referred to be dealt with at a professional conduct panel meeting, would have been taken place in private. The presenting officer opposed the application on the basis that, although the case had originally been referred for consideration at a meeting, a panel had decided that the case should be referred for hearing and there was a presumption that hearings should take place in public. After receiving legal advice, the chair announced the decision of the panel as follows:

'The panel has considered an application by Mr Ellis that the hearing should take place in private. The panel concluded that the public interest in this hearing taking place in public outweighs any right to privacy. Accordingly, the hearing will take place in public.'

## **D. Summary of evidence**

### **Documents**

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

Section 1: Chronology – page 2

Section 2: Notice of Proceedings, Response and Statement of Agreed Facts – pages 4 to 13

Section 3: NCTL documents – pages 15 to 72

Section 4: Teacher documents – pages 74 to 85

In addition, the panel agreed to accept the following documents:

A copy of an email to Mr Ellis dated 29 March 2017 and a copy of the decision made at a Professional Conduct Panel Meeting on 29 March 2017. These documents were added to section 3 of the bundle as pages 72A to 72H.

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

### **Witnesses**

There were no witnesses

## E. Decision and reasons

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

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

Mr Philip Ellis was employed as a teacher by the Paddington Academy until 12 October 2015.

On 27 February 2015 a search warrant was executed at the home of Mr Ellis. The items seized by the police included a DVD containing a commercially produced film called "After School Break". This DVD was viewed by the police and was found to contain an image of four boys with five different options that could be selected and opened. The first option was to play the movie. The second option was a scene selection, where it was possible to select four different scenes from the movie. The four scenes were titled "After School", "The Banya", "The Shower" and "Getting Dressed". The third option was a trailer for the movie at option 1 of the DVD. The fourth option was a photo gallery. In this section, there was a series of photographs of the four boys in the film taken outside, fully clothed. The fifth option was named previews, which provided a trailer of seven different movies. The whole of the above footage was classed by a police officer from the Metropolitan Police Paedophile Unit as Category C indecent images. The police officer concluded that the main movie contained indecent images of boys aged between 14 and 16 years of age.

The guidelines from the Sentencing Council describe three categories of indecent images. Category A relates to images involving penetrative sexual activity or sexual activity with an animal or involving sadism. Category B relates to images involving non-penetrative sexual activity. Category C relates to other indecent images not falling within Categories A and B.

On 21 April 2015, Mr Ellis was arrested on suspicion of possessing indecent images of children. On the basis of legal advice, he read a prepared statement in interview in which he said that any images and videos that he had at his home address were to his knowledge and belief of people over the ages of 18. Mr Ellis answered "no comment" to all questions, including questions asking where he had bought the DVD and whether he had viewed it.

On 10 July 2015 Mr Ellis agreed to accept a caution for the offence of possessing indecent images of children.

A disciplinary hearing was scheduled for 13 October 2015, but Mr Ellis resigned from his employment at Paddington Academy the day before.

## **Findings of fact**

The panel's findings of fact are as follows:

**It was alleged that you are guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that**

**Whilst employed as a teacher:**

- 1. You were in possession of an indecent DVD containing photographs or pseudo-photographs of one or more children on or around 27 February 2015;**
- 2. Your behaviour as referred to at 1 above constituted a criminal offence pursuant to section 160 of the Criminal Justice Act 1988 for which you accepted a caution on 10 July 2015.**

Mr Ellis has admitted the alleged facts. The panel accepted the legal advice to the effect that, unlike a conviction, a caution does not represent conclusive proof of the commission of an offence. However, a caution can only be given where an offence is admitted.

The panel noted that, under section 160 of the Criminal Justice Act 1988, it is an offence for a person to have any indecent photograph or pseudo photograph of a child in his possession. Mr Ellis has admitted that he accepted a caution for the offence of possession of an indecent movie of a child under the age of 18.

The panel noted that Mr Ellis stated that he purchased the DVD as a naturist and adult pornography DVD. Mr Ellis also stated that, although he viewed the main movie on one occasion, he did not view the other menu options and was not aware that the DVD was illegal. The panel also noted that section 160(2)(a) of the Criminal Justice Act 1988 provides that it is a defence for a person to prove that he had not himself seen the photograph or pseudo photograph and did not know or have cause to suspect it to be indecent. Mr Ellis agreed to accept a caution rather than seek to avail himself of this defence, despite having access to legal advice. Although Mr Ellis had stated that he did not view the other menu options, he admitted that he viewed the main movie, which was classed as Category C. On that basis, Mr Ellis would not have been able to rely upon the defence under section 160(2)(a). Accordingly, the panel is satisfied on the balance of probabilities that Mr Ellis committed the offence for which he was cautioned.

Accordingly the panel finds the facts alleged in allegations 1 and 2 proved.

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

Having found 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, which the panel refers to as “the Advice”.

The panel is satisfied that the conduct of Mr Ellis in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Ellis 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
  - not undermining ...the rule of law.

The panel is satisfied that the conduct of Mr Ellis amounts to serious misconduct which fell significantly short of the standards expected of the profession.

The panel has also considered whether the conduct of Mr Ellis displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of possessing an indecent photograph or image or pseudo photograph or image of a child, including one off incidents is relevant, even though the offence was at the lower end of the spectrum as detailed in the Advice.

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.

Accordingly, the panel is satisfied that Mr Ellis is guilty of unacceptable professional conduct, despite the fact that the allegations took place outside of the education setting and the DVD was a commercially produced and marketed product.

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 status of Mr Ellis as a teacher, potentially damaging the public perception.



The panel therefore finds that the actions of Mr Ellis 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 and conduct that may bring the profession into disrepute, it is necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Ellis 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 Ellis was outside that which could reasonably be tolerated.

The panel also recognised that there may be a public interest in an effective teacher being able to continue in that role.

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 Ellis.

In carrying out the balancing exercise the panel has had regard to the public interest considerations both in favour of and against prohibition as well as the interests of Mr Ellis. 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, which the panel felt undermined the rule of law

- possession of an indecent photograph or image or pseudo photograph or image of a child, including one-off incidents, which resulted in a police 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 of this case.

The panel noted that, during their investigation, the police did not find any evidence of indecent material other than the particular DVD despite seizing and forensically examining laptops, mobile phones and other DVDs. As a result, his caution was for possession of a single DVD, which was found at the lowest category of indecent images according to the Sentencing Council guidelines. The panel accepts Mr Ellis's admission that he had viewed the main movie on the DVD once (and not the other menu options). Furthermore, there is no suggestion that Mr Ellis was involved in distributing, making, taking or publishing any indecent image.

In his mitigation, Mr Ellis now acknowledges that some of the participants in the movie may be under the age of 18. However, he said that he purchased the DVD in good faith as 'a naturist and adult pornography DVD'. Moreover, the panel accepts the teacher's evidence that his actions relating to the possession of a DVD with indecent images of children were not deliberate.

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

The teacher did have a previously good history. The panel noted that Mr Ellis worked at North Westminster Community School, which subsequently became the Paddington Academy, from 1981 until 2015. During this time, Mr Ellis secured several internal promotions up to senior leadership level, which the panel recognised were a reflection of his ability as a teacher and the high regard the school had for him.

The panel considered a reference dated 5 May 2005 from Mr Michael Marland, who was the Founder Headteacher of North Westminster Community School between 1980 and 1999. Individual A said that Mr Ellis 'took a significant and positive interest in all aspects of school life, its review and planning, and its leadership and management, and valuably contributed to almost all aspects of our work.' Individual A said that as Acting Deputy Head: Director of Curriculum, Mr Ellis took on – 'a massive responsibility, which he carried through with great thoroughness, vision, cooperation and meticulous detail.'

The panel also considered the content of an extract from a nomination by the Principal of the Paddington Academy in 2011 for a UK honour for Mr Ellis which stated that Mr Ellis made 'the most enormous contribution to the North Westminster community of students as a teacher, Head of Science, Head of Sixth Form and Leader for Vocational Education.' The nomination also said that Mr Ellis made 'the most enormous contribution to the North Westminster community of students aged 11 -18 but in particular the more vulnerable

age of 15-18 in a troubled and challenging environment for a continuous period of 30 years.'

Mr Ellis has admitted the offence in accepting the police caution and has expressed regret and remorse for his actions. The panel does not believe that Mr Ellis represents a risk to children/ pupils.

The panel is not of the view that prohibition is a proportionate and appropriate response given that the nature and severity of the behaviour is at the less serious end of the possible spectrum and in light of the mitigating factors that were present in this case. The panel believes that the public declaration of the findings of unacceptable professional conduct and conduct that may bring the profession into disrepute is sufficient to protect the public interest in this case. Consequently, the panel has determined that a recommendation for a prohibition order will not be appropriate.

## **Decision and reasons on behalf of the Secretary of State**

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

In considering this case I have given very careful attention to the advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case the panel has found both of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr Ellis should not be made the subject of a prohibition order.

In particular the panel has found that Mr Ellis 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
  - not undermining ...the rule of law.

The panel is satisfied that the conduct of Mr Ellis amounts to serious misconduct which fell significantly short of the standards expected of the profession.

The panel has also considered whether the conduct of Mr Ellis displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of possessing an indecent photograph or image or pseudo photograph or image of a child, including one off incidents is relevant, even though the offence was at the lower end of the spectrum as detailed in the Advice.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the

profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Ellis, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed, "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."

A prohibition order would therefore prevent such a risk from being present as long as it is in place. I have also taken into account the panel's comments on insight and remorse which the panel sets out as follows, " Mr Ellis has admitted the offence in accepting the police caution and has expressed regret and remorse for his actions."

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, " The findings of misconduct are serious and the conduct displayed would likely have a negative impact on the status of Mr Ellis as a teacher, potentially damaging the public perception."

I am particularly mindful of the fact that this case involves the following findings:

1. He was in possession of an indecent DVD containing photographs or pseudo-photographs of one or more children on or around 27 February 2015;
2. His behaviour as referred to at 1 above constituted a criminal offence pursuant to section 160 of the Criminal Justice Act 1988 for which you accepted a caution on 10 July 2015.

I have had to consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public as a failure to uphold those high standards. In weighing these considerations I have had to consider the matter from the point of view of an "ordinary intelligent and well-informed citizen."

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Ellis himself. I have read the panel's considerations in this area, where they reference evidence that says that , "

Mr Ellis made 'the most enormous contribution to the North Westminster community of students aged 11 -18 but in particular the more vulnerable age of 15-18 in a troubled and challenging environment for a continuous period of 30 years.'."

A prohibition order would prevent Mr Ellis from continuing that work. A prohibition order would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case I have read the guidance that is published by the Secretary of State and which is very clear about the misconduct that has been found in this case. It says, " It is likely that a teacher's behaviour will be considered to be incompatible with being a teacher if there is evidence of one or more of the factors below,

Any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one off incidents".

I have placed considerable weight on this guidance and in particular the stress that it places on one off incidents. I have also recognised that it states that " it is likely..."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Ellis has made and is making to the profession.

In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision of unacceptable professional conduct and conduct that may bring the profession into disrepute does not in my view satisfy the public interest requirement concerning public confidence in the profession where this behaviour has been admitted and found proven.

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. The panel has obviously not made any recommendation in this matter.

I have therefore considered carefully the advice that is published by the Secretary of State in these matters. That advice says, " A panel should consider recommending to the Secretary of State that a prohibition order is imposed with no provision for the teacher to apply for it to be set aside after any period of time where the case involved or permitted any of the following,

" any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child."

Once again I am conscious that the advice says " should consider".

I have considered whether imposing a prohibition order with no provision for a review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, the guidance is very clear and although it is evident that Mr Ellis has contributed much to the profession I have not given that contribution as much weight as the panel has. In my view the reputation of the profession and the need to secure that reputation, coupled with the need to maintain public confidence in the profession means that in my view a prohibition order with no review is required to satisfy the maintenance of public confidence in the profession. This decision reflects the very clear guidance published by the Secretary of State for cases of this type.

**This means that Mr Philip Ellis 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 Philip Ellis 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 Philip Ellis 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.



**Decision maker: Alan Meyrick**

**Date: 28 July 2017**

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