



National College for
Teaching & Leadership

Mr Femi Eyinade: Professional conduct panel outcome

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

December 2017

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

Teacher: Mr Femi Eyinade
Teacher ref number: 1566453
Teacher date of birth: 19 April 1986
NCTL case reference: 14869
Date of determination: 4 December 2017
Former employer: St Thomas the Apostle College ("the School")

A. Introduction

A professional conduct panel ("the panel") of the National College for Teaching and Leadership ("the National College") convened on 12 October 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH, and then subsequently on 4 December 2017 at the Ramada Hotel, The Butts, Coventry, CV1 3GG, to consider the case of Mr Femi Eyinade.

The panel members were Mr Melvyn Kershaw (teacher panellist – in the chair), Ms Margaret Windsor (teacher panellist) and Ms Jean Carter (lay panellist).

The legal adviser to the panel was Mr Tom Walker of Blake Morgan LLP.

The presenting officer for the National College was Ms Holly Quirk of Browne Jacobson LLP.

Mr Femi Eyinade was present and was represented by Mr Jonathan Storey, Counsel.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 1 August 2017.

It was alleged that Mr Femi Eyinade was guilty of having been convicted of a relevant offence, in that:

He was convicted on 2 October 2015, in the Central Criminal Court of the following offences:

1. Attempt to commit fraud by abuse of position between 17/02/2014 – 21/02/2014, contrary to s.1 (2) (c) and s.4 Fraud Act 2006, for which he was sentenced to imprisonment for 18 months.
2. 9 counts of making false representation to make gain for self or another or cause loss to another or expose another to a risk of loss on various dates between 03/01/2014 and 15/01/2014, contrary to s.1 (2) (a) and s.2 Fraud Act 2006, for which he was sentenced to 18 months concurrent.

Mr Eyinade admits the factual allegations and also admits that his conduct amounts to unacceptable professional conduct, conduct which brings the profession into disrepute and conviction of a relevant offence.

C. Preliminary applications

The presenting officer made an application to amend the charge to insert the word "attempt to commit" before "fraud" in Allegation 1. Mr Storey agreed to the proposed amendment. The panel noted that in accordance with Rule 4.56 it could amend an allegation at any stage prior to making its decision, provided that such an amendment was in the interests of justice. The panel was satisfied that the proposed amendment was appropriate and corrected a minor inaccuracy in the original charges. The panel was satisfied that the amendment was in the interests of justice.

The panel noted that the allegation should in fact refer to the conviction date as 2 October 2015 (as referred to in the certificate of conviction) as opposed to 17 November 2015 which was the sentencing date. The panel having heard observations from the parties was satisfied that this amendment was appropriate and in the interest of justice.

D. Summary of evidence

Documents

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

- Section 1: Chronology and anonymised pupil list – page 2
- Section 2: Notice of Proceedings and Response – pages 4 to 14
- Section 3: NCTL documents – pages 16 to 21
- Section 4: Correspondence between the School and Mr Eyinade – pages 22 to 25
- Section 5: Employment Documents – pages 26 to 61

In addition, the panel agreed to accept the following:

Reference from the head of maths at a school which currently employs Mr Eyinade (page 62), and subsequently a further reference dated 3 December 2017 from the headteacher of the school which employs Mr Eyinade.

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

Witnesses

The panel heard oral evidence from Mr Eyinade.

E. Decision and reasons

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing. The panel announced its decision and reasons as follows.

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

This case relates to the conduct of Mr Eyinade during his employment at a bank in 2014 which resulted in him receiving a sentence of 18 months imprisonment on 17 November 2015 following a guilty plea on 2 October 2015 to 10 offences of fraud.

The relevant factual background is set out in a Statement of Agreed Facts which has been signed by Mr Eyinade.

The panel first sat on 12 October 2017 to consider this case and an initial decision and recommendation were made. Subsequently, the NCTL and Mr Eyinade's representative made a joint application for the panel to reconvene to hear further submissions in relation to this case. In particular, the parties submitted that clarification may be required in relation to the approach taken by the panel to the allegations, and whether it was fair and appropriate for the panel to take into account additional matters which, even if admitted in evidence, did not form part of the pleaded allegations.

The panel has received legal advice and has accepted that advice. The panel is mindful that its initial decision has not been acted upon and recognises that it is appropriate and

in the interests of justice given the unusual circumstances of this case, to reconvene to hear submissions from the parties.

The panel notes that the factual background to this case has presented some challenges. Given the circumstances, the panel has reviewed its initial decision and has decided that it is appropriate to revisit some of the findings in light of the further submissions received.

In particular, the panel is of the view that a number of the factual findings made previously should not be considered as part of the determination of whether Mr Eynade is guilty of a conviction of a relevant offence, unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

The panel has decided that in this case, notwithstanding the Statement of Agreed Facts, this case is better approached by focusing on the factual allegations of the conviction at the initial stage. The panel has thus decided that it would not be appropriate to take no action following the submissions of the parties.

The panel has carefully considered whether it is in a position to proceed fairly with this case, or whether it would be in the interests of justice to remit this case for fresh consideration by a differently constituted panel. The panel is of the view that it is able to review its decision objectively and fairly. The panel is also of the view that an objective and fair-minded observer would conclude that this panel was in a position to conduct this exercise impartially.

Findings of fact

Our findings of fact are as follows.

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

You are guilty of a conviction, at any time, of a relevant criminal offence in that you were convicted on 2 October 2015, in the Central Criminal Court of the following offences:

- 1. Attempt to commit fraud by abuse of position between 17/02/2014 – 21/02/2014, contrary to s.1 (2) (c) and s.4 Fraud Act 2006, for which you were sentenced to imprisonment for 18 months.**
- 2. 9 counts of making false representation to make gain for self or another or cause loss to another or expose another to a risk of loss on various dates between 03/01/2014 and 15/01/2014, contrary to s.1 (2) (a) and s.2 Fraud Act 2006, for which you were sentenced to 18 months concurrent.**

The allegation has been admitted by Mr Eynade. The evidence that the panel has received, both written and oral, is consistent with the admission and the allegations are found proved.

The panel also had the benefit of evidence from Mr Eynade in relation to the allegations, the surrounding circumstances, and his subsequent conduct after the offences had been committed.

The panel was of the view that the convictions were serious in nature and related to a sustained and planned course of dishonest conduct. Mr Eynade accepts in the signed Statement of Agreed Facts that the offences for which he was convicted included findings that he had been dishonest.

The panel noted that the convictions relate to 10 offences over a period of 2 months. There was no evidence before the panel that any party had suffered financial loss, and the panel accepts the submission made on behalf of Mr Eynade that no such loss occurred.

The panel has had regard to the evidence of Mr Eynade in relation to the surrounding circumstances of the conduct giving rise to the conviction. Mr Eynade stated in evidence that he had opened a series of bank accounts for individuals whom he had not met, and whose identity documents he had not reviewed or checked in accordance with his employer's procedures. Mr Eynade stated that he did this when requested to do so by an existing customer of the bank, and accepted that, at his own instigation, he did this on 9 separate occasions, as opposed to opening the accounts simultaneously.

Mr Eynade stated that when he did this he knew that he was breaching his bank employer's procedures and furthermore knew that he was acting dishonestly. Mr Eynade stated in evidence that upon reflection he should have appreciated that the bank accounts he opened could have been used for criminal purposes. The panel is of the view that it should have been obvious to Mr Eynade that there was a serious risk that such bank accounts could be used for criminal purposes, and in consequence Mr Eynade is also guilty of a very serious error of judgement, and recklessness, in addition to dishonesty.

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

Having found the allegations proven, the panel has gone on to consider whether the facts of those proven allegations amount to conviction of a relevant offence, unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

The panel notes that Mr Eynade has admitted in the Statement of Agreed Facts that his conduct amounts to a conviction of a relevant offence, unacceptable professional

conduct and conduct which may bring the profession into disrepute (paragraphs 16 to 17). However, the panel has applied its own assessment of these matters.

Conviction of a relevant offence

The panel has noted that Mr Eyinade's behaviour ultimately led to him receiving a sentence of imprisonment which is indicative of the seriousness of the offences committed.

This was a case which related to fraud or serious dishonesty, which the guidance document Teacher Misconduct – the Prohibition of Teachers ("the Advice") states is likely to be considered a relevant offence.

The panel has taken into account Mr Eyinade's circumstances, including his statement that he was under pressure from his bank to open additional accounts to meet targets. However, the panel is of the view that even if Mr Eyinade was under pressure at work to meet various targets, there was no excuse for his conduct and this affords him very limited mitigation.

The panel has also had regard to the positive evidence received in relation to Mr Eyinade's teaching ability and proficiency since his release from prison. The panel accepts this evidence. However, the panel has found the seriousness of the offending behaviour that led to the conviction is relevant to his ongoing suitability to teach.

The panel considers that a finding that these convictions are relevant offences is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Unacceptable professional conduct

The panel has noted that whilst this did not form part of the formal allegation, it was admitted in the Statement of Agreed Facts.

The panel has noted that the conduct giving rise to the conviction took place outside an education setting and before Mr Eyinade had decided to become a teacher. By virtue of this, the panel has decided, particularly given the finding that Mr Eyinade has been convicted of a relevant offence, that it is not appropriate to reach a finding that Mr Eyinade's conviction also amounts to unacceptable professional conduct, notwithstanding his admission.

Conduct which may bring the profession into disrepute

The panel has noted that whilst this did not form part of the formal allegation, it was admitted in the Statement of Agreed Facts. The panel has decided that it is appropriate to consider this issue.

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, which includes a conviction for serious offences of dishonesty, would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

Whilst the panel notes that the conduct giving rise to the conviction took place before Mr Eyinade became a teacher, the conviction itself occurred whilst he was a teacher. The conviction was for offences that would be regarded as so serious that, notwithstanding the fact that they occurred outside an education context, they would likely have a negative impact on the public perception of the profession.

The panel therefore finds that Mr Eyinade's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of a conviction of a relevant offence 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.

In light of the panel's findings against Mr Eyinade, which involved convictions for fraud, public confidence in the profession could be seriously weakened if conduct such as that found against Mr Eyinade 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 Eyinade 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 Eynade.

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 Eynade.

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 acts of dishonesty.

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.

In considering this matter, the panel has revisited and reviewed this case following submissions from the parties.

The panel notes from his oral evidence that Mr Eynade did not disclose the fact of his dismissal from the bank and the surrounding circumstances to Goldsmiths University where he undertook the PGCE between 2014-15.

Mr Eynade similarly did not disclose these facts to a school where he was subsequently employed as a maths teacher, and indeed completed an application form which was misleading (page 33) in that he claimed that he had left his role at the bank in 2014 due to a "change in career". Mr Eynade stated that he completed this application form prior to being charged with any offences, and that he had been advised by the legal team representing him in his criminal case that he was not required to disclose anything until he had been charged. However, the panel is of the view that Mr Eynade knew, or should have known, that this information was clearly relevant to his application, and should have been disclosed. Mr Eynade stated in oral evidence that he regrets his behaviour.

The panel has also noted that Mr Eynade contacted the school which employed him as a teacher on 17 November 2015 and stated that he was suffering from food poisoning and was thus unable to attend work, when in fact he was due at court that day for a sentencing hearing. Mr Eynade thus, when presented with a further opportunity to disclose matters to his employer, chose not to do so.

It is to Mr Eynade's credit that he was prepared to admit this subsequent conduct. However, having heard submissions from the teacher's representative, Mr Storey, in relation to the fairness of the panel relying upon such admissions in the circumstances of this case, the panel has taken the view that it would not be appropriate to determine whether or not Mr Eynade's actions after his conduct were in fact dishonest in all the

circumstances, regardless of what has been expressed in the Statement of Agreed Facts.

However, the panel has had regard to this subsequent conduct in considering this case in accordance with the provision in rule 4.73 that at the recommendation stage a panel "will consider all the evidence available".

The conduct of Mr Eyinade giving rise to the conviction was deliberate. However, Mr Eyinade was relatively young at the time the offences were committed, was not a teacher when the offences were committed, has no previous convictions and has produced positive references relating to his recent teaching record.

The panel is not satisfied that a public decision marking Mr Eyinade's misconduct is a sufficient sanction in this case. 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 Eyinade.

By virtue of his conviction, Mr Eyinade has committed acts of serious dishonesty. Furthermore, the panel also noted that Mr Eyinade subsequently failed to fully disclose the matters giving rise to his conviction to his University and subsequent employer. Mr Eyinade admitted this behaviour in oral and written evidence, and as set out above, stated that he regretted this conduct.

Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it to decide to recommend that a review period of the order should be considered. The panel is mindful that the Advice advises 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 fraud or serious dishonesty, and thus there are features present in the case which ordinarily would militate against a review period being recommended.

However, there are some features of this case which are relevant to whether a review period should be recommended. The panel notes that Mr Eyinade committed the offence giving rise to the conviction for a relevant offence when he was a relatively young man and prior to his decision to become a teacher.

Mr Eyinade also attended the hearing and gave evidence. In the panel's view Mr Eyinade has demonstrated remorse and insight into his behaviour such as would militate against a prohibition order being imposed with no review period. Furthermore, the panel

accepted the positive references received, including the detailed reference dated 3 December 2017 from the head teacher at the school which currently employs Mr Eynade. The panel also had regard to the evidence of Mr Eynade that he was a capable, enthusiastic and committed teacher.

Whilst none of these features is sufficient to outweigh the public interest in the imposition of a prohibition order, the panel is of the view that these features are relevant to the question as to whether Mr Eynade should be entitled to apply to set aside the prohibition order should he wish to re-enter the teaching profession in the future.

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period of 4 years.

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 and a review period.

In considering this case, I have also 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 the allegations proven and found that those proven facts amount to a relevant criminal conviction and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr Eynade should be the subject of a prohibition order, with a review period of four years.

In particular the panel has found that Mr Eynade has received a conviction of a relevant offence, "which related to fraud or serious dishonesty".

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 a relevant conviction 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 Eynade, 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. In this case, there are no specific factors that relate to this element. I have also

taken into account the panel's comments on insight and remorse which the panel sets out as follows, "Mr Eynade has demonstrated remorse and insight into his behaviour such as would militate against a prohibition order being imposed with no review period." I have given this comment considerable weight in reaching my decision concerning a review period.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "public confidence in the profession could be seriously weakened if conduct such as that found against Mr Eynade were not treated with the utmost seriousness when regulating the conduct of the profession."

I am particularly mindful of the finding of dishonesty in this case and the impact that such a finding has on the reputation of the profession.

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 a relevant criminal conviction, 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 Eynade himself. The panel refer to his current references, "the panel accepted the positive references received, including the detailed reference dated 3 December 2017 from the headteacher at the school which currently employs Mr Eynade. The panel also had regard to the evidence of Mr Eynade that he was a capable, enthusiastic and committed teacher."

A prohibition order would prevent Mr Eynade from teaching and 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 placed considerable weight on the panel's comments concerning this case, "The conduct of Mr Eynade giving rise to the conviction was deliberate. However, Mr Eynade was relatively young at the time the offences were committed, was not a teacher when the offences were committed, has no previous convictions and has produced positive references relating to his recent teaching record".

The panel is not satisfied that a public decision marking Mr Eynade's misconduct is a sufficient sanction in this case. 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 Eynade."

I have placed considerable weight on the finding of the panel that Mr Eynade was dishonest.

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. In this case, the panel has recommended a 4 year review period.

I have considered the panel's comments "These behaviours include fraud or serious dishonesty, and thus there are features present in the case which ordinarily would militate against a review period being recommended."

The panel has also said that a 4 year review period would "be proportionate in all the circumstances."

I have considered whether a 4 year 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, there are factors that in my view mean that a no review period is not proportionate. These are that Mr Eyinade committed the offence giving rise to the conviction for a relevant offence when he was a relatively young man and prior to his decision to become a teacher.

I consider therefore that a 4 year review period satisfies the maintenance of public confidence in the profession in all the circumstances.

This means that Mr Femi Eyinade 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 13 December 2021, 4 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 Femi Eyinade remains prohibited from teaching indefinitely.

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

Mr Femi Eyinade 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: 7 December 2017

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