



National College for
Teaching & Leadership

Mr Jack Fursdon: Professional conduct panel outcome

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

October 2017

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

Teacher: Mr Jack Fursdon

Teacher ref number: 1647979

Teacher date of birth: 19 October 1992

NCTL case reference: 15991

Date of determination: 10 October 2017

Former employer: The Henry Box School ('the School'), Oxfordshire

A. Introduction

A professional conduct panel ("the panel") of the National College for Teaching and Leadership ("the National College") convened on 9 -10 October 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case Mr Jack Fursdon.

The panel members were Mr Martin Pilkington (lay panellist – in the chair), Ms Gail Goodman (teacher panellist) and Mr John Armstrong (lay panellist).

The legal adviser to the panel was Miss Surekha Gollapudi of Eversheds Sutherland (International) LLP solicitors.

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

Mr Jack Fursdon was present and was represented by Mr Paul McLaughlin and Mr Mark Thomas of the National Education Union.

The hearing took place in public and was recorded, except for evidence relating to sensitive personal information which was heard in private.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 19 July 2017.

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

1. Had inappropriate contact with Child A via Facebook in or around September 2016, specifically by:
 - a. Communicating with Child A;
 - b. Commenting on Child A's weight and / or size;
 - c. Discussing sexual topics with Child A;
 - d. Asking Child A about her sexual experience;
 - e. Discussing pregnancy with Child A;
 - f. Using sexual innuendo with Child A;
2. In undertaking allegation 1, he was sexually motivated;
3. In undertaking allegation 1, he failed to comply with The Henry Box School's policies, in particular:
 - a. The Henry Box School Keeping Children Safe in Education Staff Code of Professional Conduct July 2016, specifically:
 - i. Page 2 – Power and positions of trust;
 - ii. Page 3 – Personal conduct, dress and appearance;
 - iii. Page 7 – Safe use of the internet and mobile phones;
 - b. The Henry Box School Safeguarding Students – Guidance for Staff and Volunteers September 2016, specifically:
 - i. Page 5 – Use of social network sites and other forms of social media.

Mr Jack Fursdon admits allegations 1 and 3, and that they amount to unacceptable professional conduct and /or conduct that may bring the profession into disrepute.

Mr Jack Fursdon denies allegation 2.

C. Preliminary applications

There were no preliminary applications.

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 – pages 2 to 3

Section 2: Notice of Proceedings and response – pages 5 to 18

Section 3: NCTL witness statements – pages 20 to 21

Section 4: NCTL documents – pages 23 to 144

Section 5: Teacher documents – pages 146 to 167

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 HR manager of the School, called by the presenting officer.

The panel also heard evidence from Mr Fursdon.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

Mr Fursdon was employed at the School from 1 September 2016. Prior to this, he had acted as a teaching assistant at The Marlborough School. In July 2016, Mr Fursdon sent a Facebook message to Child A, a pupil at The Marlborough School. There was no response from Child A until 25 September 2016 at which time Mr Fursdon and Child A engaged in a conversation which lasted three days. It is alleged that the messages Mr Fursdon sent during this conversation were inappropriate.

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:

- 1. You had inappropriate contact with Child A via Facebook in or around September 2016, specifically by:**
 - a. Communicating with Child A;**
 - b. Commenting on Child A's weight and / or size;**
 - c. Discussing sexual topics with Child A;**
 - d. Asking Child A about her sexual experience;**
 - e. Discussing pregnancy with Child A;**
 - f. Using sexual innuendo with Child A;**

The allegation is admitted by the teacher.

The panel reviewed a number of messages which were sent by Mr Fursdon to Child A.

The panel found this allegation proven on the balance of probabilities.

2. In undertaking allegation 1, you were sexually motivated;

As with all findings of fact, the panel considered this question applying the balance of probabilities. The panel considered whether on the balance of probabilities reasonable persons would think the words found proven could be sexual. The panel then considered whether, in all the circumstances of the conduct in the case, it was more likely than not that the teacher's purpose in using such words was sexual.

The panel considered whether, even in the absence of any direct evidence, sexual motivation should be inferred from all the circumstances of the case. The panel had in mind the evidence of the teacher's character and considered whether such evidence had any bearing on the teacher's credibility or propensity to have carried out the alleged facts or to the circumstances in which the teacher found himself.

The panel had regard to the content and tone of the messages which included references to sexual activity and personal comments about Child A.

The panel did not hear oral evidence from Child A but did have the benefit of a written statement prepared during the course of the school investigation in which she stated, "Not long into the conversation he started to ask some inappropriate questions which made me feel uncomfortable and scared...".

The panel noted Mr Fursdon's oral evidence that he was not sexually motivated in sending the messages to Child A. The panel did not find that Mr Fursdon could provide a credible alternative explanation as to his motivation. In particular, the panel had regard to the evidence within the messages which showed Mr Fursdon initiated discussions of a sexual nature and repeatedly brought the conversation back to sexual topics and innuendo.

The panel had found the particulars of allegation 1 proven. Taking into account the sexually explicit and inappropriate words and phrases used by Mr Fursdon, the panel considered that sexual motivation was more likely than not to have been his motivation. Therefore on the balance of probabilities, sexual motivation was proven in relation to allegation 1.a. to 1.f.

3. In undertaking allegation 1, you failed to comply with The Henry Box School's policies, in particular:

a. The Henry Box School Keeping Children Safe in Education Staff Code of Professional Conduct July 2016, specifically;

- i. Page 2 – Power and positions of trust;**
- ii. Page 3 – Personal conduct, dress and appearance;**
- iii. Page 7 – Safe use of the internet and mobile phones;**

b. The Henry Box School Safeguarding Students – Guidance for Staff; and Volunteers September 2016, specifically:

- i. Page 5 – Use of social network sites and other forms of social media;**

The allegation is admitted by the teacher.

The panel reviewed the documentary evidence and heard oral evidence from Mr Fursdon about his misunderstanding of whether certain safeguarding issues were applicable to former students at different schools. Mr Fursdon was clear in his evidence that he now fully understood the extent of the safeguarding requirements.

The panel found this allegation proven on the balance of probabilities.

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 Fursdon in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Fursdon 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

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

The panel has also considered whether Mr Fursdon’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 is relevant.

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 allegations took place outside of the education setting. Mr Fursdon’s conduct exposed Child A to harmful behaviour, as evidenced by her statement during the school’s investigation.

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 individual’s status as a teacher, potentially damaging the public perception.

Having found the facts of allegations 1, 2 and 3 proved, we further find that Mr Fursdon's conduct amounts to both unacceptable professional conduct and 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 a 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; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and the interest of retaining the teacher in the profession.

In light of the panel's findings against Mr Fursdon, which involved him sending inappropriate messages of a sexual nature to a pupil at a school in which he previously acted as a teaching assistant, there is a strong public interest consideration in respect of the protection of pupils. The panel found Mr Fursdon's evidence as to his contrition and insight into his actions was credible and therefore did not find that there would be an ongoing risk to pupils.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Fursdon was not treated with the utmost seriousness when regulating the conduct of the profession.

The panel decided that a strong public interest consideration in declaring proper standards of conduct in the profession was also present, as the conduct found against Mr Fursdon was outside that which could reasonably be tolerated.

The panel also decided that there was a strong public interest consideration in retaining the teacher in the profession, since no doubt has been cast upon his abilities as an educator and he is able to make a valuable contribution to the profession.

In view of the clear public interest considerations that were present, the panel looked carefully at whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Fursdon.

In carrying out the balancing exercise, the panel had the public interest considerations, both in favour of and against prohibition as well as the interests of Mr Fursdon in mind. 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;
- sexual misconduct, eg involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position.

Even though there were behaviours that 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. The panel particularly took into account the nature and severity of the behaviour in this case.

In particular, the panel noted that the teacher has a previously good record and the panel accepts that the incident was out of character. Whilst the panel does not accept that the teacher was acting under duress [redacted]. The panel did not find that Mr Fursdon's actions were malicious or calculated.

The panel has seen evidence of good character provided by Mr Fursdon's mother.

The panel first looked at whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel is sufficient.

The panel is of the view that applying the standard of the ordinary intelligent citizen recommending no prohibition order is neither a proportionate nor an appropriate response. Recommending that the publication of adverse findings is sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for the teacher of prohibition.

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 Fursdon. The nature and extent of the messages sent to Child A were significant factors in forming that opinion. 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 determine whether or not it would be appropriate to decide to recommend that a review period of the order should be considered. The panel was

mindful that the Advice states 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, e.g. 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. Whilst the panel found that Mr Fursdon's actions in sending the inappropriate messages were sexually motivated, it found that his actions were at the less serious end of the scale.

The panel noted that Mr Fursdon had displayed a high level of cooperation both with the School's investigation and these proceedings. The panel placed considerable weight on the evidence of Mr Fursdon as to his insight into his actions and found him to be compelling and credible in his regret as to the actions which brought him before the panel and for the adverse impact his actions had on Child A. The panel considered that Mr Fursdon had been extremely naive and foolish in contacting a former pupil, who was still under the age of 18, on social media after leaving his position at that School.

In all the circumstances of this case, and in particular taking into consideration the oral evidence provided by Mr Fursdon, the panel was persuaded that Mr Fursdon would not put himself in this position again in the future.

The panel decided that its findings indicated a situation in which a review period would be appropriate and that it would be proportionate in all the circumstances for the prohibition order to be recommended with provision for a review period of 2 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 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 all 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 Fursdon should be the subject of a prohibition order, with a review period of two years.

In particular the panel has found that Mr Fursdon 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

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

The panel has also considered whether Mr Fursdon’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 is relevant.

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 Fursdon, 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 “Mr Fursdon’s conduct exposed Child A to harmful behaviour, as evidenced by her statement during the school’s investigation.” A prohibition order would therefore prevent such a risk from being present in the future. However, I have also noted the panel’s specific comment that “Mr Fursdon’s evidence as to his contrition and insight into his actions was credible and therefore did not find that there would be an ongoing risk to pupils.”

I have also taken into account the panel’s other comments on insight and remorse which the panel sets out as follows, “considerable weight on the evidence of Mr Fursdon as to his insight into his actions and found him to be compelling and credible in his regret as to the actions which brought him before the panel and for the adverse impact his actions had on Child A.”

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “the conduct found against Mr Fursdon was outside that which could reasonably be tolerated.”

I am particularly mindful of the finding of sexual misconduct 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 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 Fursdon himself. He has a previously good record and the panel accepts that the incident was out of character.”

A prohibition order would prevent Mr Fursdon 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 the behaviours shown. In recommending a prohibition order the panel has said, “the public interest considerations outweigh the interests of Mr Fursdon. The nature and extent of the messages sent to Child A were significant factors in forming that opinion.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr Fursdon has made to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. Mr Fursdon’s behaviour was sexually motivated. I accept that the panel has found it was at the less serious end of that behaviour.

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 two year review period. That is the minimum period allowed for in the legislation.

I have considered the panel’s comments on insight and remorse and on balance I agree that a two year review period is adequate and sufficiently marks the seriousness of the panel’s findings and is in line with the published advice.

I consider therefore that a two year review period is sufficient to satisfy the maintenance of public confidence in the profession.

This means that Mr Jack Fursdon 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 20 October 2019, two 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 Jack Fursdon remains prohibited from teaching indefinitely.

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

Mr Jack Fursdon 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 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 13 October 2017

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