



National College for
Teaching & Leadership

Ms Cheryl Barber: Professional conduct panel meeting outcome

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

March 2018

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

Teacher: Ms Cheryl Barber

Teacher ref number: 9653337

Teacher date of birth: 25 March 1969

NCTL case reference: 15663

Date of determination: 22 March 2018

Former employer: Not disclosed

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 22 March 2018 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Ms Cheryl Barber.

The panel members were Ms Alison Walsh (teacher panellist), Dr Geoffrey Penzer (lay panellist – in the chair) and Ms Mary Speakman (teacher panellist).

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

In advance of the meeting, the National College agreed to a request from Ms Barber that the allegations be considered without a hearing after taking into consideration the public interest and the interests of justice. Ms Barber provided a signed Statement of Agreed Facts and admitted unacceptable professional conduct and/or conduct that may bring the profession into disrepute. The panel considered the case at a meeting without the attendance of the presenting officer, Ms Barber or her representative.

The meeting took place in private.

B. Allegations

The panel considered the allegations set out in the Notice of Meeting dated 13 February 2018.

It was alleged that Ms Barber was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that, whilst employed at a school in the Midlands between September 2010 and 15 July 2016:

1. She exchanged sexually explicit messages with Individual Z on one or more occasions

- a. whilst she was teaching and/or had pupil(s) in her care;
 - b. including messages which referred to sexual fantasies in relation to:
 - i. Child A;
 - ii. animals.
2. She sent photographs and/or video footage of Child A to Individual Z for his sexual gratification.
 3. Her conduct as may be found proved at 1 and/or 2 above was conduct of a sexual nature and/or was conduct which facilitated the sexual motivation of another.

Ms Barber admitted the facts of all of the allegations and that her conduct amounted to unacceptable professional conduct and conduct that may bring the profession into disrepute.

Preliminary applications

There were no preliminary applications.

C. 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 4
- Section 2: Notice of Referral response and Notice of Meeting – pages 5 to 13
- Section 3: Statement of Agreed Facts and presenting officer representations– pages 14 to 23
- Section 4: NCTL documents – pages 24 to 330
- Section 5: Teacher documents – pages 332 to 346

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

Statement of Agreed Facts

The panel considered a Statement of Agreed Facts which was signed by Ms Barber on 14 November 2017.

D. Decision and reasons

The panel announced its decision and reasons as follows.

The panel has carefully considered the case and reached a decision. The panel has received legal advice and accepted that advice.

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

In advance of the meeting, the National College agreed to a request from Ms Barber that the allegations be considered without a hearing. The panel has the ability to direct that the case be considered at a hearing if required in the interests of justice or in the public interest. The panel did not determine that such a direction is necessary or appropriate in this case.

Ms Barber had been employed at a school between 1 September 2010 and 15 July 2016, when she was dismissed as a result of the matters set out in the allegations.

These allegations came to light as a result of a police investigation, in the course of which Ms Barber was interviewed. Ms Barber was neither prosecuted for, nor convicted of, any criminal offences. However the matters being investigated by the police resulted in Ms Barber being referred to the National College.

In or around 2011, Ms Barber had commenced a sexual relationship with Individual Z, who had no connection with her teaching role or employer (page 146 of the Bundle). As this relationship developed, but more particularly in the months before her interview by the police in March 2016, Ms Barber exchanged sexually explicit messages with Individual Z and did so whilst working at the school.

However, the messages themselves did not directly relate to teaching or indeed to pupils at the school. Ms Barber admits that her actions were of a sexual nature and facilitated the sexual motivation of individual Z.

Ms Barber also sent images of Child A to Individual Z for his sexual gratification, and, whilst the images themselves were not indecent in nature, Ms Barber accepts that by her actions she was facilitating the sexual motivations of another in relation to a child.

Findings of fact

Our findings of fact are as follows. The allegations have been admitted and the admission is consistent with the evidence in the case.

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

Whilst employed as a class teacher at a school in the Midlands between September 2010 and 15 July 2016 :

- 1. you exchanged sexually explicit messages with Individual Z on one or more occasions;**
 - a. whilst you were teaching and/or had pupil(s) in your care;**
 - b. including messages which referred to sexual fantasies in relation to:**
 - i. Child A;**
 - ii. animals.**

Ms Barber admitted the facts of this allegation. The evidence considered by the panel was consistent with the admission.

Ms Barber accepted that the messages exchanged with Individual Z, which included messages sent by her, were sexually explicit, and that some of them had been sent whilst she had teaching responsibilities and had pupils in her care. In particular, there are examples of dozens of messages both sent and received by Ms Barber, some of which were sent during teaching hours. Indeed, in some of the messages Ms Barber refers to being surrounded by children (page 251). Accordingly, in light of the admissions made and the evidence, the panel found the facts of allegation 1(a) proved.

Ms Barber accepted that the messages exchanged with Individual Z referred to sexual fantasies in relation to Child A and animals. Accordingly, in light of the admission made and the evidence, the panel found the facts of allegation 1(b)(i) and 1(b)(ii) proved.

- 2. You sent photographs and/or video footage of Child A to Individual Z for his sexual gratification.**

Ms Barber admitted the facts of this allegation. The evidence considered by the panel was consistent with the admission.

Ms Barber accepted that the photographs and video footage of Child A were sent to Individual Z for his sexual gratification. Indeed, a number of the contemporaneous and associated messages exchanged between Individual Z and Ms Barber confirm that Individual Z was using the images for his own sexual gratification.

Accordingly, in light of the admission made and the evidence, the panel found the facts of allegation 2 proved.

- 3. Your conduct as may be found proved at 1 and/or 2 above was conduct of a sexual nature and/or was conduct which facilitated the sexual motivation of another.**

Ms Barber admitted the facts of this allegation. The evidence considered by the panel, in particular the transcripts of the text messages and the police interviews, were consistent with the admission.

Ms Barber accepted that the conduct admitted at allegations 1 and 2 was conduct of a sexual nature and was conduct which facilitated the sexual motivation of another, namely Individual Z, in relation to both a child and animals.

Ms Barber admitted allegation 3, but only on the basis that her own conduct was sexually motivated in relation to Individual Z alone.

The panel considered this issue carefully and accepted that Ms Barber's conduct was motivated by a desire to gratify Individual Z and that she did so by facilitating his sexual motivation towards a child as well as to animals. These actions were committed by virtue of the particulars set out in allegations 1 and 2, namely through sexually explicit messages sent whilst Ms Barber was teaching and/or had pupils in her care, and at other times, and in the course of which references were made to explicit sexual fantasies relating to a child and animals. Accordingly, in light of the admission made and the evidence, the panel found the facts of allegation 3 proved.

The panel considers the admitted conduct to be of the utmost gravity.

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

Having found all allegations proven, the panel has gone on to consider whether the facts of those 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 Ms Barber in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Ms Barber 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
 - 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, and maintain high standards in their own attendance and punctuality.
- 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 Ms Barber amounts to misconduct of a serious nature which fell significantly short of the standards expected of the profession. Ms Barber's conduct represents a wholesale departure from the principles and guidance which relate to safeguarding.

The panel has also considered whether Ms Barber's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice.

Ms Barber was neither prosecuted nor convicted of any criminal offence. However, the panel was of the view that Ms Barber has, by virtue of her admitted conduct, displayed behaviour which is associated with sexual offences.

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 a number of the actions to which the allegations relate took place outside an educational setting. However, some of the actions took place within an educational setting.

The panel was of the view that the conduct displayed, both inside and outside school, affects the way Ms Barber would be expected to fulfil her teaching role and may lead to pupils being exposed to or influenced by her behaviour in a harmful way. However, in particular, by exchanging sexually explicit messages in proximity to pupils there was a significant risk that pupils could have been exposed to harmful material.

Accordingly, the panel is satisfied that Ms Barber is guilty of unacceptable professional conduct.

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.

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

Having found the facts of allegations 1, 2 and 3 proved, the panel finds that Ms Barber'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 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 protection of other members of the public; the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Ms Barber, which involved very serious actions of a sexual nature which put pupils at risk of exposure to harmful and sexually explicit content, there is a strong public interest consideration in respect of the protection of pupils.

Similarly, the panel considers that public confidence in the profession would be seriously weakened if conduct such as that found against Ms Barber 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 Ms Barber was outside that which could reasonably be tolerated.

In view of 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 Ms Barber. It was noted that Ms Barber had no previous relevant disciplinary findings and should be regarded as of previously good character.

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 Ms Barber.

The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- a deep-seated attitude that leads to harmful behaviour;
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

There was no evidence that the teacher's actions were not deliberate. There was no evidence to suggest that the teacher was acting under duress. Whilst the panel accepts that Ms Barber was sexually motivated, and was motivated by a desire to impress Individual Z and thus was influenced by him, this was not to the extent that could be described as duress. For example, Ms Barber displayed a sustained pattern of the admitted behaviours over a long period of many months. Indeed, there is no evidence in the text messages of any coercion by Individual Z, and the evidence suggests that on a number of occasions Ms Barber took the initiative in the exchanges.

Through her solicitor, Ms Barber has submitted that she has no mitigation she wishes to put forward.

The panel first considered 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 not a proportionate and appropriate response. Recommending that publication of adverse findings is sufficient in the case would unacceptably compromise the public interest considerations, 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 Ms Barber. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate to recommend that a review period of the order should be considered. The panel was mindful that 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. One of these is the behaviour associated with serious sexual misconduct. In particular the panel has found that Ms Barber has been responsible for a sustained pattern of sexually motivated activities of an unacceptable nature. The conduct was of the utmost seriousness and, whilst there was no evidence that any children were harmed, there was clearly a risk of such harm.

Ms Barber has expressed remorse for her actions, but the panel has seen no evidence of insight.

The panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period.

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 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 Ms Barber should be the subject of a prohibition order, with no review period.

In particular the panel has found that Ms Barber 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
 - 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, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel finds that the conduct of Ms Barber fell significantly short of the standards expected of the profession. The panel also say that, “Ms Barber's conduct represents a wholesale departure from the principles and guidance which relate to safeguarding.”

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 Ms Barber, and the impact that will have on her, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. The panel has observed, “findings against Ms Barber, which involved very serious actions of a sexual nature which put pupils at risk of exposure to harmful and sexually explicit content, there is a strong public interest consideration in respect of the protection of pupils.” A prohibition order would therefore prevent such a risk from being present. I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “Ms Barber has expressed remorse for her actions, but the panel has seen no evidence of insight.” In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks future pupils’ exposure of harmful and sexually explicit content. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “that public confidence in the profession would be seriously weakened if conduct such as that found against Ms Barber were not treated with the utmost seriousness when regulating the conduct of the profession.” I am particularly mindful of the finding of “You sent photographs and/or video footage of Child A to Individual Z for his sexual gratification” 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 Ms Barber herself. The panel note, "that Ms Barber had no previous relevant disciplinary findings and should be regarded as of previously good character." The panel go on to say, "Through her solicitor, Ms Barber has submitted that she has no mitigation she wishes to put forward."

I note the panel's comments that, "the conduct displayed, both inside and outside school, affects the way Ms Barber would be expected to fulfil her teaching role and may lead to pupils being exposed to or influenced by her behaviour in a harmful way. However, in particular, by exchanging sexually explicit messages in proximity to pupils there was a significant risk that pupils could have been exposed to harmful material."

A prohibition order would prevent Ms Barber from continuing in the teaching profession. A prohibition order would also clearly deprive the public of her contribution to the profession for the period that it is in force.

I have given less weight in my consideration of sanction therefore, to the contribution that Ms Barber 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. A published decision that is not backed up by full insight does not in my view satisfy the public interest requirement concerning public confidence in the profession.

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 no review period.

I have considered the panel's comments "In particular the panel has found that Ms Barber has been responsible for a sustained pattern of sexually motivated activities of an unacceptable nature. The conduct was of the utmost seriousness and, whilst there was no evidence that any children were harmed, there was clearly a risk of such harm."

The panel has also said that it felt, "the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period."

I also note the Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these is the behaviour associated with serious sexual misconduct.

I have considered whether a 2 year review period, or a review period of longer than two years, 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 three factors that in my view mean that a two year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are, the serious nature of the misconduct found, the sustained pattern of sexually motivated activities, and the lack of insight.

I consider therefore that no review period is required to satisfy the maintenance of public confidence in the profession.

This means that Ms Cheryl Barber 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 her, I have decided that Ms Barber shall not be entitled to apply for restoration of her eligibility to teach.

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

Ms Barber has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this order.

A handwritten signature in black ink, appearing to read 'Dawn Dandy', with a stylized, sweeping flourish at the end.

Decision maker: Dawn Dandy

Date: 29 March 2018

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