



National College for
Teaching & Leadership

Timothy David Pooley: Professional Conduct Panel outcome

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

September 2014

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Mr Timothy David Pooley

Teacher ref no: 13/86973

Teacher date of birth: 8 June 1963

NCTL Case ref no: 0010408/POOLEY

Date of Determination: 19 September 2014

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership convened on 19 September 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Timothy David Pooley.

The Panel members were Melvyn Kershaw (Teacher Panellist - in the Chair), Fiona Tankard (Teacher Panellist) and Janet Draper (Lay Panellist).

The Legal Adviser to the Panel was Trish D’Souza of Eversheds LLP.

The Presenting Officer for the National College was Fiona Butler of Browne Jacobson LLP. Mr Pooley was not represented.

This case was convened as a meeting and therefore neither the Presenting Officer, nor Mr Pooley were present.

The meeting took place in private and was not recorded, save for the public announcement of the Panel’s decision on the facts and whether the facts amounted to conviction, at any time, of a relevant criminal offence, which was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Meeting dated 1 September 2014 as amended as set out below.

It was alleged that Mr Pooley was guilty of having been convicted of the following relevant offences, in that:

1. On 19 December 2013, you were convicted at Chelmsford Crown Court of the offence of voyeurism, contrary to Section 67 of the Sexual Offences Act. You committed this offence on or around 1 May 2013 when you recorded a person doing a private act. As a result of your conviction you were sentenced to a community order for 2 years with a supervision requirement and an unpaid work requirement of 180 hours. The forfeiture and destruction of your hard drive was ordered and you were made subject to a sexual offences prevention order for 3 years and a sex offenders notice for 5 years. You were ordered to pay a victim surcharge of £60.00.
2. On 19 December 2013, you were convicted at Chelmsford Crown Court of the offence of voyeurism, contrary to Section 67 of the Sexual Offences Act. You committed this offence on 21 May 2013 when you operated equipment to enable another to observe a person doing a private act. As a result of your conviction you were sentenced to a community order for 2 years with a supervision requirement and an unpaid work requirement of 180 hours (concurrent).
3. On 19 December 2013, you were convicted at Chelmsford Crown Court of the offence of voyeurism, contrary to Section 67 of the Sexual Offences Act. You committed this offence on 6 June 2013 when you recorded a person doing a private act. As a result of your conviction you were sentenced to a community order for 2 years with a supervision requirement and an unpaid work requirement of 180 hours (concurrent).

Mr Pooley admitted the facts of the allegations against him and that they amount to a conviction, at any time of a relevant offence.

C. Preliminary applications

There were no preliminary applications; however, upon advice from the Legal Advisor the Panel considered whether it was appropriate to amend the first allegation.

Although this matter has been listed as a Professional Conduct Panel Meeting, the Panel has the power to amend an allegation under rule 4.56 of the Teacher Misconduct – Disciplinary procedures for the Teaching profession (“the Procedures”), at any stage before making its decision about whether the facts of the case have been proved, if the Panel deems this is in the interests of justice. The Panel considered whether it was appropriate for it to amend the first allegation in light of the Statement of Agreed Facts referring to Mr Pooley’s indicating that there was an error in the date of the offence which was taken from the wording of the Conviction report before the Panel. The Conviction report contained the same error. The Panel had regard to the Presenting Officer’s submission in the Statement of Agreed Facts that this error in dating made no material difference to the nature of the allegations being considered by the Panel. The Panel was

mindful that as Mr Pooley was not present, any amendment contemplated should not introduce a more serious allegation. It may be said that the amendment contemplated reflected inaccuracies in the drafting of the allegation which was based on an inaccurate date in the Conviction report upon which the allegation was based, rather than any substantive amendment.

In view of the fact that the amendment would not cause prejudice to Mr Pooley (and because Mr Pooley has consented to the amendment in signing the Statement of Agreed Facts), the Panel decided the date in the first allegation should be amended from 1 January 2013 to on or around 1 May 2013.

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 Referral, response and notice of meeting	Pages 4 – 8c
Section 3:	Statement of Agreed Facts and Presenting Officer Representations	Pages 10 – 15
Section 4:	National College for Teaching & Leadership Documents	Pages 17 – 35
Section 5:	Teacher Documents	Pages 37 – 56

Although this was a Professional Conduct Panel Meeting, the Panel were advised by the Legal Advisor that it had the power to admit further documentation under paragraph 4.25 of the Procedures.

The Panel agreed to admit a letter from Mr Pooley dated 3 September 2014 addressed to the National College of Teaching and Leadership to be included as part of the Teacher's Documents as pages 57 to 58 as it was in the interests of justice to do so.

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

Witnesses

As this matter has been convened as a meeting, the Panel heard no oral evidence.

E. Decision and reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing and the additional document which the Panel agreed to admit as part of the Teacher's documents.

Summary of Evidence

On 6 June 2013, it was discovered that a mobile phone belonging to Mr Pooley was set to record in a bathroom. The matter was reported to the police and upon his arrest on 22 June 2013, Mr Pooley's computer, keyboard, mouse and external hard drive were seized. An analysis of his computer indicated that videos which showed the victim in various stages of undress had been made. During an interview with the Police on 26 June 2013 Mr Pooley denied the allegations; however, during a second interview with the Police on 22 November 2013, he admitted to deliberately recording in a bedroom and in a bathroom. He was subsequently convicted of three offences of voyeurism on 19 December 2013.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:

1. On 19 December 2013, you were convicted at Chelmsford Crown Court of the offence of voyeurism, contrary to Section 67 of the Sexual Offences Act. You committed this offence on or around 1 May 2013 when you recorded a person doing a private act. As a result of your conviction you were sentenced to a community order for 2 years with a supervision requirement and an unpaid work requirement of 180 hours. The forfeiture and destruction of your hard drive was ordered and you were made subject to a sexual offences prevention order for 3 years and a sex offenders notice for 5 years. You were ordered to pay victim surcharge of £60.00.

In relation to this amended allegation, the Panel has seen the Court Record of Chelmsford Crown Court and the Police National Computer ("PNC") record contained within the bundle of documents which confirms that Mr Pooley was convicted of the offence of voyeurism, recording a person doing a private act committed on 01 January 2013. The Panel took note that the Statement of Agreed facts refers to this offence being committed on or around 1 May 2013 and not 1 January 2013 as indicated by the PNC record and that the Presenting Officer submits that this error in dating makes no material difference to the nature of the allegation being considered. The Panel agreed with this approach and also noted that Mr Pooley has admitted having been convicted of this offence. This allegation is therefore found proven.

2. On 19 December 2013, you were convicted at Chelmsford Crown Court of the offence of voyeurism, contrary to Section 67 of the Sexual Offences Act. You committed this offence on 21 May 2013 when you operated equipment to enable another to observe a person doing a

private act. As a result of your conviction you were sentenced to a community order for 2 years with a supervision requirement and an unpaid work requirement of 180 hours (concurrent).

The Panel has seen the Court Record of Chelmsford Crown Court and the PNC record contained within the bundle of documents which confirms that Mr Pooley was convicted of the offence of voyeurism, operating equipment to enable another to observe a person doing a private act committed on 21 May 2013. Mr Pooley has also admitted having been convicted of this offence. This allegation is therefore found proven.

3. On 19 December 2013, you were convicted at Chelmsford Crown Court of the offence of voyeurism, contrary to Section 67 of the Sexual Offences Act. You committed this offence on 6 June 2013 when you recorded a person doing a private act. As a result of your conviction you were sentenced to a community order for 2 years with a supervision requirement and an unpaid work requirement of 180 hours (concurrent).

The Panel has seen the Court Record of Chelmsford Crown Court and the PNC record contained within the bundle of documents which confirms that Mr Pooley was convicted of the offence of voyeurism, recording a person doing a private act committed on 06 June 2013. Mr Pooley has also admitted having been convicted of this offence. This allegation is therefore found proven.

Findings as to conviction of a relevant offence

The Panel found that the matters proved do amount to conviction of a relevant offence, as they represent an abuse of trust in relation to sexual misconduct, albeit not with a child.

The Panel is satisfied that the conduct of Mr Pooley in relation to the facts it has found proved, involved breaches of Part Two of the Teachers' Standards. We consider that Mr Pooley is in breach of the overarching requirement to demonstrate consistently high standards of personal and professional conduct, and is in breach of the following standard:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by showing tolerance of and respect for the rights of others.

The Panel noted that even though the offences of which Mr Pooley has been convicted related to an adult, his actions were relevant to teaching, working with children and/ or working in an education setting. Equipment was purposely placed in a bedroom and bathroom with the intention of capturing images/video footage of the victim in a state of undress. This demonstrated a lack of respect for the privacy of the individual concerned and breached the trust that the victim may have placed in Mr Pooley.

The Panel has also taken account of how the teaching profession is viewed by others. The Panel considered that Mr Pooley's behaviour in committing the offence could affect public confidence in the teaching profession given the influence teachers may have on pupils, parents and others in the community.

The Panel noted that Mr Pooley's conviction did not lead to a sentence of imprisonment. However, Mr Pooley had a community order placed upon him for two years and was made subject to a Sexual Offences Prevention Order for three years and a sex offenders notice for five years. A member of the teaching profession with such a sentence is unlikely to uphold public confidence in the teaching profession.

This is a case involving an offence of sexual activity which the Teacher Misconduct: Prohibition of Teachers Advice ("the Guidance") states is likely to be considered a relevant offence.

Panel's recommendation to the Secretary of State

Given the Panel's findings in respect of convictions of relevant offences, 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.

The Panel has considered the particular public interest considerations set out in the Guidance, namely the protection of pupils and the protection of other members of the public; the maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct. The Panel does not consider that Mr Pooley poses a significant risk to the protection of pupils as his behaviour took place outside the educational context and did not involve pupils. The Panel also considers that Mr Pooley's conduct does not pose a significant risk to members of the public. The misconduct was relatively unsophisticated and did not involve children. The Panel does consider that Mr Pooley's behaviour amounts to an improper standard of conduct; however, it was at the lower end of the scale and does not amount to serious sexual misconduct.

The Panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Pooley. The Panel took further account of the Guidance, which suggests that a Prohibition Order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, that might potentially be relevant in this case are:

- 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;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of the Police Act 1997 and criminal record disclosures.

If a person has more than one conviction, then any convictions (including spent convictions) are included under the definition of "relevant matters" for the purposes of the Police Act 1997.

Even though there were behaviours that could point to a Prohibition Order's being appropriate, the Panel went on to consider whether or not there were sufficient mitigating

factors to militate against a Prohibition Order's being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

The Panel has had regard to the numerous character statements in the bundle of documents which indicate that Mr Pooley is a decent and honest man, who has shown insight and remorse. He regrets his actions, which he has admitted and reported to the leadership figures of his local church. It is suggested in the mitigation evidence that he was frank and contrite in his admission of guilt, that he usually practised high moral standards and that his former and current pupils and music colleagues felt safe and at ease in his presence.

Mr Pooley's account of the emotional difficulties that he was suffering at the relevant time, was a relevant consideration for the Panel. Such difficulties included the recent death of two close family members, undertaking full time care for another frail and ill relative and supporting another family member through mental health difficulties. The Panel also noted that Mr Pooley experienced a stroke.

The Panel has also read Mr Pooley's account that his commission of the offences occurred following a nervous breakdown as a result of the many different stresses (which are summarised above).

The Panel is also mindful of the fact that prior to these convictions, there is evidence to suggest that Mr Pooley was a person of good character who had a good previous history and no previous criminal record.

Even though the Panel considers that Mr Pooley's actions were deliberate, which he has admitted, the Panel could find no evidence to indicate that his actions demonstrate a deep seated attitude that would lead to future harmful behaviour. Even though the Panel found Mr Pooley's actions to be sexually motivated, the Panel does not consider that such conduct amounted to serious sexual misconduct. In addition, Mr Pooley did not use his professional position or status to influence or exploit a person or persons and the offences do not relate to children.

The Panel is of the view that Prohibition would be neither proportionate nor appropriate in the circumstances. 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 has determined that a recommendation for a Prohibition Order would not be appropriate in this case.

The Panel judged Mr Pooley as posing a very low risk of harm towards children and that there is a very low risk of a repetition of the behaviour that led to his convictions. Accordingly, the Panel makes a recommendation to the Secretary of State that a Prohibition Order should not be imposed.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to the findings and recommendations of the panel in this case.

Mr Pooley has admitted the facts and that those facts amount to conviction of a relevant offence. Mr Pooley has been convicted of the offence of voyeurism in relation to three separate instances in May/June 2013. The court made Mr Pooley subject to a sexual offences prevention order for 3 years and a sex offenders notice for 5 years. He was sentenced to a community order for 2 years with a supervision requirement and an unpaid work requirement of 180 hours.

The panel have found the facts proven and judged that those facts amount to conviction of a relevant offence.

Mr Pooley's behaviour amounts to an abuse of trust in relation to sexual misconduct albeit not with a child.

In considering whether to recommend a prohibition order the panel have considered the public interest considerations. The panel's judgement is that Mr Pooley does not pose a significant risk to the protection of pupils nor to the public but that his behaviour amounts to an improper standard of conduct, albeit at the lower end of the scale. They also judge that his behaviour does not amount to serious sexual misconduct. The panel have noted the numerous character statements that indicate Mr Pooley to be a decent and honest man who has shown insight and remorse. He regrets his actions and the mitigation evidence suggests that he usually practised high moral standards. The panel have also noted the particular emotional difficulties and personal circumstances that he was suffering at the time of the offences.

In all the circumstances the panel have recommended that prohibition would be neither appropriate nor proportionate.

In considering their recommendation I have carefully considered the Secretary of State's advice *Teacher misconduct: the prohibition of teachers*. The advice is clear that a primary public interest consideration is the maintenance of public confidence in the profession. Mr Pooley has been convicted of a sexual offence that has resulted in him being subject to a sex offenders notice for 5 years. It is my view that this has the potential to seriously undermine public confidence in the profession. The advice goes on to list behaviours that are likely to be considered to be incompatible with being a teacher. Those behaviours include '*sexual misconduct eg involving actions that were sexually motivated or of a sexual nature.....*' Whilst Mr Pooley has supplied character references, has shown insight and regret, and was dealing with difficult personal circumstances at the time, nevertheless I believe the public interest considerations in this case outweigh the interests of Mr Pooley and that the offences fall into the area where prohibition is a likely outcome.

In the circumstances I have decided that a prohibition order is an appropriate and proportionate sanction. Mr Pooley should be allowed to apply for the order to be set aside after a minimum period of 5 years has elapsed. This will be shortly after his sex offenders notice expires.

This means that Mr David Timothy Pooley 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 30 September 2019, 5 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 Timothy David Pooley remains barred from teaching indefinitely.

This Order takes effect from the date on which it is served on the Teacher.

Mr Timothy David Pooley 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 grey ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

NAME OF DECISION MAKER: Alan Meyrick

Date: 19 September 2014

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