



National College for
Teaching & Leadership

Keith Ellen: Professional Conduct Panel outcome

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

October 2014

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

Teacher:	Mr Keith Ellen
Teacher ref no:	7400984
Teacher date of birth:	24 January 1945
NCTL Case ref no:	0011636
Date of Determination:	3 October 2014
Former employer:	William Parker Sports College

A. Introduction

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

The Panel members were Nicole Jackson (Chair – Lay Panellist), Alison Robb-Webb (Teacher Panellist) and Michael Lesser (Teacher Panellist).

The Legal Adviser to the Panel was Patricia D’Souza (Eversheds LLP Solicitors).

The Presenting Officer for the National College was Fiona Butler (Browne Jacobson LLP Solicitors).

Mr Keith Ellen was not present and was not represented.

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 5 September 2014 as amended as set out below.

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

1. On 24 October 2013 he was convicted at Harrow Crown Court of the offence of indecent assault on a female under the age of 14 years. He committed this offence between on or around July 1977 and 13 December 1979. He was sentenced to a period of imprisonment for 12 months (wholly suspended for 18 months) with an unpaid work requirement of 200 hours. He was ordered to pay a Victim Surcharge of £100 and costs of £1000 and was given a Sex Offences Notice for a period of 10 years.
2. On 24 October 2013 he was convicted at Harrow Crown Court of the offence of indecent assault on a female under the age of 14 years. He committed this offence between on or around July 1977 and 13 December 1979. He was sentenced to a period of imprisonment for 12 months (wholly suspended for 18 months) with an unpaid work requirement of 200 hours (concurrent).
3. On 24 October 2013 he was convicted at Harrow Crown Court of the offence of indecent assault on a female under the age of 14 years. He committed this offence between on or around July 1977 and 13 December 1979. He was sentenced to a period of imprisonment for 12 months (wholly suspended for 18 months) with an unpaid work requirement of 200 hours (concurrent).
4. On 24 October 2013 he was convicted at Harrow Crown Court of the offence of indecent assault on a female under the age of 14 years. He committed this offence between on or around July 1977 and 13 December 1979. He was sentenced to a period of imprisonment for 12 months (wholly suspended for 18 months) with an unpaid work requirement of 200 hours (concurrent).

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 date ranges included in each of the allegations.

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”). This paragraph of the Procedures indicates that at any stage before making its decision about whether the facts of the case have been proved, the Panel may amend the allegations if it deems this is in the interests of justice. The Panel considered whether it was appropriate for it to amend the date range included in the allegations in light of Mr Ellen recording in the Statement of Agreed Facts that he believed that date of the offences which was taken from the wording of the Police National Computer (“PNC”) before the Panel, were incorrect.

The Panel had regard to the Presenting Officer’s submission in the Statement of Agreed Facts that this is a historic case where a broad date range has been used. It is not

uncommon for the date range included in a conviction to be much broader than the actual time of the incidents as often exact dates cannot be remembered. The Panel considered 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 Ellen 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 PNC, rather than any substantive amendment.

In view of the fact that the amendment would not cause prejudice to Mr Ellen (and because Mr Ellen raised the need for amendment in signing the Statement of Agreed Facts), the Panel decided the dates in the allegation should be amended to, between on or around July 1977 to 13 December 1979.

The Panel noted that the PNC record in the bundle of documents refers to Mr Ellen having been given a Sex Offender's Notice of 10 years and the Certificate of Conviction of Harrow Crown Court refers to the period for which Mr Ellen must sign on the Sex Offenders Register is 7 years. The Panel consider that this slight discrepancy in the timeframe under which Mr Ellen is subject to the Sex Offender's notice under which he is obliged to sign the Sex Offenders register is not material to the allegations raised and the Panel did not consider it necessary to amend Allegation 1 in this regard.

D. Summary of evidence

Documents

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

Section 1: Chronology, Anonymised Pupil List and List of Key People	Page 2
Section 2: Notice of Referral, response and notice of meeting	Pages 4 – 10c
Section 3: Statement of Agreed Facts and Presenting Officer Representations	Pages 12 – 15
Section 4: National College for Teaching and Leadership Documents	Pages 17 – 46
Section 5: Teacher Documents	Pages 48 - 60

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

Witnesses

As this was listed as a Meeting, the Panel heard no oral evidence.

E. Decision and reasons

The Panel announced its decision and reasons as follows:

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

The Panel confirm that it has read all the documents provided in the bundle in advance of the hearing.

Summary of Evidence

In October 2012, Mr Ellen was contacted by the Metropolitan Police in connection with allegations of indecent assault against a former pupil of the Canons High School where Mr Ellen taught during the period September 1976 to April 1979. Mr Ellen was arrested by the Police on 28 November 2012 and he was subsequently bailed upon condition that he did not contact the victim directly or indirectly and he was not to work with children under 16 years of age in a professional or voluntary manner. As a result Mr Ellen ceased teaching on 29 November 2012. Mr Ellen resigned from his part-time teaching post at William Parker Sports College, where he had been teaching since August 2010, on 8 May 2013 and such resignation was accepted. He was subsequently convicted of four offences of indecent assault on a female under 14 years of age on 24 October 2013.

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. On 24 October 2013 you were convicted at Harrow Crown Court of the offence of indecent assault on a female under the age of 14 years. You committed this offence between on or around July 1977 and 13 December 1979. You were sentenced to a period of imprisonment for 12 months (wholly suspended for 18 months) with an unpaid work requirement of 200 hours. You were ordered to pay a Victim Surcharge of £100 and costs of £1000 and were given a Sex Offences Notice for a period of 10 years.

In relation to this amended allegation, the Panel has seen the PNC record contained within the bundle of documents which confirms that Mr Ellen was convicted of the offence of indecent assault on a female under the age of 14 committed during the period 11 December 1976 to 13 December 1979. The Certificate of Conviction of Harrow Crown Court also confirms that Mr Ellen admitted to this offence.

The Panel took note that the Statement of Agreed facts refers to Mr Ellen not having met the female concerned until July 1977, and that the Presenting Officer submits that the date range used in the convictions is often broader than the actual time of historic incidents as often the exact dates cannot be remembered.

The Panel noted that Mr Ellen has admitted having been convicted of this offence. This allegation is therefore found proven.

2. On 24 October 2013 you were convicted at Harrow Crown Court of the offence of indecent assault on a female under the age of 14 years. You committed this offence between on or around July 1977 and 13 December 1979. You were sentenced to a period of imprisonment for 12 months (wholly suspended for 18 months) with an unpaid work requirement of 200 hours (concurrent).

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Findings as to conviction of a relevant offence

In considering the allegations that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which is referred to as the ‘Guidance’.

The Panel found that the matters proved do amount to conviction of a relevant offence, as they represent an indecent assault, ie sexualised behaviour towards a child.

The Panel is satisfied that the conduct of Mr Ellen in relation to the facts it has found proved, involved breaches of the Teachers’ Standards. It considers that by reference to Part Two, Mr Ellen 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;
 - showing tolerance of and respect for the rights of others;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The Panel notes that Mr Ellen’s actions were relevant to teaching, working with children and / or working in an education setting as he has admitted kissing a 14 year old pupil of his former school and touching her physically, when she was below the age of legal consent. The Panel note that the Guidance indicates that it is likely that an offence that led to a term of imprisonment or involves sexual activity will be considered a relevant offence. Both of these criteria are met by the facts relating to this case and the Panel sees no reason to depart from the Guidance.

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

The Panel has noted that Mr Ellen’s behaviour has ultimately led to him receiving a sentence of imprisonment (albeit that it is suspended), which is indicative of the seriousness of the offences committed.

The Panel has also taken into account Mr Ellen’s written account of the facts relating to the offences for which he was convicted, in that they occurred more than 34 years ago and related to kissing and touching a girl aged 14 years old and when she was also 15 years old. The Panel notes that the allegations in this matter and the offences for which Mr Ellen was convicted related to a female under the age of 14. The Panel is mindful that in its decision making it is required to consider Mr Ellen’s conduct in accordance with the relevant Procedures, Guidance and Teacher’s standards that apply at this current time, and not those that may have been applicable during the period, more than 34 years ago when the offences were committed. However, given the offences for which Mr Ellen was convicted are under the Sexual Offences Act 1956, it is clear to the Panel that even at that date this behaviour could have been subject to criminal sanction.

In the bundle of documents Mr Ellen indicates that the actions were “completely consensual”, however, he indicates he accepts “that she was not permitted, according to law, to consent”. Mr Ellen indicates that he has been teaching for 40 years. He retired from full time teaching in August 2010 and was engaged to develop a school cadet unit at William Parker Sports College where he was given a part time teaching contract for three subjects in addition to cadet work. The Panel noted that Mr Ellen has been involved in running and organising various cadet and scout groups and he has frequently worked with children in these and other numerous voluntary youth groups. As a teacher Mr Ellen would have received safeguarding training and Mr Ellen indicates in his written account that he fully accepts he needs to be punished for these incidents both for himself and as a deterrent to others in the future.

In addition, the Panel has had regard to written character evidence from former teaching and cadet colleagues and a parent who had engaged Mr Ellen to provide private mathematics tuition to her three children which attest to Mr Ellen always acting in a professional and caring manner towards staff and cadets, having a good balance of discipline and approachability, and that he is trustworthy at all times around children. The written character evidence indicates that there was no reason to doubt Mr Ellen’s honesty and integrity. The Panel noted that the date of the character statements preceded the date of Mr Ellen’s convictions and therefore the Panel are not certain that all the character statements, except one, were prepared in the knowledge of the criminal allegations against Mr Ellen, and to which he has admitted.

The Panel also had regard to Mr Ellen’s indication in his written account that he very much regrets the incidents that took place and that they were an isolated case in his first teaching appointment and he learnt from his behaviour at the time.

The Panel notes Mr Ellen’s extensive teaching experience. However, the Panel has found the seriousness of the offending behaviour that led to the conviction is relevant to Mr Ellen’s 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.

Panel’s recommendation to the Secretary of State

Given the Panel’s findings in respect of a conviction of a relevant offence, 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 Teacher Misconduct – Prohibition of Teachers Advice and having done so has found a number of them to be relevant in this case, namely protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

There is a strong public interest consideration in respect of the protection of pupils given the serious finding of inappropriate relations, ie kissing and touching a pupil of 14 years of age.

Similarly, the Panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Ellen were not treated with the utmost seriousness when regulating the conduct of the profession. The Panel also considered that protection of pupils and other members of the public were relevant.

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 Ellen 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 Ellen.

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 Ellen. 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, 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
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils
- 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 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 forming a judgment in this respect, the Panel took particular account of the mitigation evidence that was presented in the bundle of documents including Mr Ellen's detailed written account of his numerous previous teaching and youth group activities, in which he outlined that these offences were isolated and committed during his first teaching appointment and that he has learnt from his behaviour since. The reference from a

former colleague who is also a former Cadet officer indicates that Mr Ellen was always professional and caring towards staff and cadets and both male and female cadets respected him. Both this character reference and another provided by a parent who engaged Mr Ellen as a private tutor for her two daughters and son indicates that Mr Ellen is trustworthy. However, as noted earlier in this decision the Panel are not certain that the character statements provided on behalf of Mr Ellen were written in the knowledge of the criminal allegations which Mr Ellen admitted.

The Panel had no evidence before it which indicated that apart from his convictions for four incidences of indecent assault and a concern raised in 2012 at William Parker Sports College, which resulted in a reduction in his teaching duties (of which the Panel had no further detail) that Mr Ellen's teaching record was anything other than positive.

Mr Ellen has admitted his conduct was inappropriate and the Panel notes that his actions were repeated and deliberate. There was no evidence that he was acting under duress. Further, the Panel considered that his behaviour was sexually motivated towards the female pupil concerned.

Mr Ellen indicated in his written account that he regrets the incidents which led to his convictions and that it was right that he was punished and that this should serve as a deterrent to others in the profession. Mr Ellen also indicated that with the benefit of hindsight he recognised that he had blurred the boundaries and he had learnt from his behaviour. However, the Panel is concerned that even now he has failed to recognise the emotional and moral dimension to his inappropriate conduct towards a child, preferring to rely on his own view that the pupil consented. By doing so, Mr Ellen has failed to recognise the breach of trust and the risk to the pupil's wellbeing.

The Panel is of the view that Prohibition is both proportionate and appropriate. It decided that the public interest considerations outweigh the interests of Mr Ellen. The Panel considered this to be such a significant breach of trust that it was incompatible with him teaching in a school or college. 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 Prohibition Order should be considered. The Panel were mindful that the Teacher Misconduct – Prohibition of Teachers 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 two years.

The Teacher Misconduct – Prohibition of Teachers Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes serious sexual misconduct, eg 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. Whereas the criminal convictions for which Mr Ellen has received a sentence relate to indecent assault, the extent of which the Panel has limited information, the Panel considers Mr Ellen's conduct does amount to "serious sexual misconduct" given it was sexually motivated and his lack of insight of the potential harm to the female pupil concerned renders his conduct "serious". The Panel were very concerned at his lack of insight even now. The Panel noted that the pupil initiated the criminal proceedings.

The Panel felt its findings amounted to 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 provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have considered the findings and recommendations of the panel in this case.

The panel have found proven all the allegations in respect of Mr Ellen being convicted of offences of indecent assault on a female under the age of 14 years. They have found these to be convictions of a relevant offence.

In deciding whether a prohibition would be an appropriate and proportionate sanction, the panel have found a number of public interest considerations to be relevant in this case:

- The protection of pupils;
- Maintenance of public confidence in the profession; and
- Upholding and declaring proper standards of conduct.

The panel have taken account of the mitigation evidence presented to it including Mr Ellen's detailed account of his teaching and youth group activities and employment and character references. Mr Ellen has shown that he regrets the incidents that led to his convictions and has recognised that he blurred the boundaries of what was acceptable behaviour. The panel have though registered their concern that even now he has failed to recognise the breach of trust and the risk to the pupil's wellbeing.

In the circumstances I agree with the panel's recommendation that Mr Ellen should be prohibited from teaching.

The panel consider that Mr Ellen's behaviour amounts to serious sexual misconduct and have recommended that the order should be without provision for Mr Ellen to apply to have it set aside. I agree with their recommendation.

This means that Mr Keith Ellen is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Keith Ellen shall not be entitled to apply for restoration of his eligibility to teach.

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

Mr Keith Ellen 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.



NAME OF DECISION MAKER: Paul Heathcote

Date: 6 October 2014

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