



National College for  
Teaching & Leadership

# **Mr Gary Duggan: Professional conduct panel outcome**

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

**April 2015**

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

<b>Teacher:</b>	Mr Gary Duggan
<b>Teacher ref no:</b>	1728542
<b>Teacher date of birth:</b>	14 October 1961
<b>NCTL Case ref no:</b>	11079
<b>Date of Determination:</b>	22 April 2015
<b>Former employer:</b>	Kenton School, Newcastle upon Tyne

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 22 April 2015 at 53-55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Gary Duggan.

The panel members were Paul Bompas (lay panellist – in the chair), Mick Levens (teacher panellist) and Peter Cooper (teacher panellist).

The legal adviser to the panel was Patricia D’Souza of Eversheds LLP.

The presenting officer for the National College was Lucy Coulson of Browne Jacobson LLP.

Mr Gary Duggan was not present and was not represented.

The hearing took place in public and was recorded.

## **B. Allegations**

The panel considered the allegation set out in the notice of proceedings dated 6 January 2015.

It was alleged that Mr Gary Duggan was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed at Kenton School:

1. A number of indecent images of children (or records of the viewing the same) were found on:-
  - a. Your laptop
  - b. Your ex-partner's laptop which you had access to.

## **C. Preliminary applications**

The panel has considered whether this hearing should continue in the absence of Mr Duggan.

The panel is satisfied that the National College has complied with the service requirements of Regulation 19 a to c of the Teacher Disciplinary (England) Regulations 2012 (the "Regulations").

The panel is also satisfied that the notice of proceedings complies with paragraphs 4.11 and 4.12 of the Disciplinary procedures for the teaching profession ("the procedures").

The panel has determined to exercise its discretion under paragraph 4.29 of the procedures to proceed with the hearing in the absence of Mr Duggan.

The panel understands that its discretion to commence a hearing in the absence of Mr Duggan has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that Mr Duggan may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1. The panel is satisfied that Mr Duggan is actually aware of the proceedings, as the notice of proceedings was dated 6 January 2015 and therefore more than 8 weeks' notice has been given. The notice of proceedings was sent on 6 January 2015 by first class post to Mr Duggan's last known address. No response has been received from Mr Duggan in relation to the notice of proceedings. The presenting officer submitted that Mr Duggan indicated in the notice of referral form that he does not intend to take part in any hearing. The panel noted that the

notice of referral form was dated in April 2014, over a year ago. However, in his written representations to the National College dated 28 January 2015, Mr Duggan expressly states that he is aware that a hearing is to be “held against him” on 22 April 2015. The panel also took note that the National College has attempted to engage with Mr Duggan subsequently, but he has failed to respond to further correspondence. The presenting officer submitted that Mr Duggan has not provided any indication that he ever intended to attend this hearing.

The panel therefore considers that Mr Duggan has waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place.

The panel has had regard to the requirement that it be only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. There is no indication that an adjournment might result in Mr Duggan attending the hearing.

The panel has had regard to the extent of the disadvantage to Mr Duggan in not being able to give his account of events, having regard to the nature of the evidence against him. The panel has the benefit of written representations made by Mr Duggan and is able to ascertain the lines of defence on his behalf. The panel has noted that one witness relied upon by the National College is to be called to give evidence and the panel can test that evidence in questioning that witness, considering such points as are favourable to Mr Duggan, as are reasonably available on the evidence. The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard Mr Duggan’s account.

The panel also notes that a witness, who is prepared to give evidence, has travelled a significant distance to be here today, and that it would be inconvenient for the witness to return again.

The panel has had regard to the seriousness of this case, and the potential consequences for Mr Duggan and has accepted that fairness to Mr Duggan is of prime importance. However, it considers that in light of Mr Duggan’s waiver of his right to appear (given his lack of engagement) the panel considers that an adjournment of the hearing is unlikely to secure his future attendance. In addition, by taking such measures referred to above to address any unfairness insofar as is possible, and taking account of the inconvenience an adjournment would cause to the witness; that on balance, these are serious allegations and the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

The presenting officer also made an application for additional documents to be admitted to the bundle, which are printouts of searches undertaken on two computers examined by the witness who is due to give evidence today. The presenting officer indicates that these documents are referred to in the witness statement included in the bundle. It was submitted that these additional documents may assist the panel in understanding the oral evidence to be given today.

The panel were advised by the legal advisor that in accordance with paragraph 4.18 of the procedures, the panel may admit any evidence where it is fair to do so, which may reasonably be considered to be relevant to the case. However, given Mr Duggan's absence from the hearing today, the panel should exercise caution and consider whether Mr Duggan has received the relevant documents and whether he has had sufficient opportunities to make representations about them. The panel determined that as these documents were only provided to the presenting officer by the witness today, Mr Duggan has not had the opportunity to review or comment on them. For that reason, the panel decided it was neither fair nor reasonable to include these additional documents in the bundle. The presenting officer's application was rejected.

## **D. Summary of evidence**

### **Documents**

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

Section 1:	Application Form	Pages 1 – 2
Section 2:	Notice of Proceedings	Pages 3 – 9
Section 3:	National College's statements	Pages 10 – 17
Section 4:	National College's documents	Pages 18 – 149
Section 5:	Teacher documents	Pages 150 – 153

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

### **Witnesses**

No witnesses appeared on behalf of Mr Duggan. The panel heard oral evidence from a hi-tech crime forensic investigator for the police (witness A).

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

The panel has now carefully considered the case before us and have reached a decision.

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

Mr Duggan was employed as an unqualified teacher of Motor Vehicle Technology from 1 September 2010 at Kenton school (“the school”) after having previously worked at another school since January 2007. On 23 August 2012, the school became aware that Mr Duggan had been arrested by the police regarding allegations of possession of indecent images of children. Following an investigation meeting with the police and local authority, the school decided to suspend Mr Duggan with immediate effect. Mr Duggan was interviewed twice by the police and following this, the police decided to take no further action as there was no evidence that the indecent images had been downloaded on purpose by a particular individual. The school undertook a separate disciplinary investigation. On 28 June 2013 Mr Duggan wrote to the school to offer his resignation with effect from 31 August 2013.

### **Findings of Fact**

The panel’s findings of fact are as follows:

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

- 1. A number of indecent images of children (or records of the viewing the same) were found on:-**
  - a. Your laptop**
  - b. Your ex-partner’s laptop which you had access to.**

The presenting officer submitted in her opening statement that the allegations relating to Mr Duggan do not allege that Mr Duggan or any other person downloaded the alleged indecent images. This may be relevant to the panel’s consideration of whether any facts found amount to unacceptable professional misconduct or conduct that may bring the profession into disrepute.

Mr Duggan’s ex-partner did not attend the hearing to give evidence, despite receiving a witness summons from the National College. The presenting officer intended to call the ex-partner to rebut the potential defence that Mr Duggan has put forward in his written representations. However, the presenting officer was content to put forward the National

College's case as the panel could consider the written statement provided by Mr Duggan's ex-partner to the police and the oral evidence of witness A.

The panel noted from the ex-partner's signed statement to the police, dated 11 August 2012, that Mr Duggan and his ex-partner were previously involved in a relationship. During that relationship, Mr Duggan and his ex-partner had a conversation about Facebook and the ex-partner mentioned that she had an Acer laptop which she was unable to use due to a broken keyboard. Mr Duggan's ex-partner confirmed that Mr Duggan offered to pass the laptop to a third party to repair and the ex-partner was content for Mr Duggan to retain the laptop for his own use for as long as he wanted. After the end of their relationship, Mr Duggan returned the laptop to his ex-partner on 9 August 2012. Upon going through the "history" of the computer on 11 August 2012, the ex-partner discovered an "initial frame of a video which she took to be pornography" and which she indicates in her statement, was clearly of children. She checked the dates the images were downloaded and it was on a date that she was not with Mr Duggan, which she believes to be 28 July 2012. The ex-partner then reported the matter to the police on the same date (11 August 2012).

Witness A confirmed that a number of images were recovered from the Acer laptop:

- 9 movies (1 of which had been downloaded 3 times) and had file creation dates of between 28 June 2012 and 6 August 2012. All movies would be classed as indicative (that showed teenagers dancing and moving provocatively) apart from 2 movies which show a nudism beauty pageant for under 18 year olds. Witness A explained in his oral evidence that what would be considered mainstream adult pornography relating to individuals aged 18 or more, is not usually classified as "indicative" images. Indicative images could relate to individuals aged 16-18 which essentially are not "illegal" images but may be considered to be inappropriate. For example, these may be non-erotic and non-sexualised pictures showing children in their underwear/swimming costumes from either commercial sources or family albums;
- The following images were found in areas of the computer that a user would not find accessible:
  - 15 indicative images (showing young teens in scant clothing aged over 18 or more);
  - 10 small indecent images;
  - 3 partial bestiality images;
  - 8 teen header related images showing banner headers advertising teen gallery websites;
  - recent internet searches – were recorded using the terms "preteen pantie" and "preteen nude".

The police interviews included in the bundle, confirm that on 14 August 2012, Mr Duggan's EEE PC Seashell netbook ("netbook") was seized by the police and he was arrested and interviewed. Subsequent forensic examination of that netbook by Witness A revealed a number of images including:

- 4 level 1 images (Images depicting erotic posing with no sexual activity);
- 63 nudism photos (Witness A indicated that nudism type photos are photos of children in an obvious setting of a nudism camp, with nude adults also present);
- 9 teen website banners;
- 403 indicative "teen" images;
- Words typed into the search engine such as "teen art", "teen nudism", "find teen bodies" and "panties".

Witness A was able to determine that for some searches it was clear that someone had deliberately typed search terms into the web browser.

Witness A confirmed that as a result of his examination he is unable to place a particular individual at a computer at any particular time. However, he recorded the date stamps of the various images as opposed to the date the images were accessed. The date stamps are relatively accurate as they tallied with the dates that the laptop computers were seized.

In his opinion, the images discovered on Mr Duggan's netbook contained more data which indicated images were downloaded on 13 August 2012 as that was the file creation date.

In Witness A's opinion, all images recovered had been deliberately accessed and stored following specific internet searches, and not by other means. The link between the two computers examined was the search for nudism websites and the "teen headers" on both computers, as that was suggestive of the same person or persons having accessed the same information.

The panel found that a number of images were downloaded on Mr Duggan's netbook on 13 August 2012, after the cessation of the relationship and after his ex-partner reported the matter to the police on 11 August 2012. The panel therefore considered it unlikely that his ex-partner was attempting to "set him up" or fabricate a false allegation against him.

The panel was mindful that it was unable to test some of the points raised by Mr Duggan relating to his ex-partner's evidence as neither she nor Mr Duggan attended the hearing. However, the panel carefully examined her statement in the context of the evidence provided by Witness A. The panel considered that the factual pattern of events that Mr Duggan's ex-partner outlined was substantially corroborated by the oral evidence of Witness A and his findings.

The school's investigation report reflects Mr Duggan's indication that a number of visitors to his home had access to both computers but that he still believed that it was the ex-partner who had accessed the images. The report further stated that Mr Duggan had two separate occasions to explain to the police why such images were present on his computer and he chose not to do so, upon legal advice.

In his written representations to the National College included in the bundle, Mr Duggan denies having searched for indecent images of children, or having stored, shared, saved or swapped indecent images of children.

The panel were persuaded by the presenting officer's submissions that as Witness A was able to confirm the dates when certain images were present on both computers and that very similar search criteria was used, it was more likely than not that the same person had downloaded indecent images onto both computers. That person had to have access to both computers. In his interviews with the school, Mr Duggan has confirmed that both computers were present at his house. Even though others may have been able to access the computers, the panel considered, on the balance of probabilities that it was more likely than not that Mr Duggan had allowed these images to be present on both computers.

The panel therefore find allegation 1a. and 1b. proven.

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

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 the panel refers to as the 'guidance'.

The panel is satisfied that the conduct of Mr Duggan in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Duggan 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;
- 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 Mr Duggan fell significantly short of the standards expected of the profession. The school's conditions of service make clear that as a teacher Mr Duggan was required to make sure that he was "familiar with and act[ed]

in accordance with the school's child protection policy". There were documents in the bundle which confirmed that Mr Duggan had received training on child abuse and neglect issues in 2010 from his local Safeguarding Children Board. Allowing indecent images relating to nude pictures of children to be present on his netbook and his ex-partner's Acer laptop fell significantly short of the standards referred to above.

The panel has also considered whether Mr Duggan's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the guidance. The panel has found that his activities involved possessing indecent photographs or images of a child/children, and permitting any such activity, including one off incidents is relevant. The guidance indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would be considered to be incompatible with being a teacher and would amount to unacceptable professional conduct. Accordingly, the panel is satisfied that Mr Duggan 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 panel's findings of serious misconduct displayed by Mr Duggan would likely have a negative impact on Mr Duggan's status as a teacher, potentially damaging the public perception of the profession. Permitting indecent images of children to be present on his own netbook and the Acer laptop of his ex-partner is not the behaviour of a role model.

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

## **Panel's recommendation to the Secretary of State**

Given the panel's findings in respect of 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 guidance and having done so has found all of them to be relevant in this case, 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.

There is a strong public interest consideration in respect of the protection of pupils and members of the public given the panel's serious findings of Mr Duggan allowing indecent images of children to be present on both his netbook and his ex-partner's Acer computer.

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

The panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Duggan 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 Duggan.

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 Duggan. 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
- any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting such activity, including one-off incidents

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. The panel were mindful of Witness A's evidence, in that there was a link between the Acer laptop and netbook, as searches using the same or similar key terms was suggestive of the same person or persons having used both computers. Witness A considered that such search terms were keyed in deliberately. At the fact-finding stage of this matter, the panel considered it was more likely than not that Mr

Duggan had allowed such search terms to be used on both computers. There was no evidence presented by either the presenting officer or Mr Duggan which suggested he was acting under duress.

It was clear from the historic references included in the bundle of documents that he had been working as an unqualified teacher for 5 years. The panel note that Mr Duggan indicates in his written representations that he is of good character. He says his record at the schools he has worked in was impeccable whilst working with a large amount of the most difficult students with special educational needs and behavioural problems. The presenting officer submitted that in the school's disciplinary matter there was no reference to any previous concerns or disciplinary issues being raised against Mr Duggan. Therefore the panel consider that Mr Duggan is of good record.

Although it has heard evidence of Mr Duggan's good character, the panel has noted that no recent references have been provided from any colleagues that can attest to his abilities as a teacher. Although historic references contained within application forms within the bundle of documents, indicate that he is an able tutor who enjoys good relationships with young people and he is a loyal, trustworthy and reliable employee.

The panel has decided that the public interest considerations outweigh the interests of Mr Duggan. The presence of indecent images of children on two computers that Mr Duggan had access to was a significant factor 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 is of the view that prohibition is both proportionate and appropriate.

The panel went on to consider whether or not it would be appropriate for them to decide to recommend that a review period of the order should be considered. The panel were mindful that the guidance 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 guidance indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these behaviours includes any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. Mr Duggan has been responsible for permitting indecent images of children to be present on his netbook and his ex-partner's Acer laptop which is activity related to the possessing of indecent images of children.

The panel notes from Mr Duggan's written representations that he continues to deny he was involved in searching, storing, sharing, saving or swapping indecent images of children. However, Mr Duggan has chosen not to participate in this hearing and/or to provide evidence to support his denial. The evidence considered by the panel led to it

finding the allegations proven. The panel felt such 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 provisions 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 both sanction and review period.

The panel has found the allegations proven. The panel has also found that Mr Duggan's activities involved possessing indecent photographs or images of a child/children.

The panel has given careful consideration to the guidance published by the Secretary of State, and I have also given careful consideration to that same guidance. That indicates that where behaviours associated with such an offence exist, that conduct would be considered to be incompatible with being a teacher and would amount to unacceptable professional conduct. In this case the panel was satisfied that Mr Duggan is guilty of unacceptable professional conduct.

I have considered carefully all the matters in this case. I have taken into account the need to be proportionate and to weigh up the interests of the teacher and the public.

In my judgement a prohibition order is both necessary in the public interest and proportionate. The guidance clearly also supports that.

I have also given careful consideration to the matter of a review period. I support the reasons set out by the panel that in this case it is proportionate that there should be no review period.

**This means that Mr Gary Duggan 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 Gary Duggan 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 Mr Duggan.

Mr Gary Duggan 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: Alan Meyrick**

A handwritten signature in black ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

**Date: 24 April 2015**

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