



National College for
Teaching & Leadership

Mr Mahmudul Choudhury Professional conduct panel outcome

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

October 2015

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

Teacher: Mr Mahmudul Choudhury
Teacher ref number: 0652224
Teacher date of birth: 18 March 1979
NCTL case reference: 13389
Date of determination: 5 October 2015
Former employer: Unknown

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 5 October 2015 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Mahmudul Choudhury.

The panel members were Mrs Mel Gunstone (lay panellist – in the chair), Mr Tony Woodward (former teacher panellist (not having been a teacher in the five years prior to the hearing)) and Mrs Alison Walsh (teacher panellist).

The legal adviser to the panel was Mr Thomas Whitfield of Eversheds LLP solicitors.

The presenting officer for the National College was Mr Chris Geering of counsel, instructed by Nabarro LLP solicitors.

Mr Mahmudul Choudhury was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 28 July 2015.

It was alleged that Mr Mahmudul Choudhury was guilty of having been convicted of a relevant offence, in that:

On 6 February 2015, at South East London Magistrates' Court, he was convicted that on 11 July 2014, he used threatening, abusive or insulting words or behaviour or disorderly behaviour with intent to cause/thereby causing a person harassment, alarm or distress and the offence was racially aggravated contrary to section 4A of the Public Order Act 1986 and section 31(1)(b) of the Crime and Disorder Act 1998. On 17 February 2015 he was ordered to pay a fine of £465, costs of £85 and victim surcharge of £47.

The allegation was not admitted.

C. Preliminary applications

The presenting officer applied for the hearing to proceed in the absence of Mr Choudhury.

The panel was satisfied that NCTL had complied with the service requirements of paragraph 19 a to c of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations"). The panel was also satisfied that the Notice of Proceedings complied with paragraphs 4.11 and 4.12 of the Teacher Misconduct: Disciplinary Procedures for the Teaching Profession, (the "Procedures").

The panel determined to exercise its discretion under Paragraph 4.29 of the Procedures to proceed with the hearing in the absence of the teacher. The panel understood that its discretion to commence a hearing in the absence of the teacher had to be exercised with the utmost care and caution, and that its discretion was a severely constrained one. In making its decision, the panel noted that the teacher may waive his right to participate in the hearing. The panel took account of the various factors drawn to its attention from the case of *R v Jones* [2003] 1 AC1.

The panel also took notice of Mr Choudhury's letter of 30 March 2015, in response to a previous notice of proceedings, showing that he was aware of the proceedings. The panel noted that Mr Choudhury provided as his address, in that letter, the address to which all correspondence had been sent. This also matched the address for Mr Choudhury obtained from a search agent. The panel was mindful of the note of a telephone call, in which the caller indicated that he was Mr Choudhury's brother and that

Mr Choudhury had moved address. The panel noted however that no alternative address was provided and that Mr Choudhury had not responded to voicemail messages left at the number provided by Mr Choudhury's brother.

The panel therefore considered that Mr Choudhury was aware of the proceedings and had waived his right to be present at the hearing, in the knowledge of when and where the hearing was taking place.

The panel found no indication that an adjournment might result in the teacher attending the hearing.

The panel had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place.

The panel had regard to the extent of the disadvantage to the teacher in not being able to give his account of events, having regard to the nature of the evidence against him. The panel noted that the allegation is of a conviction and that the panel cannot look behind the conviction to reassess whether the facts that gave rise to it took place. The panel had the benefit of a letter from Mr Choudhury and character references provided by him. The panel had not identified any significant gaps in the documentary evidence provided to it and determined that should such gaps arise during the course of the hearing, the panel would be able to consider whether to adjourn for such documents to become available. The panel noted that it could also take any gaps in documentary evidence into consideration when deciding whether the presenting officer had discharged the burden of proof. The panel determined that it was 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 the teacher's account.

The panel had regard to the seriousness of this case, and the potential consequences for the teacher and accepted that fairness to the teacher is of prime importance. However, it considered that in light of the teacher's waiver of his right to appear and by taking such measures referred to above to address that unfairness insofar as is possible, on balance, the public interest was in favour of the hearing continuing.

Mr Choudhury also indicated that he wanted the hearing to be conducted in private.

The panel therefore considered whether to exercise its discretion under paragraph 11 of the Regulations and paragraph 4.57 of the Procedures to exclude the public from all or part of the hearing.

The panel determined not to exercise its discretion under paragraph 11(3)(b) of the Regulations and the second bullet point of paragraph 4.57 of the Procedures that the public should be excluded from the hearing.

In doing so, the panel considered whether it would be contrary to the public interest to exclude the public. In applying this test, the panel took into account the general rule that hearings should be held in public and that this is generally desirable to maintain public confidence in the administration of these proceedings and also to maintain confidence in the teaching profession. In light of Mr Choudhury's request that the hearing be in private, the panel balanced the reasons why he requested that the public be excluded against the competing reasons for which a public hearing is required.

The panel noted that any departure from the general rule had to be no greater than the extent reasonably necessary and that interference for a limited period of the hearing is preferable to a permanent exclusion of the public.

The panel concluded that it would be contrary to the public interest to exclude the public from the hearing and so determined that the hearing would proceed in public.

The panel considered whether there were any steps short of excluding the public that would serve any legitimate purpose, but did not consider that there were any such steps.

D. Summary of evidence

Documents

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

Section 1: Chronology – pages 1 to 2;

Section 2: Notice of Proceedings and Response – pages 3 to 9;

Section 3: NCTL documents – pages 10 to 31;

Section 4: Teacher documents – pages 32 to 46.

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

In addition, the panel agreed to accept a bundle of documents relating to the service of the Notice of Proceedings on Mr Choudhury and subsequent attempts to contact him, which were separately numbered service bundle pages 1 to 27.

Witnesses

The panel did not hear any oral evidence.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr Mahmudul Choudhury has practised as a teacher. On 17 January 2015 Mr Choudhury was arrested and on 6 February 2015, he was convicted, following a guilty plea, of an offence contrary to the Crime and Disorder Act 1998, which is the subject matter of this hearing.

Findings of fact

Our findings of fact are as follows:

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

On 6 February 2015, at South East London Magistrates' Court, you were convicted that on 11 July 2014, you used threatening, abusive or insulting words or behaviour or disorderly behaviour with intent to cause/thereby causing a person harassment, alarm or distress and the offence was racially aggravated contrary to section 4A of the Public Order Act 1986 and section 31(1)(b) of the Crime and Disorder Act 1998. On 17 February 2015 you were ordered to pay a fine of £465, costs of £85 and victim surcharge of £47.

The panel has been provided with a memorandum of the register of the South East London Magistrates' Court, showing that Mr Mahmudul Choudhury was convicted on 6 February 2015 that on 11 July 2014, he used threatening, abusive or insulting words or behaviour or disorderly behaviour with intent to cause/thereby causing another person harassment, alarm or distress and the offence was racially aggravated within the terms of section 28 of the Crime and Disorder Act 1998.

The panel noted that the conviction was stated in the register to be contrary to section 31(1)(b) of the Crime and Disorder Act 1998. Following advice from the panel's legal adviser, the panel noted that a conviction under section 31(1)(b) of that Act necessarily involved an offence under section 4A of the Public Order Act 1986.

The panel also had the benefit of a letter from Mr Choudhury, in which he accepted that he had been convicted of an offence of the nature alleged.

In these circumstances, the panel found this allegation proven.

Findings as to conviction of a relevant offence

Having found the facts of the allegation to be proven, the panel has gone on to consider whether that conviction amounts to conviction of a relevant offence.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as “the Advice”.

The panel is satisfied that the conduct of Mr Choudhury in relation to the facts it has found proved, involved breaches of the Teachers’ Standards. We consider that by reference to Part Two, Mr Choudhury 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
 - showing tolerance of and respect for the rights of others;
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs;
 - ensuring that personal beliefs are not expressed in ways which exploit pupils’ vulnerability or might lead them to break the law.

The panel has found that Mr Choudhury’s actions were relevant to teaching, working with children and working in an education setting, in that as a teacher Mr Choudhury was to act as a role model, instilling in pupils values as well as knowledge. The panel noted that Mr Choudhury’s Facebook post, which gave rise to the conviction, was publically accessible and therefore could have been accessed by any of his pupils.

The panel did not consider that Mr Choudhury’s actions had a potential impact on the safety or security of pupils or members of the public, beyond that detailed above.

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

This is a case of an offence involving intolerance and/ or hatred on the grounds of race and/or religion, which the Advice states is likely to be considered a relevant offence.

The panel has taken into account the written evidence that has been adduced attesting to the teacher’s professional and ethical attitude and his contribution to charity and community projects, including inter-faith activities. The panel has also taken account of written evidence regarding Mr Choudhury’s abilities as a teacher.

Further, the panel has taken into consideration Mr Choudhury's account that he had been fasting for at least 17 hours a day when the Facebook post was uploaded, but noted that as well as posting an image, Mr Choudhury added a comment to the image, which required a conscious effort on the part of Mr Choudhury. Moreover, the comment indicated Mr Choudhury's agreement with the sentiment of the image and thereby exacerbated the offensive nature of the post.

The panel has found the seriousness of the offending behaviour that led to the conviction is relevant to the teacher's ongoing suitability to teach. The panel considers that a finding that this conviction is a relevant offence 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 finding of conviction of a relevant offence, it is necessary for it to go on to consider whether to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to make such a recommendation, 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 all of them to be relevant in this case, namely the protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Choudhury, which involved him posting an anti-Semitic image and comment, on his own Facebook page, which was accessible to his pupils, former pupils and the wider public, the panel considered that there was a public interest consideration in the protection of pupils from exposure to such attitudes being espoused by their teacher, who in that role had taken on a position of trust.

Similarly, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Choudhury 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 Choudhury 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 Choudhury.

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 Choudhury. 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; and
- actions or behaviours that undermine fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs; or that promote political or religious extremism.

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 does not accept that Mr Choudhury's actions were not deliberate.

There was no suggestion that Mr Choudhury was acting under duress when posting the image or making the comment on Facebook.

The panel has however taken into account that, to its knowledge, Mr Choudhury is of previously good history and indeed has provided a number of references attesting to his work with people of other faiths.

The panel has been provided with character references relating to Mr Choudhury. These include a reference from the Chairman of the Council of Mosques, Tower Hamlets, in which it is recorded that Mr Choudhury has been instrumental to interfaith relationship, has promoted inter faith dialogue, participated in inter faith events and promoted/fostered relationship with the wider community. That reference states that the Council did not find Mr Choudhury expressing any racial or religious hatred whilst volunteering for the Council. The panel was also shown a reference from the head teacher of Al-Madrasah Al-Quraaniyyah, in which he stated that Mr Choudhury has always been compassionate, showing concern and well-being for all and that he had never heard or seen Mr Choudhury express any signs of malice or contempt towards anyone, stating that Mr Choudhury is certainly not, in the writer's view, racist, xenophobic or anti-Semitic. The panel has also considered a reference from Individual A in which she professes disbelief that Mr Choudhury could possibly be accused of racism and definitely not deliberately. The panel has also had the benefit of a reference from Individual B. A reference from a teacher at Cumberland School indicates that Mr Choudhury was never seen to express or show any form of racial or religious views. A reference from a representative of the Shahjalal Centre similarly states that the facts leading to the conviction were wholly inconsistent with Mr Choudhury's professional and personal reputation. A reference from

a youth manager at the South Poplar and Limehouse Action for Securing Housing group states that Mr Choudhury regularly gives his free time to support activities with the aim of bringing people together regardless of ethnic background and religion. A reference from the Deputy Mayor of Tower Hamlets confirms Mr Choudhury's contribution and effort in bettering community cohesion.

Notwithstanding these references, in light of the facts of the conviction, the panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Choudhury. The panel noted that Mr Choudhury not only re-posted an image supporting the holocaust; he added a comment in support of that message. This was a significant factor in the panel forming the opinion that prohibition is proportionate and appropriate. 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 for them to decide to recommend that a review period of the order should be considered. The panel were mindful that the 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 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One of these is intolerance and/or hatred on the grounds of race/religion or sexual orientation. This behaviour was clearly present in the facts found proven, including as they did the use of threatening, abusive or insulting words with intent to cause, or thereby causing harassment, alarm or distress, which was found by a criminal court to be racially aggravated.

The panel notes that Mr Choudhury has sent an apology to a former pupil who had viewed the Facebook post in question, but aside from this has seen little evidence that Mr Choudhury has any insight into or remorse for his actions. The panel notes that Mr Choudhury has instead, in his statement to the panel, sought to go behind the conviction, trying to cast doubt on whether he did in fact post the image or comment in question. Mr Choudhury's engagement with the panel has been minimal, with him supplying a statement but failing to engage with the NCTL thereafter or to attend the hearing.

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 provisions for a review period.

Decision and reasons on behalf of the Secretary of State

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

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

In considering whether to recommend prohibition as an appropriate and proportionate sanction, the panel finds the following public interest considerations to be relevant to this case:

- the maintenance of public confidence in the profession;
- declaring and upholding proper standards of conduct; and
- the protection of pupils.

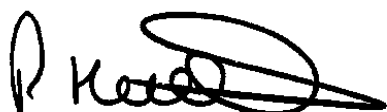
The panel has found Mr Choudhury's actions to be deliberate and there is no evidence to suggest he was acting under duress. Mr Choudhury has been convicted of a racially aggravated offence and the panel has recommended that a prohibition order be imposed. I agree with that recommendation.

In determining whether to allow Mr Choudhury to apply to have the order set aside at a future date the panel has noted a number of positive references. However the Secretary of State's advice is clear that intolerance and/or hatred on the grounds of race/religion or sexual orientation is a behaviour that might militate against a review period being set and the panel has recommended that no opportunity should be given for a set aside application. I agree with their recommendation.

This means that Mr Mahmudul Choudhury 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 allegation found proved against him, I have decided that Mr Mahmudul Choudhury 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 Mahmudul Choudhury 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.



Decision maker: Paul Heathcote

Date: 9 October 2015

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