



National College for
Teaching & Leadership

Mr David Hugh Gideon: Professional conduct panel outcome

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

August 2017

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Professional conduct panel decision and recommendations

Teacher: Mr David Hugh Gideon
Teacher ref number: 7551021
Teacher date of birth: 23 December 1949
NCTL case reference: 13135
Date of determination: 22 August 2017
Former employer: The Marches School, Shropshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 21 August 2017 to 22 August 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr David Hugh Gideon.

The panel members were Miss Jean Carter (lay panellist – in the chair), Ms Fiona Tankard (teacher panellist) and Mr John Matharu (lay panellist).

The legal adviser to the panel was Miss Surekha Gollapudi of Eversheds Sutherland (International) LLP solicitors.

The presenting officer for the National College was Mr Ian Perkins of Browne Jacobson LLP solicitors.

Mr Gideon 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 15 June 2017.

It was alleged that Mr Gideon was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that he:

1. Engaged in inappropriate electronic communications during which he:
 - a. received one or more indecent images of children from Individual A between 2010 to 2014;
 - b. engaged in discussion of sexual abuse of children with Individual A via email and / or Messenger in or around December 2012 to February 2013;
 - c. engaged in discussion of sexual abuse of children via Messenger in or around March 2011;
 - d. engaged in discussion of sexual abuse of children with Individual B including discussion of:
 - i. tying up and spanking Individual B's daughter;
 - ii. engaging in sexual activity with Individual B's daughter;
 - e. requested that one or more children send him photographs of themselves in or around May 2013 via Skype and / or Yahoo Chat including:
 - i. an image of them wearing their schoolgirl uniform;
 - ii. an image of their bottom;
 - iii. an image of them wearing a bikini.
2. His conduct at allegation 1 was sexually motivated.

The allegations have been denied by the teacher.

C. Preliminary applications

The panel considered an application from the presenting officer to proceed in the absence of Mr Gideon.

The panel was satisfied that the 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.

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. In particular, the panel considered that Mr Gideon had replied to the Notice of Proceedings and provided an account of his actions.

The panel therefore considered that the teacher waived his right to be present at the hearing in the knowledge of when and where the hearing was taking place.

The panel considered an application from Mr Gideon that the hearing should be held in private and noted that he did not provide any specific reasons to support this application. The panel noted that any departure from the general rule has 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 therefore considered whether there were any steps short of excluding the public that would serve the purpose of presenting evidence which was not directly relevant to the allegations but which provided important context to the allegations, and considered that to the extent it became necessary during the course of the hearing to discuss such matters, the panel would consider at that stage whether to exclude the public from that part of the hearing only.

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 Proceedings and response – pages 4 to 14

Section 3: NCTL witness statements – pages 16 to 24

Section 4: NCTL documents – pages 26 to 187

Section 5: Teacher documents – pages 189 to 195

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

Witnesses

The panel did not hear oral evidence from any witnesses.

E. Decision and reasons

The panel announced its decision and reasons as follows:

Mr Gideon commenced teaching at The Marches School (the “school”) in January 2014 as a part time teacher of law. In November 2014, the school was informed by Flintshire Social Services that Mr Gideon had been arrested on suspicion of having images of child abuse on his computer or other electronic devices at his home. His employment was terminated in December 2014 and he subsequently resigned in January 2015.

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. You engaged in inappropriate electronic communications during which you:

a) received one or more indecent images of children from Individual A between 2010 to 2014;

When questioned under caution by the police, Mr Gideon admitted that he received indecent images of children aged approximately 10 or 11 years old by email from Individual A. Mr Gideon stated that the images were not solicited and that he deleted them immediately on receipt. The panel had sight of a detailed description of the images which a forensic investigator had found on Mr Gideon’s computer. The panel went on to consider the description of the images which Mr Gideon provided to the police and found this to be persuasive evidence that he had looked at the images. The panel found the images to be of a serious and extreme nature and noted they had been categorised by the police as category C still images. The panel found that Mr Gideon had the opportunity to report the images to the authorities but he did not do so.

On the balance of probabilities, the panel found this allegation proved.

b) engaged in discussion of sexual abuse of children with Individual A via email and / or Messenger in or around December 2012 to February 2013;

The panel considered contemporaneous emails between Individual A and Mr Gideon. The panel found a number of emails from Individual A to Mr Gideon contained explicit descriptions of the sexual abuse of girls aged between 9 years old and 13 years old. The

panel found that Mr Gideon was an active participant in these email exchanges and was not simply receiving them.

Mr Gideon admitted during his police interview that he strongly suspected Individual A was a paedophile and indeed that Individual A was trying to recruit him, however he continued the email correspondence.

The panel also considered the content of messages within Messenger from Individual A to Mr Gideon which contained details of sexual abuse of a 9 year old girl.

Mr Gideon did not report the content of the emails or messages (which he received over the course of several years) to the police, nor did he raise any safeguarding concerns about the ongoing child abuse which was described.

On the balance of probabilities, the panel found this allegation proven.

c) engaged in discussion of sexual abuse of children via Messenger in or around March 2011;

The panel carefully considered the content of messages exchanged on Messenger in March 2011 in which Mr Gideon sent explicit messages to an individual whom Mr Gideon believed to be a school aged child. Mr Gideon admitted the fact of the exchange of messages within his interview under caution with the police.

The panel considered the evidence of Mr Gideon that as the communications took place electronically and he did not meet any children in person, he could not be sure of their age. The panel did not find this explanation to be credible as at various points within the exchanges, Mr Gideon received confirmation from the children that they were under 16 years old. The panel considered evidence that one child confirmed her date of birth to Mr Gideon and on another occasion he discussed the reaction of a child's headteacher to the short length of her school uniform skirt. Whilst Mr Gideon may not have known for certain to whom he was speaking online, the panel found that on the balance of probabilities, he believed he was speaking to children under 16 years old.

On the balance of probabilities, the panel found this allegation proven.

d) engaged in discussion of sexual abuse of children with Individual B including discussion of:

- i. tying up and spanking Individual B's daughter;**
- ii. engaging in sexual activity with Individual B's daughter;**

The panel considered the content of a discussion which took place between Individual B and Mr Gideon in February 2013 in which Individual B initiated a conversation about having Mr Gideon tie up and spank her and her daughter and to which Mr Gideon

responded that he would consider doing this and he stated he would go “as far as you wanted me to.”

On the balance of probabilities, the panel found this allegation proven.

e) requesting that one or more children send you photographs of themselves in or around May 2013 via Skype and / or Yahoo Chat including:

- i. an image of them wearing their schoolgirl uniform;**
- ii. an image of their bottom;**
- iii. an image of them wearing a bikini;**

The panel considered a series of messages on Skype chat between Mr Gideon and an individual who appeared from the messages to be of school age. During this conversation Mr Gideon asked for a picture of the child in a schoolgirl uniform. Later in the conversation he requested images of the child’s bottom.

Mr Gideon had further conversations with a child on Yahoo chat in which he requested an image of the child in a bikini.

The panel found it was clear he received the images and encouraged the senders with positive comments about their looks. He also made suggestive and inappropriate remarks about their bodies.

On the balance of probabilities, the panel found this allegation proven.

2. Your conduct at allegation 1 was sexually motivated

As with all findings of fact, the panel considered this question applying the balance of probabilities. The panel considered whether on the balance of probabilities reasonable persons would think the words and actions found proven could be sexual. The panel then considered whether, in all the circumstances of the conduct in the case, it was more likely than not that the teacher’s purpose in such words and actions were sexual.

The panel considered whether, even in the absence of any direct evidence, sexual motivation should be inferred from all the circumstances of the case.

The panel considered the evidence of the email exchanges, and messages on Skype, Messenger and Yahoo chat. The panel noted the statement of Mr Gideon in which he said, “I can categorically assure you I have no sexual interest in children.” However the panel could not reconcile this with the material Mr Gideon had clearly received and repeatedly engaged with over the course of a number of years. Having found allegation 1

proven, the panel considered that sexual motivation was more likely than not to have been Mr Gideon's motivation.

On the balance of probabilities, the panel found this allegation proven.

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

Having found all of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher misconduct: The prohibition of teachers, which the panel refers to as "the Advice".

The panel is satisfied that the conduct of Mr Gideon in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Mr Gideon 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

The panel is satisfied that the conduct of Mr Gideon fell significantly short of the standards expected of the profession.

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

The panel has found that the offence of the activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting any such activity, including one off incidents, is relevant.

The Advice indicates that where behaviours associated with such an offence exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel notes that the allegations took place outside of the education setting. The panel found that whilst Mr Gideon's behaviour took place outside of the setting of the school, the content of his communications with children and the serious nature of the images he received, which were of an abhorrent sexual nature, were so inappropriate that it amounted to unacceptable professional conduct.

The panel has considered whether the allegations also amount to conduct which may bring the profession into disrepute. In considering this, the panel has taken into account the way the teaching profession is viewed by others and has considered the influence

that teachers may have on pupils, parents and others in the community. The panel has taken into account the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct are extremely serious and the conduct displayed would be certain to have a negative impact on the individual's status as a teacher, likely damaging the public perception.

Having found the facts of particulars of allegations 1 and 2 proved, we find that Mr Gideon's actions amount to 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 considered whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. Prohibition orders should not be given as a punitive measure, or to show that blame has been apportioned, although they are likely to have a punitive effect.

The panel considered the particular public interest considerations set out in the Advice and having done so found a number of them to be relevant in this case, namely the protection of pupils; the protection of other members of the public; the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Gideon, which involved sexually motivated discussions about child abuse with two adults, receipt of explicit images of child abuse, and sexually motivated discussions online with children (including receipt of images from children), there is a strong public interest consideration in respect of the ongoing protection of children.

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

The panel also considered that there was a strong public interest in declaring proper standards of conduct in the profession, as the conduct found against Mr Gideon was outside that which could reasonably be tolerated.

In view of the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Mr Gideon.

In carrying out the balancing exercise, the panel considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Gideon. 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;
- sexual misconduct, for example involving actions that were sexually motivated or of a sexual nature;
- 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 present that would point to the appropriateness of a prohibition order, the panel went on to consider whether or not there were sufficient mitigating factors to militate against the appropriateness and proportionality of a prohibition order, particularly taking into account the nature and severity of the behaviour in this case.

The panel noted that there was no evidence to suggest that the teacher was acting under duress, and in fact the panel found the teacher's actions to be calculated, motivated and deliberate.

The panel noted Mr Gideon's own declarations of his previous good history and his claim that he could have elicited a significant number of references as to his character from former pupils. However Mr Gideon did not actually produce any references for the panel to consider. Additionally, no references were provided from any colleagues that could attest to his abilities as a teacher. In any event, the panel considered that Mr Gideon's behaviour was too serious to be mitigated by any previous good history.

In light of the above, the panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.

The panel was of the view that applying the standard of the ordinary intelligent citizen, recommending no prohibition order would not be a proportionate and appropriate response. The panel considered that recommending only the publication of the adverse findings in this case would unacceptably compromise the public interest considerations present, despite the severity of consequences for the teacher of prohibition.

The panel was of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Gideon. 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 decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against the recommendation of a review period. These behaviours include any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. The panel has found that Mr Gideon received indecent images of children by email and chose not to notify the relevant authorities.

Mr Gideon's statement to the panel was primarily concerned with the impact of the police investigation on him and did not adequately address his decision not to alert the authorities to the clear evidence of child abuse he received when he was sent Category C indecent photographs of children.

Additionally, the panel found that Mr Gideon showed no insight into the severity of his actions and in fact sought to minimise the severity of his behaviour within his statement to the panel, describing it as "nothing more than internet chat." He went on to say that "I had no evidence whatsoever as to any abuse suffered by this girl other than what was said over the internet or by text" and he was "never quite sure as to what age the girl was." The panel found that Mr Gideon had significant information within the emails and messages he exchanged to be fully aware of possible child abuse. Mr Gideon also acknowledged he had serious concerns that Individual A was a paedophile.

In light of this evidence, the panel did not find Mr Gideon's statement that he had insufficient information to be credible taking into account the clear sexual nature of the images sent to Mr Gideon, the explicit descriptions of child abuse which he received, and replied to, by email and the evidence that he was aware of the date of birth of at least one child that he was speaking to online. The panel could not accept Mr Gideon's assertion that the information he held was insufficient to raise concerns under safeguarding guidelines.

Moreover Mr Gideon declared within his statement that he attended "numerous meetings on 'Every Child Matters' and child protection issues." The panel considered that Mr Gideon would have been fully aware that even suspicions of child abuse should be reported to the authorities and in any event, specialist child protection training was not

necessary to ascertain that the emails and images depicted child abuse and should be reported.

The panel was in no doubt that the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of sanction and review period.

In considering this case I have given very careful attention to the Advice that is published by the Secretary of State concerning the prohibition of teachers.

In this case the panel has found all of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has made a recommendation to the Secretary of State that Mr Gideon should be the subject of a prohibition order, with no provision for a review period.

In particular the panel has found that Mr Gideon 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.

The panel is satisfied that the conduct of Mr Gideon fell significantly short of the standards expected of the profession.

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

The panel has found that the offence of the activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child, or permitting any such activity, including one off incidents, is relevant.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider

whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr Gideon, and the impact that will have on him, is proportionate.

In this case I have considered the extent to which a prohibition order would protect children. I have noted that the behaviours took place outside of a school setting. The panel has observed “the content of his communications with children and the serious nature of the images he received, which were of an abhorrent sexual nature, were so inappropriate that it amounted to unacceptable professional conduct.”

A prohibition order would prevent Mr Gideon from teaching children. I have also taken into account the panel’s comments on insight and remorse which the panel sets out as follows, “Mr Gideon showed no insight into the severity of his actions and in fact sought to minimise the severity of his behaviour within his statement to the panel, describing it as “nothing more than internet chat.”

In my judgement the lack of insight means that there is some risk of the repetition of this behaviour and this risks future children being subject to his behaviours. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, “The findings of misconduct are extremely serious and the conduct displayed would be certain to have a negative impact on the individual’s status as a teacher, likely damaging the public perception.”

I have had to consider that the public has a high expectation of professional standards of all teachers and that failure to impose a prohibition order might be regarded by the public as a failure to uphold those high standards. In weighing these considerations I have had to consider the matter from the point of view of an “ordinary intelligent and well-informed citizen.”

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Mr Gideon himself.

The panel has commented, “Mr Gideon did not actually produce any references for the panel to consider. Additionally, no references were provided from any colleagues that could attest to his abilities as a teacher. In any event, the panel considered that Mr Gideon’s behaviour was too serious to be mitigated by any previous good history.”

A prohibition order would clearly prevent Mr Gideon from teaching and would also deprive the public of his contribution to the profession for the period that it is in force.

I have given less weight in my consideration of sanction to the contribution that Mr Gideon has made and is making to the profession. In my view it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision that is not backed up by remorse or insight does not in my view satisfy the public interest requirement concerning public confidence in the profession. I have also taken into account the panel's observation, "In any event, the panel considered that Mr Gideon's behaviour was too serious to be mitigated by any previous good history."

For these reasons I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the aims which a prohibition order is intended to achieve.

I have gone on to consider the matter of a review period. In this case the panel has recommended that no review period should be permitted.

I have considered both the Advice published by the Secretary of State and panel's comments "The Advice indicates that there are behaviours that, if proven, would militate against the recommendation of a review period. These behaviours include any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo photograph or image of a child. The panel has found that Mr Gideon received indecent images of children by email and chose not to notify the relevant authorities."

I have considered whether not allowing for a review period reflects the seriousness of the findings and is proportionate to achieve the aim of maintaining public confidence in the profession. In this case, there are three factors that in my view mean that no review period should be permitted. These elements are the seriousness of the behaviours found, the lack of insight and the deliberate nature of the behaviour, "the panel found the teacher's actions to be calculated, motivated and deliberate." The Advice published by the Secretary of State also gives a clear steer on this type of behaviour.

I consider therefore that a prohibition order that does not allow for a review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr David Gideon 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 David Gideon 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 David Gideon 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 black ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 1 September 2017

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