



National College for
Teaching & Leadership

Dr Thelma Geneva Fox: Professional conduct panel outcome

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

November 2016

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

Teacher: Dr Thelma Geneva Fox

NCTL case reference: 14696

Date of determination: 15 November 2016

Former employer: Longcroft School and Sixth Form College, East Yorkshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 14-15 November 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH, to consider the case of Dr Fox.

The panel members were Ms Mary Speakman (teacher panellist – in the chair), Mr Peter Cooper (teacher panellist) and Mr John Armstrong (lay panellist).

The legal adviser to the panel was Ms Clare Strickland of Blake Morgan solicitors.

The presenting officer for the National College was Ms Kayleigh Brooks of Browne Jacobson solicitors.

Dr Fox was present and was represented by Ms Diane Ellis, Regional Officer, NASUWT.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 8 September 2016.

It was alleged that Dr Fox was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst employed at Longcroft School and Sixth Form College ("the School") during the academic year 2014/2015, she:

1. Made inappropriate comments to pupils and/or in the presence of pupils, including but not limited to:
 - a. 'Your mother is like a chicken coop, cocks fly in and out all day' or words to that effect;
 - b. 'I want to dress up as [Pupil C] but I can't fit 20 cocks in my mouth' or words to that effect.
2. Used systems designed to bypass the School's IT systems in relation to otherwise blocked websites and/or materials.

The teacher denied the facts alleged in allegations 1a and 1b. She admitted the facts alleged at allegation 2.

The teacher accepted that the facts admitted amounted to unacceptable professional conduct/conduct that may bring the profession into disrepute.

C. Preliminary applications

The panel considered the following preliminary matters:

- An application to amend allegation 1 so as to add particular 1c reading "*Cupid Stunt, or words to that effect.*"

In support of her application, Ms Brooks said that the evidence to support this allegation has appeared in the papers served on the teacher throughout the proceedings, and she has therefore been fully aware of it and able to give a response. The College's reliance on this matter was, to an extent, indicated by the use of the words "*including but not limited to*" in the stem of allegation 1. Ms Brooks was unable to give a specific explanation as to why this particular had not been included previously, but suggested it may have been an oversight.

Ms Ellis responded that this amendment should not be allowed, having arisen so late in the day. She submitted that the teacher could not possibly have understood that the College would seek to allege and rely on this particular comment, given that the papers served contained information about a number of matters that had

today been accepted by the College to be irrelevant. She also said, though, that she would be able to present the teacher's response to this allegation with minimal time to prepare.

- Whether it was fair to admit the hearsay evidence of students to prove the matters alleged at allegation 1.

Ms Brooks referred to the case of *General Medical Council v Bonhoeffer* [2011] EWHC 1585 (Admin), in which Mr Justice Stadlen said that there was no absolute rule entitling a person facing disciplinary proceedings to cross-examine witnesses on whose evidence the allegations are based, even where that evidence is the sole and decisive evidence. The requirements of fairness must be assessed on a case by case basis. Ms Brooks said that the Witness A, could give evidence about the circumstances in which the students gave their respective accounts and assist the panel as to their credibility. Ms Brooks informed the panel that efforts had been made to secure the attendance of Students 1 – 3 by way of two letters addressed to their parents/guardians in March 2016 and shortly thereafter. She described the tone and content of the letters for the panel, and provided copies for the panel's consideration.

Ms Ellis responded that Witness A could not assist the panel on the credibility of the witnesses, because she could only give hearsay evidence of what they had said. Ms Ellis also said she was not aware until today that Witness A was going to attend to give evidence (although Ms Brooks informed the panel that notice was given on 12 October 2016). She submitted that the matter should not be adjourned in order to allow the College to make further efforts to secure the attendance of the students, citing the length of the proceedings to date (the incidents took place over 18 months ago), the stress of proceedings, and the adverse effect they were having on the teacher's health.

- Which documents should be redacted from the bundle/disregarded by the panel, given that they contain material that is irrelevant and/or prejudicial. Ms Brooks informed the panel that the following documents were not relevant to the issues under consideration, and should therefore be disregarded: page 88, pages 97 to 102, pages 115 to 122, and pages 151 to 182. Further, if the application to amend were not granted, pages 71 to 96 would also be irrelevant. In response to this, Ms Ellis asked the panel to retain and consider the teacher's response.

Having received legal advice on all matters, the panel first considered the issue of the admissibility of hearsay evidence as it could potentially render the question of an amendment academic. The panel considered that proposed allegation 1c was also entirely dependent on hearsay. The document at page 79 – 87 of the bundle was hearsay as it was prepared by Student G purportedly copying and pasting what was happening in an online chat room into another document. It was not an automatic electronic record.

The panel accepted the legal advice received to the effect that, following *Bonhoeffer and Nursing and Midwifery Council v Ogbonna* [2010] EWCA Civ 1216, whether or not it was fair to admit hearsay evidence would depend on the circumstances of the case. The panel concluded that in this case, it would not be fair to admit the hearsay evidence. Hearsay was the sole and decisive evidence supporting the allegations against the teacher. Those allegations were disputed by her. The ability to cross-examine the witnesses would be essential for fairness, given that the teacher raised questions of bad faith on the part of some of the students, and also, given the need to explore the possibility that someone could have used the teacher's online profile and posted comments in her name. The risks of contamination and collusion were also present, and again, this could only be explored fairly by way of cross-examination. This was in the context of proceedings before a professional panel which had the potential to end the teacher's career, as well as cause serious damage to her reputation.

The panel then considered whether it should adjourn the proceedings in order that the College could make further attempts to secure the attendance of the students. It had regard to the age of the allegations and the public interest in the expeditious disposal of proceedings, which factored against an adjournment. It also had regard to the inevitable and undesirable stress to the teacher that would be caused by an adjournment. Against that, the panel balanced the public interest in the allegations being properly considered. In that regard, it was not satisfied that there was any real prospect that the students would attend in future, even if summonsed. Having read the letters sent to the students, the panel noted that they contained all relevant information and ultimately made clear the prospect of a witness summons. Those letters did not result in any engagement from the students. The panel also considered that if the College wished to take further steps to secure the attendance of the students, it could have done so before today. In all the circumstances, the panel considered that there would be no merit in adjourning the hearing.

The panel therefore determines that it will proceed with the hearing today, on the basis that the hearsay evidence of the students is not admissible to support allegation 1.

In these circumstances, the panel will not allow the application to amend, as there is no admissible evidence to prove the proposed allegation.

The panel is grateful for the indication from Ms Brooks as to those other documents in the bundle that are not relevant, and confirms that it will disregard the material she outlined. The panel will have regard to all documents submitted by the teacher, as requested by Ms Ellis.

In light of the panel's ruling, Ms Brooks indicated that the College did not proceed with allegation 1. There was therefore just one allegation to be considered by the panel.

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 – pages 2 to 6

Section 2: Notice of Proceedings and Response – pages 8 to 14

Section 3: NCTL witness statements – pages 16 to 19

Section 4: NCTL documents – pages 21 to 182

Section 5: Teacher documents – pages 184 to 187

In addition, the panel agreed to accept the following:

- Copy letter from Browne Jacobson to Dr Fox 7 October 2016
- Copy email from Kayleigh Brooks to Diane Ellis 12 October 2016
- Copy letter from Browne Jacobson to Dr Fox 12 October 2016
- Copy letter from Browne Jacobson to Parent/Guardian of Student 1 24 March 2016
- Copy letter from Browne Jacobson to Parent/Guardian of Student 1 11 April 2016
- Copy letter from Browne Jacobson to Parent/Guardian of Student 2 24 March 2016
- Copy letter from Browne Jacobson to Parent/Guardian of Student 2 11 April 2016
- Copy letter from Browne Jacobson to Parent/Guardian of Student 3 24 March 2016
- Copy letter from Browne Jacobson to Parent/Guardian of Student 3 11 April 2016

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

Witnesses

The panel heard oral evidence from:

- Witness A, Assistant Headteacher at the School
- Witness B, ICT Network Manager at the School

- Dr Thelma Geneva Fox

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has 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.

Dr Fox was employed at the School as an information technology ("ICT") teacher. She was a supply teacher from December 2013, then held a substantive post from August 2014 to July 2015.

In January 2015, some students raised concerns about Dr Fox's ICT lessons. The concerns were investigated by Witness A. As part of the investigations, Witness A obtained information from Witness B. Witness A also conducted an investigation interview with Dr Fox.

Finding of fact

Our findings of fact are as follows:

The panel has found the following particular of the allegation against you proven, for these reasons:

Whilst employed at the School during the academic year 2014/2015, you used systems designed to bypass the School's IT systems in relation to otherwise blocked websites and/or materials

The allegation has been admitted and therefore is found proven.

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

The panel noted Dr Fox's admission that her conduct amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute, but this is a matter for the panel's independent judgement. It therefore considered the issue in light of the evidence it had heard.

Witness B gave evidence that in October 2014, when examining an issue with Dr Fox's computer, he discovered that a Google plug-in had been installed. This would have enabled her to access sites that would have been blocked by the School's filtering system. He reported this to the curriculum leader, but was not aware of any action taken as a result. Then, after a request from Witness A in January 2015, Witness B examined

Dr Fox's IT user history from the beginning of the calendar year. This showed that on 4 dates – 16, 19, 20 and 21 January 2015 – Dr Fox's username had accessed proxy servers. Proxy servers enable the user to bypass the School's security systems, access blocked internet sites, and browse any site on the internet without being traced by the School IT system. The two proxy servers used by Dr Fox had names that would appear innocuous in the educational setting.

Witness A interviewed Dr Fox on 13 February 2015. When asked if she had ever used a proxy server in the School, Dr Fox said that she had used one to help Student I, who was trying to access some blocked sites for his coursework. She said that she was asked to assist by the student's mentor after the ICT department had declined to unblock the sites. In interview, she said that she had given the student the link and supervised him while he took screenshots from the sites he needed to access. She said that she had not at the time been aware that she should not use a proxy server in the School, but that she now understood it was wrong.

In her evidence to the panel, Dr Fox said that the Google plug-in found in October 2014 automatically synched to her work computer via her Google account, to replicate her home settings. She said that she was not made aware of any issue with this by the School. She said that in addition to using a proxy server to assist Student I, she had used proxy servers on the four dates in January identified by Witness B to access the Asda online shopping website, to check on her online shopping delivery. She said that she did this in her own time, before the start of the school day.

The panel was satisfied on the balance of probabilities that Dr Fox's explanation about her online shopping order was not entirely correct. It considered it wholly implausible that she would access that particular site every morning for four consecutive school days when she could easily have accessed the site at home, over the weekend or outside school hours. The panel noted her explanation, that she was exhausted after recent surgery, but does not consider that this is a plausible reason why she could not spend a few moments at home checking the internet, when she was able to attend work and function on each of these days. Further, she did not raise the explanation about Asda in her local investigation in February 2015, when events would have been fresh in her mind. The panel accepts that accessing Asda may have been a part of the reason for using the proxy server, but does not accept it was the sole reason.

The use of a proxy server means that it is not possible to identify what use she did make of the internet via the School on those days, and therein lies the seriousness of the teacher's conduct. A proxy server allows access to any website, including those that have the potential to cause serious harm to the School and its students. It prevents the School from monitoring what use is being made of its IT systems, thereby preventing the School from identifying and addressing any risk of harm to itself or its students. Although there is no evidence of any actual harm resulting in this instance, the panel is satisfied that the deliberate use of a proxy server is capable of causing serious harm. The

School's IT systems were set up with restrictions on internet access to safeguard students, and the use of a proxy server has the potential seriously to undermine that objective.

The panel is satisfied that Dr Fox deliberately used the proxy server, and although she says she was not aware that it was wrong to do so, in the panel's view, she should have been aware. She signed the School's IT policy which says that access to offensive or inappropriate sites should always be avoided. The purpose of a proxy server is to enable access to sites that have otherwise been deemed to be offensive or inappropriate, and to prevent that access from being detected. As an IT teacher, Dr Fox would have been fully aware of that, and yet she wilfully and repeatedly used a proxy server.

The panel is satisfied that there was no good reason for her to use the proxy server. She made no attempt to have the websites she accessed for personal reasons in January 2015 unblocked by the ICT team at the School.

The seriousness of her conduct is further aggravated by the fact that she enabled Student I to bypass the School's systems. In her favour, the panel accepts that she was asked to help by the student's mentor, that she helped the student to access material needed for his coursework, and that she supervised his access. But there was a significant risk that the student could go on and use the proxy server on further occasions, or pass details of the proxy server on to other students. This presented a real risk of significant harm to students, as it could expose them to harmful internet content at school. Further, this conduct sent completely the wrong message to the student. For an IT teacher to show a student how to avoid systems designed to safeguard that student is a serious departure from acceptable conduct. In his statement, Student I demonstrated that he was fully aware of the significance of what she had done, when he said that the proxy server would "allow me to access any website blocked by the School's security wall". The panel considers that in this regard, the teacher's conduct represented a serious failure to act as a role model.

The panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as "the Advice".

It is satisfied that the conduct of Dr Fox in relation to the facts found proven involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Dr Fox 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
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

- 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 Dr Fox fell significantly short of the standards expected of the profession, and amounted to unacceptable professional conduct.

The panel has also 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 considers that Dr Fox's conduct was serious and would likely have a negative impact on the individual's status as a teacher, potentially damaging the public perception. As identified above, she significantly failed to act as a role model, to Student I in particular, and deliberately circumvented systems designed to safeguard students.

The panel therefore finds that the teacher'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 Advice and having done so has found a number 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.

The panel has found that Dr Fox engaged in conduct that had some potential to cause harm, and failed to act as a role model.

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 Dr Fox.

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 Dr Fox. 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, the panel considers that the one relevant to this case is serious departure from the personal and professional conduct elements of the Teachers' Standards.

However, although her conduct was serious, the panel was clear that it was at the lower end of the spectrum of seriousness that may give rise to a finding of unacceptable professional conduct. In particular, her conduct in respect of Student I, although completely misjudged, was not malicious and was done with the intention of helping him with his schoolwork. Further, there was a lost opportunity to alert her to the unacceptability of her conduct in October 2014, which, had it been taken, would in all probability have prevented further issues.

Also, there is no evidence that her conduct did cause actual harm. She gave evidence to the panel that demonstrated a degree of remorse for her conduct, and some insight as to what she had done wrong. She said that she would never repeat her conduct, and the panel was satisfied that the risk of repetition is minimal. As a result of what she did, Dr Fox has been dismissed from her teaching post, been through professional disciplinary proceedings, and been the subject of a finding of unacceptable professional conduct and conduct that may bring the profession into disrepute. She has not worked as a teacher since January 2015. The panel is satisfied that these outcomes will have reinforced to her the seriousness of what she has done, and ensure that she does not repeat such conduct in future. Therefore, a prohibition order is not necessary to prevent any future risk of harm.

The panel also considers that these outcomes are sufficient to declare proper standards of conduct to the profession and to the public at large. Given this, a prohibition order would not be proportionate for this purpose.

Therefore, the panel is not of the view that prohibition is a proportionate and appropriate response. Given that the nature and severity of the behaviour is at the less serious end of the possible spectrum and in light of the mitigating factors that were present in this case, the panel has determined that a recommendation for a prohibition order will not be appropriate in this case.

Decision and reasons on behalf of the Secretary of State

I have carefully considered the panel's recommendations in terms of sanction and review. The allegation has been found proven, and Dr Fox has been found guilty of unprofessional conduct and conduct which may bring the profession into disrepute.

I note that the panel is satisfied that the conduct of Dr Fox, in relation to the facts found proven involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Dr Fox 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
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I agree with the panel's view.

The panel has considered the particular public interest considerations set out in the Advice and having done so has found a number 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.

The panel has found that Dr Fox engaged in conduct that had some potential to cause harm and failed to act as a role model.

The panel has gone on to take into account the Advice published by the Secretary of State. That advice suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven.

Although Dr Fox's conduct was serious, the panel was clear that it was at the lower end of the spectrum of seriousness, albeit sufficient to give rise to a finding of unacceptable professional conduct. I note the panel found no evidence that Dr Fox's conduct did cause actual harm. I note her evidence to the panel demonstrated a degree of remorse for her conduct, and some insight as to what she had done wrong. She said that she would never repeat her conduct, and the panel was satisfied that the risk of repetition is minimal.

I have taken into account the guidance published by the Secretary of State. I have also taken into account the need to be proportionate and to balance the interests of the teacher with the interests of the public. The panel is not of the view that prohibition is a proportionate and appropriate response.

The finding of unprofessional conduct is serious in itself, however, for the reasons set out above, I agree with the panel's recommendations that prohibition is neither proportionate or appropriate in this case.

A handwritten signature in black ink, appearing to be 'JM', with a small dot at the end of the signature.

Decision maker: Jayne Millions

Date: 17 November 2016

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