



Teaching
Regulation
Agency

Mr Denis McCarthy: Professional conduct panel outcome

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

February 2019

Contents

A. Introduction	3
B. Allegations	4
C. Preliminary applications	6
D. Summary of evidence	8
Documents	8
Witnesses	8
E. Decision and reasons	9
Panel's recommendation to the Secretary of State	26
Decision and reasons on behalf of the Secretary of State	28

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

Teacher: Mr Denis McCarthy

Teacher ref number: 1866958

Teacher date of birth: 23 June 1952

TRA reference: 15928

Date of determination: 20 February 2019

Former employer: School X ('the School')

A. Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened on 4th February 2019 to 20th February 2019 at Cheylesmore House, 5 Quinton Road, Coventry, CV1 2WT to consider the case of Mr Denis McCarthy.

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

The legal adviser to the panel was Mr James Danks of Blake Morgan LLP.

The presenting officer for the TRA was Ms Hannah Eales of Kingsley Napley LLP.

Mr McCarthy was present and was not represented. Mr McCarthy deliberately absented himself for days 3, 4 and 6 of the hearing.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 19 October 2018

It was alleged that Mr Denis McCarthy was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a teacher at School X ('the School') between 1 September 1983 and 13 January 2017, he failed to maintain appropriate professional boundaries and/or appropriate professional standards when:

1. In relation to Pupil A:

- a. In or around 2009:
 - i. On one or more occasions he allowed and/or encouraged Pupil A to sit on his lap
 - ii. He "wrote letters" on her back with your finger
- b. In or around 2010, on one or more occasions he played a game where he chased and/or picked up and/or swung her
- c. In or around June 2011, allowed Pupil A to sit on his lap at a School Summer fair
- d. In or around September 2013, at a fund-raising event, he approached her from behind and touched her around the waist area
- e. In or around December 2013, he permitted her to put his hair in "bunches"
- f. On an unknown date in 2012 or 2013 he was alone with Pupil A in his classroom and he:
 - i. pushed her against a wall
 - ii. pulled her leggings and underwear down
 - iii. told Pupil A not to tell anyone about what he had done

2. In relation to Pupil B:

- a. In or around 2010:
 - i. hugged Pupil B; and/or
 - ii. allowed her to sit on his lap
- b. In or around June 2011, allowed Pupil B to sit on his lap at a School Summer fair
- c. In or around December 2013, kissed Pupil B on the cheek

- d. In or around December 2013 during a carol singing event:
 - i. Placed his arm around her
 - ii. Allowed her to lay her head on his chest
- e. Between 23 and 27 June 2014:
 - i. Stroked her cheek and tucked her hair behind her ear
 - ii. Put his arm around her
 - iii. Held her hand
 - iv. Allowed her to lay her head on his chest and/or shoulder
 - v. Allowed her to lay her head in his lap
 - vi. Placed your arm around her waist and/or shoulder
 - vii. Sat in the entrance of her open tent
- f. On or around 7 November 2014 lifted her out of his chair in the classroom
- g. On or around 12 November 2015 and/or 16 December 2015:
 - i. Stroked her shoulder and/or back
 - ii. Placed his arm around her

3. On or around 12 November 2015 he had his arm around Pupil C

4. On or around 22 February 2016 he touched the face of Pupil D

5. In relation to Pupil G:

- a. In or around 2010:
 - i. hugged Pupil G; and/or
 - ii. allowed her to sit on his lap
- b. In or around December 2013, allowed Pupil G to massage his head

6. In relation to Pupil H:

- a. In or around 2010:
 - i. hugged Pupil H; and/or
 - ii. allowed her to sit on his lap
- b. In or around June 2011, allowed Pupil H to sit on his lap at a School summer fair

- c. In 2012 you allowed Pupil H to sit on his lap
- d. In or around December 2013, allowed Pupil H to massage his head

7. His conduct at paragraph 2f, 2g, 3, and 4 was in contravention to the advice given to him in respect of maintaining professional boundaries with pupils on 28 July 2014

8. In or around June or July 2015, he encouraged pupils to use swear/rude words in a religion lesson

9. His actions as described above at paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 were

- a. inappropriate, and/or
- b. sexually motivated

Whilst Mr McCarthy admitted some of the actions that underlay the allegations, he denied any conduct to be inappropriate or sexually motivated. The panel therefore proceeded on the basis that this was a contested case.

C. Preliminary applications

The panel considered an application from the TRA that further documents, not served in compliance with Rule 4.20 be admitted into evidence. These documents were:

- Investigation Report into Complaints made against Mr McCarthy regarding Family A (D847 to D870);
- Investigation Report into Complaints made against Mr McCarthy regarding Family I (D871 to D890);
- Investigation Report into Complaints made against Mr McCarthy regarding Family X (pages D891 to D906);
- Independent Investigation Report prepared for the Chair of the Board of Trustees (D907 to D912);
- Terms of Reference to the Independent Investigation Report (D913 to D929);
- Guidance for Safer Working Practice for those Working with children and young people in education Settings (D930 to D955);
- School X's Child Protection Policy (D956 to D977); and

- Investigation Report into Institutional Allegations (pages D979 to D1057);
- Poem in respect of Pupil A (D1058).

The panel also considered a similar application from Mr McCarthy in respect of the following documents:

- Notes of a Disciplinary Meeting of 11 February 2016 (Defence Bundle D7 to D8);
- Progress Monitoring Report (Defence Bundle D9 to D17);
- Correspondence to the Chair of Trustees dated 24 November 2016 and the response (Defence Bundle D18 to D21);
- Witness Statement of 'NM' dated 9 September 2017 (Defence Bundle D22 to D24);
- Complaint emails (Defence Bundle D25 to D27);
- Disciplinary Meeting Notes and record (Defence Bundle D28 to D33);
- Telegraph Newspaper article (Defence Bundle D34 to D35);
- Classroom layout and plan of the School (Defence Bundle D36 to D37);
- [Redacted] County Council Child Protection Report for Pupil B (Defence Bundle D38 to D42);
- Speech and Language Therapy Summary for Pupil I (Defence Bundle D43 to D45);
- Correspondence from Pupil B's mother regarding Mr McCarthy's conduct (Defence Bundle D46 to D47);
- Pupil I's Class 3 report (Defence Bundle D48 to D50);
- Pupil I's Class 4 report (Defence Bundle D51 to D52);
- Notes regarding Pupil I's Class 5 (Defence Bundle D53);
- Verse of poetry for Pupil I (Defence Bundle D54 to D55).

In the panel's view, all of the above documents appeared relevant to the case that it had before it and a number of the reports, both for the TRA and Mr McCarthy, included accounts that were prepared nearer the time of the events. The documents would therefore assist in the panel in its determination of matters and in the consideration that a number of witnesses could be asked questions on the documents, any prejudice to either party was minimal.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages A2 to A7

Section 2: Notice of Proceedings and Response – pages B2 to B10

Section 3: Teaching Regulation Agency witness statements – pages C2 to C81

Section 4: Teaching Regulation Agency documents – pages D2 to D846

The teacher's documents were provided in a separate bundle, itself divided into sections A to C.

In addition, the panel agreed to accept the documents as stated above in the section headed 'Preliminary Applications.'

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

Witnesses

The panel heard oral evidence from:

- Pupil A;
- Pupil A's mother;
- Witness A, previous receptionist at the School;
- Witness B, Librarian at the School;
- Witness C, previous Designated Safeguarding Lead ('DSL');
- Witness D, Educational Facilitator;
- Witness E, Teaching Assistant;
- Witness F, Teacher;
- Witness G, previous Trustee of the School;
- Witness H, Independent Educational Consultant;
- Pupil I's mother; and

- Denis McCarthy.

All witnesses, save for Mr McCarthy, were called on behalf of the TRA.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirmed that it had read all the documents provided in the bundle in advance of the hearing and the additional documents provided during the hearing.

Mr McCarthy had been employed at School X since 1st August 1983 as a teacher. In 2009, a parent of a pupil at the School witnessed a number of pupils sitting on Mr McCarthy's lap and, in 2010, another parent witnessed him hugging pupils.

Over the next few years, numerous concerns were reported to the School by parents regarding the level of physical contact between Mr McCarthy and pupils as well the appropriateness of the language used in one of his lessons.

Following a disciplinary hearing in January 2017, Mr McCarthy was dismissed from his role at the School and his conduct referred to the TRA.

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:

Whilst working as a teacher at School X ('the School') between 1 September 1983 and 13 January 2017, you failed to maintain appropriate professional boundaries and/or appropriate professional standards when:

1. In relation to Pupil A:

a. In or around 2009:

- i. On one or more occasions you allowed and/or encouraged Pupil A to sit on your lap**
- ii. You "wrote letters" on her back with your finger**

The panel first heard live evidence on this allegation from Pupil A, who stated that Mr McCarthy had acted in a 'grandfatherly' way to her. This included Pupil A being allowed to sit on his lap for cuddles. Now that Pupil A had moved to a new school, where there was no physical contact between teachers and pupils, she said that she realised Mr

McCarthy had more of a personal connection than he should have done. Pupil A did not give any specific evidence on this particular allegation.

Pupil A's mother ('Mother A') also gave live evidence to the panel. She explained that, from 2009, she would drop Pupil A off at the School and would witness her daughter, and other female pupils, running to Mr McCarthy in order to sit on his lap. At the time, Mother A did not think this to be unusual and explained in her witness statement, "*I thought nothing of this, and considered it to be fine. It seemed normal to me.*"

In November 2009, Mr McCarthy attended Mother A's house for a home visit. Once he was seated, Pupil A ran over to Mr McCarthy and sat on his lap. Mother A stated that, in the context of the visit, her daughter had become 'flirtatious' with Mr McCarthy, something that Mother A had not seen before, which made her feel uncomfortable about Mr McCarthy for the first time.

In addition to touching Pupil A's neck, Mother A witnessed Mr McCarthy 'drawing letters' on her daughter's back in a manner that seemed 'sensual'. She denied that she or Pupil A had asked Mr McCarthy to do this to her.

At the time, Mother A was more concerned with her daughter's behaviour, rather than that of Mr McCarthy, as Pupil A had been giggly and flirty with him. Nevertheless, Mother A also said that Mr McCarthy had touched Pupil A in a way that she, and her husband, had never done.

In his written response dated 4th February 2019, Mr McCarthy accepted that he allowed, but did not encourage, Pupil A to sit on his lap and that he had written letters on Pupil A's back during the home visit but only on a request for the parents to be shown what was being taught at the School.

In his evidence, Mr McCarthy confirmed that he did not consider Pupil A to be flirting with him. He agreed that writing letters on her back was 'sensual' because it was sensory learning. He stated that if Mother A, or her husband who was also present, had any concerns regarding his behaviour, then he would have expected them to say or do something.

Mr McCarthy confirmed that he had conducted a home visit to Pupil A's house. Mr McCarthy explained that the ethos of the School was alternative to mainstream education and that he would often act as a 'Third Parent'. He believed that physical contact between a teacher and pupil was a positive action in forming a strong bond between the two and it was beneficial to the pupil. Mr McCarthy wanted the pupils to feel 'loved' by their teachers, in a similar way that their parents would love them.

Mr McCarthy stated that there was nothing inappropriate in the contact that he had with pupils (both boys and girls), and this contact included allowing them to sit on his lap. This particular contact was, however, reduced as the pupils progressed towards puberty. He

denied that he had encouraged pupils to sit on his lap although he accepted that he had not discouraged it either.

In the panel's view, from the evidence of Mother A and Mr McCarthy, Pupil A did sit on Mr McCarthy's lap at the School and during the home visit. In the panel's view, any physical contact between a teacher and pupil should be minimal.

The panel had the benefit of being able to reference 'Guidance for safer working practice for those working with children and young people in education settings' dated October 2015 ('the Guidance') and noted at section 13, the Guidance explained that:

"There are occasions when it is entirely appropriate and proper for staff to have physical contact with children, however, it is crucial that they only do so in ways appropriate to their professional role and in relation to the pupil's individual needs and any agreed care plan."

"Any physical contact should be in response to the child's needs at the time, of limited duration and appropriate to their age, stage of development, gender, ethnicity and background. Adults should therefore use their professional judgement at all times."

"This means that staff should:

Be aware that even well intentioned physical contact may be misconstrued by the pupil, an observer or any person to whom this action is described

[...]

Always be prepared to explain actions and accept that all physical contact be open to scrutiny.

Never indulge in horseplay or fun fights"

The panel accepted that the Guidance was not in publication for the majority of the allegations. Nevertheless, the panel determined that the Guidance usefully crystallised the best practice regarding safeguarding, which prevailed at the time of all of the allegations.

In the circumstances of Pupil A being on Mr McCarthy's lap on more than one occasion and for more than a fleeting time, it was inappropriate.

Whilst the panel did accept that drawing letters on the back of a pupil could be a legitimate teaching technique, in the context of where this took place and the effect it had on Pupil A, it was inappropriate.

The panel has therefore found both particulars of this allegation proved.

b. In or around 2010, on one or more occasions you played a game where you chased and/or picked up and/or swung her

Pupil A gave live evidence in respect of this allegation and stated that twice a week, Mr McCarthy would be in the playground at break-time and chase her, and other pupils, around before swinging them around.

In her witness statement, Pupil A's mother explained that Pupil A had told her that Mr McCarthy had been "...*chasing her in the playground, picking her up and swinging her round*".

Mr McCarthy accepted that this allegation had possibly occurred as he would often play with the children at break time and did not determine this to be inappropriate in any manner.

Again, the panel determined that the physical contact between Mr McCarthy and Pupil A was over and above what would be expected during a break time. On this basis, and the evidence received, the panel found this allegation proved.

c. In or around June 2011, allowed Pupil A to sit on your lap at a School Summer fair

Pupil I's mother ('Mother I') gave live evidence on this allegation. She explained that she was present at the School's summer fair in June 2011 and witnessed Mr McCarthy with Pupils A, B and H on his lap and with their arms around his neck. She described the children as being like "...*bees round a honeypot*" and was adamant in her evidence that this incident had taken place.

Mother I felt uncomfortable with this event and that she would not want her daughters behaving in such a way with a teacher. Mother I also recalled making a joke with Mr McCarthy that he could make a lot of money if he charged girls to sit on his lap.

Whilst Mother I did not make a complaint at the time, she did subsequently report her concerns to the NSPCC, albeit not until 2013.

Mr McCarthy did not deny or accept that this event had taken place as he could not remember the incident. In evidence, he did accept, however, that such an incident would not be "*an unusual thing to happen*" and, again, did not consider this to be anything other than normal.

In the panel's view, Mother I gave clear evidence on this allegation and was certain as to what she had seen. In the light of this, and that Mr McCarthy accepted that the incident would not have been unusual, the panel determined the incident to have happened. For

the reasons given previously, the panel also considered this physical contact to be inappropriate and therefore found this allegation proved.

d. In or around September 2013, at a fund-raising event, you approached her from behind and touched her around the waist area

Mother A gave live evidence on this allegation. She explained that during the interval of a School production, she saw Mr McCarthy approach her daughter from behind and poke her around her waist. This caused Pupil A to look back at Mr McCarthy in a manner that Mother A described as "*flirty*" and Pupil A did not seem to find this behaviour unusual. Mother A confirmed that, by the time of this incident, she had already raised concerns directly with the School and Mr McCarthy regarding the level of physical contact he had been having with her daughter.

Mr McCarthy accepted in his written response that he had "*...poked [Pupil A] in the back in a playful way, as I passed by.*" In his live evidence, Mr McCarthy maintained his acceptance of this contact although he did alter his description as to where on Pupil A's body the touching took place. He further explained that he did this to make Pupil A jump in shock and not for any other reason. Mr McCarthy further went on to state that such acts were not limited to just Pupil A.

In the panel's view, the accepted contact was more suitable to peers and friends. It was not appropriate for a teacher to actively create such contact with a pupil. The panel therefore found this allegation proved.

e. In or around December 2013, you permitted her to put your hair in "bunches"

The panel heard limited live evidence on this allegation from Pupil A. Whilst she did not state when she had put Mr McCarthy's hair into bunches, she did confirm that she had been allowed to do so.

The panel also heard evidence on this allegation from Mother A who confirmed that in December 2013, Pupil A had reported to her that she had been allowed to put Mr McCarthy's hair into bunches. Mother A described her daughter as being 'adamant' during her conversation and accepted it was her daughter being naughty. Nevertheless, Mother A stated that she had telephoned Witness C, the School's DSL at the relevant time to report her concerns. This was followed up in an email dated 19 December 2013 from Mother A to Witness C, which set out the fact that Pupil A had reported putting Mr McCarthy's hair into bunches.

In his written response, Mr McCarthy confirmed that he had no recollection of this event. In live evidence, he accepted that this was "*not an impossibility. If we're eating together at lunch, this was not beyond the possibility for them [the pupils] to do such a thing*". Mr McCarthy also stated that this interaction may have helped the pupils to "*come out of themselves*".

In the light of the evidence from Pupil A, as corroborated by her mother and the email of December 2013, the panel decided, on balance, that this allegation did take place. The physical contact that Mr McCarthy allowed pupils to have with him was beyond what was acceptable and therefore inappropriate. The panel found this allegation proved.

2. In relation to Pupil B:

a. In or around 2010:

i. hugged Pupil B; and/or

ii. allowed her to sit on your lap

Mother I gave live evidence on this allegation and was clear in her mind that Mr McCarthy had allowed Pupils B, G and H to sit on his lap and hug him. At the time, Mother I said that she did not think much of the contact but this view changed when her son began to tell her about other events at the School. Mother I thought that Mr McCarthy should have set appropriate boundaries and not engaged in physical contact.

Mr McCarthy did not deny that this incident had taken place but could not recall it. He accepted that it had possibly taken place and that if pupils were seated on his lap, he might have hugged them to ensure that they did not fall off. Mr McCarthy reiterated that, if this incident had taken place, any contact that he had was only for the pupils' benefit in order to increase the trust and bond between the two.

In the panel's view, Mother I was clear in her recollection of this allegation. She was adamant in her evidence as to what she had seen. Because of this, and Mr McCarthy's acceptance that it had possibly taken place, on balance, the panel found the incident to have taken place. For reasons given previously, this physical contact was not appropriate and crossed professional boundaries.

The panel therefore found this allegation proved.

b. In or around June 2011, allowed Pupil B to sit on your lap at a School Summer fair

For the reasons given at allegation 1c, the panel found this allegation proved.

d. In or around December 2013 during a carol singing event:

i. Placed your arm around her

ii. Allowed her to lay her head on your chest

The panel heard live evidence on this allegation from Mother A. She explained that Mr McCarthy had arranged for the pupils and parents to go carol singing in the local area. During the activity, Mother A noted that Pupil B was '*draped*' on Mr McCarthy, who had his arm diagonally down Pupil B's back, with the pupil's head resting on his chest. Mother A accepted that it could have been cold at the time and that the contact could have been for warmth.

The panel also had sight of an email dated 29 June 2014 that Mother A had sent to the trustees of the School following a further incident involving Mr McCarthy. This email referenced, albeit briefly, the concern that Mother A had regarding Mr McCarthy and Pupil B at the carol singing event.

Mr McCarthy denied that this incident had taken place. In live evidence, he accepted that he had a strong relationship with Pupil B but there was nothing 'special' about it.

Mr McCarthy stated that he thought Mother A was conducting a vendetta against him and this allegation was a further example of a complaint without basis.

In the panel's view, Mother A was prone to moments of exaggeration in her evidence. Nevertheless, the conduct alleged in this incident was very simple and not capable of being greatly exaggerated. Mother A gave clear evidence as to what she saw, which was corroborated to some degree by her email on June 2014. On balance, the panel preferred the evidence of Mother A to that of Mr McCarthy for this allegation and was satisfied that the incident took place.

For the reasons given previously, this unnecessary contact was not appropriate and crossed boundaries. The panel therefore found this allegation proved.

e. Between 23 and 27 June 2014:

- i. Stroked her cheek and tucked her hair behind her ear**
- ii. Put your arm around her**
- iii. Held her hand**
- iv. Allowed her to lay her head on your chest and/or shoulder**
- v. Allowed her to lay her head in your lap**
- vi. Placed your arm around her waist and/or shoulder**

The panel heard live evidence on these allegations from Mother A. She explained that her daughter's class went on a camping trip and a number of the pupils' parents were also in attendance.

During this trip, Mother A witnessed a number of incidents involving Mr McCarthy and Pupil B, which included:

- Mr McCarthy stroking Pupil B's cheek and moving her hair from her eyes to behind her ear;
- Pupil B resting her head on Mr McCarthy's chest;
- Mr McCarthy with his arm around her waist; and
- Pupil B with her head on Mr McCarthy's lap.

Following this trip, Mother A confirmed that she sent an email dated 29 June 2014 to the School's trustees setting out her concerns when they were *"fresh in her memory."* The panel had the benefit of this redacted document.

Mr McCarthy fundamentally accepted that he had the contact with Pupil B as alleged but this was in order to comfort her as she was upset. Mr McCarthy also confirmed in his statement that he had also held Pupil B's hand. He explained that there was nothing inappropriate about this comforting and that adults were always present at the times alleged.

In the panel's view, Mother A was clear in her recollection of what she had seen, as corroborated by the email she sent a few days after returning from the camping trip. The panel also had sight of notes of interviews with other parents who were on the trip. Whilst some of these parents' interpretation as to the appropriateness, or otherwise, of Mr McCarthy's actions differed from that of Mother A, all accounts as to his actual actions were consistent.

On this basis, as well as Mr McCarthy's acceptance of his actions, the panel determined that the alleged conduct had taken place.

As stated before, the physical contact that took place went further than what would have been appropriate to maintain boundaries between a teacher and pupil. The panel therefore found this allegation proved.

f. On or around 7 November 2014 lifted her out of your chair in the classroom

The panel heard live evidence on this incident from Witness E, a Teaching Assistant at the School.

Witness E confirmed that she had witnessed Pupil B sitting in Mr McCarthy's chair at the front of the class. She explained that this was not unusual but the chair was higher than the pupils' standard chairs. Witness E's attention was on a specific pupil that she had been charged with assisting but she saw Mr McCarthy put his arm behind Pupil B's back and lift her off the chair. It was a quick action and would not be normally something she would pay attention to. However, Witness E explained that she had been asked to report any contact between Mr McCarthy and the pupils to Witness C, which she did by email on 12 November 2014, a few days after the incident.

Witness E confirmed that, as a result of working with Mr McCarthy, the two of them had become friends and she did not particularly feel comfortable 'spying' on him. As a result of having to report the event, this incident stood out to Witness E and she was able to recall the event clearly.

Witness E did accept that the pupil could have been standing on the chair, prior to sitting on it, but she did not see this.

Mr McCarthy explained that his account given at the time, which stated that Pupil B was standing on his chair, was not accurate as he had been referring to a male pupil, Pupil W. However, Mr McCarthy did state in evidence that Pupil B may have been standing on his chair as well, and contact that he did have was to ensure her safety.

The panel's view was that Witness E gave evidence in a coherent manner and could clearly recollect the event, which was corroborated by her email of 12 November 2014. In contrast, Mr McCarthy's evidence on this allegation was inconsistent and he was unable to recall events with any clarity. The panel therefore preferred Witness E's evidence over that of Mr McCarthy and determined that he had lifted Pupil B from the chair.

There was no need for this physical contact to be instigated by Mr McCarthy. It was not appropriate and crossed professional boundaries. The panel found this allegation proved.

g. On or around 12 November 2015 and/or 16 December 2015:

i. Stroked her shoulder and/or back

ii. Placed your arm around her

In respect of the alleged incident on 12 November 2015, the panel heard live evidence from Witness F, a Class Teacher at the School. She confirmed that on the relevant day, she was on duty in the playground and saw Mr McCarthy's arm all the way down Pupil B's back. His arm stayed there for between one to five minutes and Witness F said, "*This seemed like a normal action, Pupil B was not in distress and she went to him as if this was something that they were used to doing.*"

The panel also noted from Witness F's statement dated 17 December 2015 (signed on 14 January 2016) that Mr McCarthy had his arm all the way down Pupil B's back on 12 November 2015 and was stroking her back.

Mr McCarthy confirmed in evidence that there were no problems in his relationship with Witness F [redacted]. He was not able to provide any specific details of the incident except to say that his arm was only present for a few seconds.

Witness F also gave evidence in respect of the incident on 16 December 2015. She explained that she was in the dining room of the School. Pupil B was also present to go through lines for a play and Witness F again witnessed Mr McCarthy stroking Pupil B's

back. Witness F's husband was also present and witnessed the interaction between Mr McCarthy and Pupil B.

The panel again noted Witness F's statement dated 17 December 2015, which explained that she had seen Mr McCarthy with his arm around Pupil B and stroking her back. Similarly, the panel also noted Witness F's unsigned statement dated 14 January 2016, which said that Mr McCarthy was stroking Pupil B's back.

Mr McCarthy accepted that he did have his arm around Pupil B and was stroking her back but only in a supportive manner as she was suffering from some breathing difficulties and he thought she was suffering from a panic attack.

The panel noted that this stance was partly corroborated by an email from Pupil B's mother dated 29 February 2016, which stated that Pupil B had been complaining of an ache around her ribs in the middle of December 2015 and was under some emotional stress. In addition, an unsigned (but purportedly approved) witness statement from Pupil E also explained that Pupil B was finding it hard to breathe on the evening of the play. The panel also noted that Pupil B did not recall there being any contact with Mr McCarthy.

In the panel's view, Witness F gave clear evidence that was consistent with the concerns she had reported closer to the relevant time. This, in conjunction with Mr McCarthy's lack of denial, was sufficient for the panel to conclude, on balance, that the conduct had taken place. The panel also preferred the evidence of Witness F as to the length of time Mr McCarthy's arm was on Pupil B.

In the light of this conduct and contact being more than just momentary, the panel also determined it inappropriate and having crossed boundaries. The panel therefore found this allegation proved for both dates.

3. On or around 12 November 2015 you had your arm around Pupil C

The panel heard live evidence on this allegation from Witness F. Witness F confirmed that on 12 November 2015, she saw Mr McCarthy with both arms around Pupil C and he appeared to be comforting the pupil. Witness F described Mr McCarthy as '*engulfing*' Pupil C.

The incident made Witness F uncomfortable. Pupil C was in her class and she felt that she was the appropriate person to be comforting the pupil if needed. Witness F went over to Mr McCarthy and Pupil C and said words to the effect of "*that's enough now*". Mr McCarthy did respond by moving away from the pupil.

Witness F did not report this incident at the time but did provide an unsigned statement dated 14 January 2016 regarding a separate matter. In this statement, Witness F

confirmed that on 12 November 2015, she saw Mr McCarthy with both arms around Pupil C, who was sitting on a wall.

Mr McCarthy gave evidence on this allegation and explained that Pupil C's grandfather had just died so he was just comforting her with his arm around her. He did not accept that he was 'engulfing' Pupil C as there was a flower-bed between the path he was on and the wall on which Pupil C was sitting.

In the panel's view, Witness F gave clear evidence on the incident and could clearly recollect matters. It stood out to Witness F as she intervened at the time it occurred and provided a statement corroborating her account shortly after the relevant time. There was no apparent reason for her to exaggerate the event especially when Mr McCarthy accepted having his arm around Pupil C, albeit apparently as an attempt to comfort her.

The panel preferred Witness F's clear evidence of the incident over that of Mr McCarthy, who accepted some contact with the pupil. Again, this contact crossed professional boundaries and was inappropriate.

The panel found this allegation proved.

4. On or around 22 February 2016 you touched the face of Pupil D

The panel heard live evidence on this allegation from Witness D, an Education Facilitator at the School at the time of the allegation.

Witness D confirmed that on 22 February 2016, he witnessed Mr McCarthy, who was in the school yard with Individual A, another teacher, momentarily stroke the face of Pupil D. Witness D witnessed this incident from his office, which was about 30 feet away from Mr McCarthy. He was clear in what he saw and the incident concerned him as Mr McCarthy had recently returned from a suspension regarding his inappropriate contact with a pupil. Witness D accepted that, had it not been for his previous knowledge of Mr McCarthy's conduct, the incident in itself may not have been notable and that Pupil D was perfectly happy when it took place.

Mr McCarthy accepted that he had touched Pupil D but this was only to point out that she had ink on her face. He said that there was nothing untoward about it and any touch was minimal.

The panel noted the unsigned statement of Individual A that stated it appeared that a pupil appeared to have ink on her face. The pupil tried to take the ink off but, when this did not work, Mr McCarthy "*got rid of it*".

Witness C also gave evidence on this allegation. She confirmed that the contact was completely avoidable, especially as there was no suggestion that Pupil D was in distress in any way.

In the light of all of the evidence, the panel was satisfied that Mr McCarthy had touched Pupil D's face, even for a short, fleeting wipe away. The panel noted that Pupil D seemed completely unconcerned by this event.

However, in the panel's view, there was no need for this contact as the pupil could have been sent to the bathroom to wipe away the stain herself. The unnecessary contact, especially for a teacher who had just returned from suspension, was inappropriate and crossed boundaries.

The panel therefore found this allegation proved.

5. In relation to Pupil G:

a. In or around 2010:

i. hugged Pupil G; and/or

ii. allowed her to sit on your lap

For the reasons given for allegation 2a, the panel found this allegation proved.

b. In or around December 2013, allowed Pupil G to massage your head

Mother I gave evidence on this allegation. She confirmed that her son had reported to her that Pupils G and H had been massaging Mr McCarthy's head in December 2013. Pupil I was clear as to what he saw and Mother I reported this incident to Witness C by email dated 3rd December 2013 stating:

"Pupil I told me yesterday that two girls in his class, Pupil H and Pupil G, were [sic] massaging Mr McCarthy's head...he felt there was something 'not quite right about it' and he said 'he should not be doing this mummy'."

Mr McCarthy did not deny or accept this allegation. In evidence, he explained that he did not recall such an incident happening and it would be something that he would probably remember. Nevertheless, Mr McCarthy did accept that if he had been talking to pupils and others were touching his head, then it could have occurred. He explained that he had never tried to remain 'aloof' with pupils and, in his view, hair touching was not a 'big thing'.

In the panel's view, whilst the substantive evidence provided was hearsay, in the light of the corroborative email sent by Mother I on 3rd December 2015 and the acceptance by Mr McCarthy that the incident could have happened, the panel was satisfied, on balance, that the incident had taken place. Massaging is, in its nature, inappropriate contact between teachers and pupils.

The panel therefore found this allegation proved.

6. In relation to Pupil H:

a. In or around 2010:

- i. hugged Pupil H; and/or**
- ii. allowed her to sit on your lap**

For the reasons given for allegation 2a, the panel found this allegation proved.

b. In or around June 2011, allowed Pupil H to sit on your lap at a School summer fair

For the reasons given at allegation 1c, the panel found this allegation proved.

c. In 2012 you allowed Pupil H to sit on your lap

Mother A gave evidence on this allegation and stated that her daughter had told her that it was unfair that Pupil H was allowed to sit on Mr McCarthy's lap. Mother A felt in some dilemma over Pupil A's comment as she took this to mean that her daughter still wanted to sit on Mr McCarthy's lap.

Mr McCarthy did not accept this allegation and thought it less likely to have occurred than other allegations of pupils being on his lap as, at this time, the pupils were getting older and he was trying to 'wean them off' such contact.

The panel noted that Mr McCarthy's denial was equivocal and that his comment regarding 'weaning' clearly inferred that he was still allowing sitting on his lap to take place. No suggestion had been put forward that Pupil A was mistaken and, on balance, the panel was satisfied that this incident had taken place.

For reasons already given, this physical contact was not appropriate and crossed boundaries. The panel therefore found this allegation proved.

d. In or around December 2013, allowed Pupil H to massage your head

For the reasons given at allegation 5b, the panel found this allegation proved.

7. Your conduct at paragraph 2f, 2g, 3, and 4 was in contravention to the advice given to you in respect of maintaining professional boundaries with pupils on 28 July 2014.

The panel had sight of the correspondence dated 28 July 2014 from Individual B, HR Manager at the School, to Mr McCarthy. This correspondence, which Mr McCarthy accepted he received, stated that "*...in extreme circumstances there may be a need for a teacher to briefly comfort a pupil if they are distressed.*" Away from such an event, the

correspondence stated that the only other contact between a pupil and teacher should be limited to the 'School's handshake'.

The correspondence was categorical as to what was allowed. The proven conduct relevant to this allegation relates to contact that was clearly avoidable and / or was more than brief. Mr McCarthy's actions were clearly contrary to the advice set out in the letter.

The panel therefore found this allegation proved.

8. In or around June or July 2015, you encouraged pupils to use swear/rude words in a religion lesson

The panel heard live evidence on this allegation from Mother I, whose son had reported the lesson to her upon his return from the School. He explained to Mother I that during a religion lesson, the class had been told to recite all of the swear words that they knew. Mother I said that this shocked Pupil I, who described it as 'mad' to her. Pupil I also said that other pupils in the class were similarly shocked especially as Mr McCarthy had been encouraging the words to be used as part of the lesson.

Mother I reported these concerns to Individual C, the Deputy Designated Child Protection Officer at the School and also to the NSPCC.

Mr McCarthy did not deny that such a lesson took place but stated that the discussion on swearing occurred spontaneously in class following an earlier incident outside of class. He stated that he emphasised to the class that swearing was offensive and inappropriate. By the end of the class, Mr McCarthy considered it had been helpful to the pupils to have discussed the issue. This stance was corroborated by notes of meetings that the School held with Pupils Y and W in respect of the incident.

In the panel's view, discussing swear words with pupils and their appropriateness (or not) could be a relevant part of a teacher's role. However, such discussion should include planning and fore-warning being given to the pupils' parents in case any wished for their child not to participate, or to prepare for a discussion at home. Mr McCarthy's lesson was, however, spontaneous and did not allow for these appropriate steps to be taken.

The panel therefore found this allegation proved.

9. Your actions as described above at paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 were

- a. inappropriate, and/or**
- b. sexually motivated**

As has been set out for those allegations found proved, in the panel's view, it is essential there are clear and unambiguous boundaries between a teacher and pupil in respect of physical contact.

In the panel's view, it is not for a teacher to act as a surrogate parent and conduct that leads to such a relationship to develop is inappropriate and crosses the professional boundaries. The panel therefore found this allegation proved in respect of Mr McCarthy's behaviour being inappropriate.

In respect of sexual motivation, the panel reminded itself that its primary aim was to determine Mr McCarthy's state of mind in this respect. It noted that a number of the TRA's witnesses viewed Mr McCarthy's actions as inappropriate and, in their opinion, he was sexually motivated.

Mr McCarthy categorically denied that any of his actions were sexually motivated and stated that the physical contact that he had was 'wholesome' and for the benefit of the pupils as he acted in a grandfatherly manner.

The panel had to determine this part of the allegation by inference from surrounding circumstances at the relevant time. In the panel's view, there was nothing inherently sexual in Mr McCarthy's actions.

The panel also noted that all of the proven conduct had taken place in the presence of others, including pupils (and, on occasion, parents) and teachers, and the physical contact that did occur was often momentary.

Whilst there was some consistency in respect of the characteristics of the pupils subject to the allegations, when taking the above factors into account, in the absence of any stronger inference, this pattern was not sufficient to persuade the panel there was any sexual motivation on the part of Mr McCarthy. The panel, therefore, did not find this allegation proved in respect of sexual motivation.

The panel has also found the following particulars of the allegations against you not proven, for these reasons:

1. In relation to Pupil A:

- f. On an unknown date in 2012 or 2013 you were alone with Pupil A in your classroom and you:**
 - i. pushed her against a wall**
 - ii. pulled her leggings and underwear down**
 - iii. told Pupil A not to tell anyone about what you had done**

The panel heard live evidence on these allegations from Pupil A. The panel also had the benefit of listening to the recording of Pupil A's police interview.

Pupil A explained that, [redacted], she had sought help from her new school in respect of events she had previously forgotten about. [Redacted].

Pupil A recalled that following a geography lesson, Mr McCarthy asked her to stay behind. Mr McCarthy then pushed her up against a wall in the classroom before pulling her leggings and underwear down. Pupil A was unclear how but she escaped from his grip before pulling up her underwear and leggings and running out crying. Mr McCarthy told her not to say anything regarding the attack.

Pupil A thought she then went to the toilet before going out to play. She did not tell anyone of the incident until 2017, when she planned to run away. Pupil A said she was 85% to 100% certain that the events that took place.

Mother A gave evidence and confirmed that she was unaware of the alleged incident [redacted].

Mr McCarthy categorically denied these allegations. He explained that the classroom where the alleged incident happened had a door with a window and people walked by during break. Mr McCarthy was unable to explain why Pupil A may have made up the allegation [redacted].

In the panel's view, Pupil A tried her best to assist in its decision. However, her evidence was from her recovered memory of an alleged event from years before when Pupil A had developed a strong emotional attachment to Mr McCarthy. Whilst there was no suggestion that Pupil A was not doing her best to remember events accurately, in the absence of any corroborating evidence from around the time of the alleged incident, the panel did not determine there was sufficient evidence to find this allegation proved.

2. In relation to Pupil B:

c. In or around December 2013, kissed Pupil B on the cheek

The panel did not hear from any witnesses who had witnessed this incident first-hand. Mother I did, however, confirm that her son had reported to her that he had *thought* he had seen Mr McCarthy kissing Pupil B on the cheek.

In his written response, Mr McCarthy stated that he never kissed his pupils. In live evidence, he accepted that he may have, on two or three occasions in his career, kissed the top of a pupil's head but never the cheek.

In the panel's view, the TRA's evidence was secondary hearsay and, at its highest, was that this incident *may* have happened. This is insufficient to discharge the evidential burden and the panel did not therefore find this allegation proved.

e. Between 23 and 27 June 2014:

vii. Sat in the entrance of her open tent

The panel heard live evidence on these allegations from Mother A. She explained that her daughter's class went on a camping trip and a number of the pupils' parents were also in attendance.

Mother A explained that she witnessed Mr McCarthy sitting in the mouth of Pupil B's tent, with Pupil B inside. When Mr McCarthy saw Mother A, he moved away. Mother A could not give any further evidence on this allegation.

Mr McCarthy accepted that he had sat in the mouth of Pupil B's tent but he was trying to persuade Pupil B to come out of her tent.

On the basis of the evidence presented, the panel was not convinced that there was sufficient evidence to suggest any inappropriate behaviour on the part of Mr McCarthy and did not find this allegation proved.

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

Having found a number of the allegations to have been proven, the panel went on to consider whether the facts of those proven allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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

The panel was satisfied that the conduct of Mr McCarthy in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part Two, Mr McCarthy was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

It is essential that teachers maintain professional and unambiguous boundaries between themselves and pupils at all times. Any blurring of these boundaries, even for the best reasons, can cause issues for pupils at the time and later.

The panel was therefore satisfied that the conduct of Mr McCarthy amounted to misconduct of a serious nature which fell significantly short of the standards expected of

the profession for all of the allegations found proved except allegation 8. In respect of this failing, the panel determined this to be a professional misjudgement but not one of a serious nature.

The panel also considered whether Mr McCarthy's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice and the panel found none of these offences to be relevant.

The panel took account of the way 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 also took 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.

For the reasons above, the panel determined that Mr McCarthy's actions amounted to both unacceptable professional conduct and 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 was 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 had to consider 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 in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel considered the particular public interest considerations set out in the Advice and, having done so, found two of them to be relevant in this case, namely;

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

In light of the panel's findings against Mr McCarthy, which involved a number of relatively minor incidents of physical contact with pupils that crossed boundaries as to what was appropriate due to length of the contact and that warnings had been given, there is a strong public interest consideration in the maintenance of public confidence in 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 McCarthy 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 McCarthy.

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 McCarthy. 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;
- a deep-seated attitude that leads to harmful behaviour.

Even though there were behaviours 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.

In light of the panel's findings, it determined that whilst Mr McCarthy's actions were deliberate, there was no calculation or ulterior motivation behind these actions. There was, however, no evidence that he was acting under duress.

The panel did bear in mind that Mr McCarthy previously had a good record and had sight of a number of character references. Whilst these references were informal and not prepared for these particular proceedings, the references did all attest to his popularity amongst pupils and that he had assisted referees to progress through life.

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. Recommending publication of adverse findings to be sufficient in the case would unacceptably compromise the public interest considerations present in this case, despite the severity of consequences for the teacher of prohibition.

The panel was of the view that prohibition would be both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr McCarthy. The constant pattern of Mr McCarthy's conduct over a number of years and

despite warnings being given, was a significant factor in forming that opinion. Accordingly, the panel recommended to the Secretary of State that a prohibition order be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for it 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 two years.

The Advice indicates that there are behaviours that, if proven, would militate against the recommendation of a review period. The panel found that none of these behaviours was present in relation to Mr McCarthy's conduct.

The panel had the benefit of hearing from Mr McCarthy in respect of his views on his behaviour. Mr McCarthy explained that he accepted that he had some responsibility for the conduct in the allegations and that he was not as aware as he could have been, at the time, of how his actions might have been perceived. He stated that he acted as he felt was needed at the time in order to help the pupils but he now stayed away from children to avoid any misinterpretation.

Whilst the panel felt that this indicated the beginnings of some insight by Mr McCarthy as to his actions, the panel was disappointed that he did not express any explicit remorse to the pupils or their families. Nevertheless, the panel also noted that there was no evidence before it that any pupils had suffered any harm as a result of Mr McCarthy's conduct and also that, after the formal warning had been given to him in July 2014, the conduct complained was minimal in occurrence and nature.

In the panel's opinion, Mr McCarthy's conduct was inherently serious but towards the lower end of the spectrum. It was, however, conduct capable of being remedied. Whilst Mr McCarthy had demonstrated the beginnings of some insight, further work was necessary for him to demonstrate he fully understood why his conduct was inappropriate and why it would not recur.

The panel considered that the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with a provision for a review period after three years.

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.

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

In this case, the panel has found a number of the allegations proven and found that of those proven facts, all of them except for the finding of fact at allegation 8 amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel has said that the facts found proven at allegation 8 amounted to, “a professional misjudgement but not one of a serious nature.”

In this case, the panel has found some of the allegations not proven. These are; 9b, 1 f i, ii, and iii, 2c and 2e vii. I have therefore put those matters entirely from my mind.

The panel has made a recommendation to the Secretary of State that Mr McCarthy should be the subject of a prohibition order, with a review period of three years.

In particular, the panel has found that Mr McCarthy is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher’s professional position;
 - having regard for the need to safeguard pupils’ well-being, in accordance with statutory provisions;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

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 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 McCarthy, and the impact that will have on him, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children. The panel has observed, “teachers maintain professional and unambiguous boundaries between themselves and pupils at all times. Any blurring of these boundaries, even for the best reasons, can cause issues for pupils at the time and later.”

A prohibition order would therefore prevent such a risk from being present in the future. I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "Whilst the panel felt that this indicated the beginnings of some insight by Mr McCarthy as to his actions, the panel was disappointed that he did not express any explicit remorse to the pupils or their families." In my judgement, the lack of complete and unambiguous insight means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils. 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 that it, "took account of the way 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 also took 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."

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order 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 McCarthy himself. The panel noted, "that Mr McCarthy previously had a good record and had sight of a number of character references. Whilst these references were informal and not prepared for these particular proceedings, the references did all attest to his popularity amongst pupils and that he had assisted referees to progress through life."

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

In this case, I have placed considerable weight on the panel's comments concerning the, "constant pattern of Mr McCarthy's conduct over a number of years and despite warnings being given."

I have given less weight in my consideration of sanction therefore, to the contribution that Mr McCarthy has made 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, in light of the circumstances in this case, that is not backed up by full remorse

or comprehensive insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

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

I have gone on to consider the matter of a review period. In this case, the panel has recommended a three year review period.

I have considered the panel's comments "Mr McCarthy's conduct was inherently serious but towards the lower end of the spectrum. It was, however, conduct capable of being remedied. Whilst Mr McCarthy had demonstrated the beginnings of some insight, further work was necessary for him to demonstrate he fully understood why his conduct was inappropriate and why it would not recur."

I have considered whether a three year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, there are factors which mean that a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the constant pattern of conduct, the presence of warnings given to Mr McCarthy and the lack of full insight or remorse.

I consider therefore that a three year review period is required to satisfy the maintenance of public confidence in the profession.

This means that Mr McCarthy is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. He may apply for the prohibition order to be set aside, but not until 1 March 2022, three years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If he does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr McCarthy remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Mr McCarthy 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: Alan Meyrick

Date: 22 February 2019

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