



National College for
Teaching & Leadership

Michael McCarthy: Professional conduct panel outcome

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

May 2016

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

Teacher:	Michael McCarthy
Teacher ref number:	8212581
Teacher date of birth:	29 August 1960
NCTL case reference:	12836
Date of determination:	12 May 2016
Former employer:	The panel directed that, in accordance with paragraph 4.60 of the proceedings, the name of the school should not be disclosed during the hearing or at all.

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 11 to 14 April 2016 and 11 to 12 May 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Michael McCarthy.

The panel members were Mrs Kathy Thomson (teacher panellist – in the chair), Mr Martin Greenslade (lay panellist) and Mr Michael Lesser (teacher panellist).

The legal adviser to the panel was Mr Peter Shervington of Eversheds LLP, solicitors.

The presenting officer for the National College was Mr Ian Perkins.

Mr McCarthy was present throughout the hearing. He was not represented other than for cross-examination of Pupil B and Pupil D, which was undertaken on his behalf by Mr Adam Ohringer of Counsel.

The hearing took place in public save for certain parts which, after hearing submissions and receiving advice, the panel determined to hear in private. The hearing was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 5 November 2015.

After hearing submissions from the parties and receiving advice from the legal adviser, at the start of the hearing the panel exercised its discretion under paragraph 4.60 of the Procedures, taking into account the provision of Section 1(1) of the Sexual Offences Amendment Act 1992, to remove the names of institutions referred to in the allegations in order to protect the identity of vulnerable witnesses giving evidence. The allegations set out below reflect these amendments.

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

- 1) Whilst employed at the School, in or around 1990 he had an inappropriate relationship with 13 year old Pupil D that he:
 - a) Showed favouritism towards her in private situations including:
 - i) complimenting her; including but not limited to telling that she was an outstanding pupil or words to that effect;
 - ii) awarding her grades which were better than her academic performance;
 - iii) giving her answers to a science test whilst she was sitting it;
 - iv) telling her that 'other pupils were jealous' of her;
 - v) telling her personal information about other teachers at the school;
 - vi) offering to drive her in his car;
 - b) treated her harshly in public situations including:
 - i) humiliating her in front of other pupils;
 - ii) encouraging other pupils to bully her;
 - iii) making derogatory comments about her to other pupils;
 - iv) making derogatory comments about her to other teachers at the school;
 - c) engaged in conversations of a sexual nature with her;
 - d) called her a "nymph";
 - e) gave her his personal telephone number;
 - f) took her to his home where he:
 - i) gave her alcohol;
 - ii) kissed her;
 - iii) engaged in sexual contact with her on approximately 5 to 20 occasions;
 - iv) engaged in sexual intercourse with her on approximately 3 or more

occasions;

- v) directed her to lick up his semen after he had had sexual intercourse with her.

2) Had an inappropriate relationship with Pupil E in that he:

- i) kissed her on school premises;
- ii) allowed her to visit his home;
- iii) engaged in sexual intercourse with her whilst she was aged 16.

3) When applying to work at Academy A, he failed to disclose on your application form that:

- a) he had worked at Comprehensive A;
- b) he had worked at Academy B;
- c) he had worked at the School;
- d) he had been dismissed from the School for gross misconduct;
- e) he had been investigated by the Police on matters of a safeguarding nature.

4) Whilst employed at Academy A, he acted inappropriately towards one or more pupils in that:

- a) in June 2013 he visited Pupil A's home:
 - i) uninvited;
 - ii) without permission from the Academy's Senior Leadership Team;
 - iii) contrary to the Academy's policy for Safer Working Practice;
- b) in October 2013 he visited Pupil C's home:
 - i) uninvited;
 - ii) without permission from the Academy's Senior Leadership Team;
 - iii) contrary to the Academy's policy for Safer Working Practice;
 - iv) contrary to a direct management instruction.

c) Made derogatory remarks about Pupil C to Pupil B.

5) His conduct at allegation 3 was dishonest in that he sought to conceal his previous employment history.

Clarifying the indications given in his completed form at page 18 of the bundle, Mr McCarthy confirmed at the hearing that allegations 3d and e and 4b(i to iv) were admitted. During the course of cross-examination, Mr McCarthy also appeared to admit allegation 2(iii). Nevertheless, the panel applied its own independent mind to these allegations and its findings are recorded below. The remainder of the allegations were denied, and Mr McCarthy denied that he was guilty either of unacceptable professional conduct or conduct which may bring the profession into disrepute.

C. Preliminary applications

The panel considered an application from Mr McCarthy that the hearing should be held in private. It decided that the public interest required that the hearing should be public. The panel determined that the interests of vulnerable witnesses in this case could be protected by use of screens during the course of the hearing.

Evidence given by Mr McCarthy in relation to aspects of allegation 2 took place in private on the direction of the panel.

The Presenting Officer made an application during the course of the hearing to amend the identity of Pupil A as recorded on the anonymised list. Mr McCarthy did not object to this. After receiving legal advice the panel directed that the name be amended, although the same suffix was retained. The panel added documents provided by the Presenting Officer in relation to this application as pages 145 A to F.

After hearing the witnesses put forward by the National College the panel sought clarification from Mr Perkins as to the information available to the Secretary of State in relation to a letter to Mr McCarthy dated 5 August 1991 indicating that a decision had been made not to pursue proceedings. Mr Perkins made enquiries of those instructing him and produced documents added to the bundle at pages 145 G to J, which indicated that details of the decision in 1991 had been lost or destroyed. The Legal Adviser advised the panel that it would be prudent to consider the issues of res judicata and abuse of process, notwithstanding that these had not been raised by the teacher. The panel received advice and heard submissions from Mr Perkins and Mr McCarthy. After deliberating it read the following decision:

The context of this issue is a letter, provided to the panel shortly before the hearing, on behalf of the Secretary of State for Education to Mr McCarthy and dated 5 August 1991. It states that the Secretary of State 'has been informed of the circumstances surrounding your resignation from [the school] leading to the resolution of the disciplinary sub-committee of Humberside Local Education Authority on 22 January 1991, that you should not be employed in future as a teacher in a Humberside School'. The letter goes on to state that 'after careful consideration of the information available to him the Secretary of State has decided not to take action under Regulation 10 of the Education (Teachers) Regulations 1989 (SI 1989/1319) which empowers him to bar or restrict the employment of as teachers of persons considered by him to be unsuitable for such employment on grounds of misconduct'.

Although no application had been made by the teacher or his representatives on the point, the legal advisor, conscious that Mr McCarthy was not represented at the hearing, having heard the evidence of the National College's witnesses in relation to the previous investigations, considered that the panel should address its mind to the question as to whether this case may be impacted by the res judicata principle or otherwise that it might be an abuse of process.

The panel has heard submissions from the presenting officer and from Mr McCarthy and has received legal advice. It has considered all of this and the material before it carefully. It has also considered the findings of the Supreme Court decision in the case of R (on the application of Coke-Wallis) (Appellant) v. Institute of Chartered Accountants in England and Wales [2011] UKSC 1, in which The Supreme Court confirmed that the doctrine of res judicata was relevant in certain circumstances in professional disciplinary proceedings.

The panel was referred to the key criteria necessary to establish res judicata are summarised at paragraph 34 of the judgment in that case. Of these, two critical questions arose:

1. Whether cause of action in the present proceedings was the same as that in the 1991 proceedings;
2. Whether the decision of the Secretary of State in 1991 was final and on the merits.

The panel was advised that it should consider whether these elements were established based on the material before it.

Dealing with the first question, whether the cause of action in the present proceedings was the same as that in the 1991 proceedings, the panel notes that it does not have information relating to the original investigation by the Local Education Authority or by the Police. The panel accepts that efforts have been made to recover this information, but that it appears to have been destroyed or lost over the course of time. Whilst it might be possible to speculate as to what the allegations might have been in 1990, there is real uncertainty on this point. The evidence of Pupil D and Individual A both suggest that the information available to the LEA (which appears to have been the source of information for the Secretary of State) may well have been some way short of the scope of conduct now being alleged. In the panel's view, this fact pattern is more consistent with the content of the letter itself, and with the fact (as we are told by the Presenting Officer) that the file for the matter was destroyed in 2011 on the basis that there was no ongoing risk presented. The panel is therefore not satisfied that it has been shown that the cause of action was the same.

Secondly, and in any event, the panel has also concluded that the decision by the Secretary of State expressed in the letter of 2001 was not a decision which can be said to have been final and on the merits. The panel was advised to consider the Canadian case of Holder v. Manitoba (College of Physicians and Surgeons) 2002 MBCA 135 (CanLII). Although it recognises that decision is not binding, the panel considers that it is broadly analogous and that the principles set out there are relevant. Having considered that case, and carefully assessed the provisions of Regulation 10 of the Education (Teachers) Regulations 1989, the panel has noted that, whilst there were no detailed provisions for hearings in those regulations, they did require (Regulation 10(5)) that the Secretary of State afford the teacher an opportunity to make representations before exercising his powers. Whilst the panel notes that there was an LEA hearing prior to the

referral to the secretary of state, it appears that the information available to him may have been limited, there is no indication that he invited representations, or otherwise that he assessed the matter on its merits. Whilst its view as to the merits of the substantive claim remains entirely open, the panel considers that, had the full details of the complaint been considered by the Secretary of State, it would be most unlikely, given the specific allegations of serious sexual misconduct, that a decision would have been made to destroy the file later on the basis that no risk arose. The panel is therefore not satisfied that the decision has been shown to have been 'on the merits'. Nor, in the circumstances, does the panel consider that the decision can properly be construed as being final in the sense of precluding the matter being re-opened.

Turning next to the general argument of abuse of process, whilst it has considered the arguments carefully, the panel does not consider it to have been shown either (i) a fair trial would not be possible or that (ii) for some other compelling reason it would be unfair to try the accused.

The panel was advised that it is recognised law that the double jeopardy rule does not apply to hearings such as this. The character and purpose, procedures, focus and consequences of these proceedings is quite different from any decisions taken by the employer or by the police and as such, the existence of investigations by the police or Mr McCarthy's employers in the past do not prevent this hearing proceeding. Nor does the panel consider that it is unfair for the proceedings to continue in light of the letter of 5 August 1991: for the reasons outlined above we do not consider that letter to have been final, nor are we satisfied that the full extent of the allegations now made were before the Secretary of State.

As to the length of time which has passed, whilst it acknowledges that the period since some of the events alleged is considerable, it is not in this case unjustified: the historic allegations before us now stem in large part from disclosures made by Pupil B in recent years, and there is no evidence of undue delay in progressing the matter. The panel is satisfied that sufficient protection will be afforded to the teacher by suitable advice being given to the panel in due course as to the effect of time on witnesses' memories. The panel has the benefit of being able to question and test the evidence of Pupil D and that of Mr McCarthy himself. Similarly, where reliance is placed on hearsay material the panel will be advised to take its status into account in assessing the weight attributed to it. The panel is conscious that there are gaps in the documentary evidence from 1989/1990, and in so far as this gives rise to doubts these will be counted in favour of the teacher in assessing whether with the National College has proved its case. The panel considers that these are sufficient safeguards to allow the hearing to proceed.

D. Summary of evidence

Documents

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

Section 1: Chronology, Anonymised List and List of Key People – pages 1 to 3

Section 2: Notice of Proceedings and Response – pages 5 to 25

Section 3: NCTL witness statements – pages 27 to 38

Section 4: NCTL documents – pages 40 to 145

Section 5: Teacher Documents – pages 146 to 155

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

The following additional documents were received during the course of the hearing:

Documents relating to the amendment proposed by the Presenting Officer to the name referred to by the suffix Pupil A – at pages 145 A to F.

Documents relating to the Presenting Officer's investigations regarding the Secretary of State's previous letter – at pages 145 G to J.

Witnesses

The panel heard oral evidence from the following witnesses for the NCTL:

- Pupil D former pupil at the school
- Pupil B former pupil at Academy A
- Witness A former chair of governors at the school

The panel also heard oral evidence from Mr McCarthy himself.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing, as well as Mr McCarthy's statement and attachments.

Mr McCarthy was employed as a teacher at the School. It was alleged that in or around 1990 he had an inappropriate relationship with a 13 year old, Pupil D, including showing favouritism towards her in private situations, treating her harshly in public situations, engaging in sexual conversations with her, calling her a nymph, giving her a personal telephone number, taking her to his home, giving her alcohol and engaging in sexual intercourse with her. It was also alleged that he had an inappropriate relationship with Pupil E including kissing her on school premises, allowing her to visit his home, and engaging in sexual intercourse with her when she was 16.

It was alleged that subsequently, Mr McCarthy dishonestly failed to disclose information on his application form when applying to Academy A. It was further alleged that, whilst at Academy A, he acted inappropriately towards one or more pupils by visiting the homes of two pupils uninvited, without permission from the Academy's senior leadership team and contrary to the Academy's policy, and that he made derogatory remarks about one pupil to another.

Findings of fact

Our findings of fact are as follows:

1) Whilst employed at the School, in or around 1990 you had an inappropriate relationship with 13 year old Pupil D that you:

a) Showed favouritism towards her in private situations including:

i) complimenting her; including but not limited to telling that she was an outstanding pupil or words to that effect;

In her oral evidence, Pupil D described being told that she was a 'brilliant and outstanding pupil' in circumstances where she had just copied out of a text book into an exercise book. She said that she was pleased the teacher had thought of her highly, but that she had, 'done nothing to warrant it'. In oral evidence she described herself as, 'rather pleased but a little confused'.

Mr McCarthy denied that his level of interaction with Pupil D was any different from that with others in the same group. He stated that Pupil D and others in the group would have six lessons a week with him, and in many cases would come back to him to ask for more work. He stated that Pupil D did not do this any more than the others. When one pupil came in to see him outside of class, they would very quickly be followed by others. Mr McCarthy accepted that he might have called Pupil D outstanding, but he did not recall doing so. He did not accept that such language was inappropriate.

Having considered the evidence carefully, the panel's conclusion is that Mr McCarthy may have complimented Pupil D, but that it has not been proved, on the balance of probabilities, that this amounted to favouritism; the panel is persuaded that it was consistent with his general approach. The panel is not satisfied that the use of the word

'outstanding', in the context, has been shown to suggest anything other than that Pupil D had performed well within the range of her abilities.

Allegation 1(a)(i) is found not proved.

ii) awarding her grades which were better than her academic performance;

In her witness statement at paragraph 5 on page 27 Pupil D states that Mr McCarthy would, 'give me straight As in Science even though I was really poor in that subject'.

The panel was referred to reports at pages 89 to 90 and 93 to 95 which showed relatively high grades being given by Mr McCarthy, with less positive reports following in later years.

Mr McCarthy said that there was an, 'absolute spark from day one' with this year group, and that others had been given particularly high grades as well. He identified a number of other pupils who had almost identical reports, with similar grades.

Mr McCarthy said that he was not surprised at any of the grades shown in the documents, which he said reflected the age and situation of Pupil D at various stages in the school.

The panel considered the reports inconclusive. In the panel's view there are many possible explanations for the fact that they show grades going downhill after Mr McCarthy finished teaching Pupil D demonstrates. The panel is not satisfied on the basis for the evidence put forward that the grades awarded exceeded Pupil D's academic performance.

Allegation 1(a) (ii) is therefore found not proved.

iii) giving her answers to a science test whilst she was sitting it;

In her oral evidence, Pupil D described being in a room alone with Mr McCarthy, chatting with him whilst she was completing a paper, for which she had missed the original sitting. She described him making, 'a mocking "shush"' sound when she was talking and responding to questions asked about the paper, by shaking or nodding his head.

Mr McCarthy, in his oral evidence, stated that Pupil D had missed the test (which he described as a, 'class test' rather than an examination) and so she had to sit at the back of the class to undertake it. He told the panel that this was not unusual. He stated that he walked up and down and occasionally looked over at her.

Again, the panel considered the conflicting accounts carefully. The panel is satisfied that Pupil D gave an honest account based on her recollection. The panel is prepared to accept that Mr McCarthy may have nodded or shaken his head to assist Pupil D. However, the panel does not accept that the way he treated Pupil D in this respect was any different from his approach to others or that it amounted to favouritism.

Thus, on the balance of probabilities, allegation 1(a) (iii) is found not proved.

iv) telling her that 'other pupils were jealous' of her;

At paragraph 28 of her statement, Pupil D refers to Mr McCarthy, telling her that other pupils were jealous of her because she, 'had more class than all of them' and was, 'stunning'. Asked in oral evidence whether he might simply have intended to boost her confidence, she said that, although at the time she was flattered by the attention, she did not think this was the case, because he would also make critical comments about her in front of other girls.

Mr McCarthy, in his statement at page 148, denied telling Pupil D that other pupils were jealous of her, but stated that he was aware that she was being bullied by other pupils at the time. He stated that he had a conversation with her mother concerning the bullying, in which he may have told her mother that bullying sometimes occurred because other children were jealous of a particular child.

The panel considered the evidence carefully. The panel was satisfied with the honesty of Pupil D's account. The panel considers it more likely than not that Mr McCarthy did suggest other pupils were jealous of Pupil D. However, the panel does not consider that this demonstrates favouritism or that this treatment differed from comments made to any other pupil. Accordingly, allegation 1(a)(iv) is found not proved.

v) telling her personal information about other teachers at the school;

Pupil D, at paragraph 17 of her statement, identified that Mr McCarthy made comments to her about the sexual orientation of two other teachers at the school.

Mr McCarthy denied that he would have done any such thing.

The panel accepts that Mr McCarthy may have told Pupil D personal information about other teachers in the school. Again, however, the panel is not satisfied that this demonstrated any favouritism towards her or that it differed from the way he interacted with other pupils.

Allegation 1(a)(v) is therefore found not proved.

vi) offering to drive her in your car;

Pupil D, in her oral evidence, stated that she had been given lifts by Mr McCarthy in his car on several occasions. She accepted that in one instance this was because she was experiencing bullying at the end of school. He took her home and spoke to her mother about the situation. She recalled that, 'on more than one or two occasions', he had driven her from church to the corner of her street. It was suggested to her in cross examination that she was taken by him to see a fellow student in hospital. She stated that she could not remember how she got to hospital but that this sounded familiar. When it was put to her that the only other occasions on which she was given a lift related to sporting fixtures,

she denied this and stated that he picked her up from the local shopping centre and from a main road near her home in order to go to his house.

Mr McCarthy denied giving Pupil D lifts in his car other than in specific circumstances which he outlined. He stated that he had taken her home once and spoken to her mother because she was being bullied. He stated that once when she rode her bicycle to church he took her to her home because there was a fault with it. He also described taking her home after she had been drinking at his house (discussed further under allegation 1(f)) and several occasions when he gave her, along with other pupils, lifts to/from sporting fixtures.

When asked about lifts given to pupils after sporting events, Mr McCarthy said that he would typically have four pupils in the car with him. He said that Pupil D would often be dropped off before the others because she lived closer. He said that other teachers would also give lifts at the time.

The panel is satisfied that Mr McCarthy offered to drive Pupil D in his car. However, the panel accepts the evidence of Mr McCarthy that this was not abnormal in the late 1980s and early 1990s and in the context of the specific school, and that it was consistent with his behaviour towards other pupils at the time. The panel does not accept that his offers demonstrate favouritism.

Allegation 1(a)(vi) is therefore found not proved.

b) treated her harshly in public situations including:

i) humiliating her in front of other pupils;

At paragraph 7 of her statement on page 28, Pupil D states that Mr McCarthy would, 'egg on the older girls to tackle me hard' and then, 'call me over and tell me that I had handled it well'. She felt that he had orchestrated this. In oral evidence she stated that older girls had sat on her and Mr McCarthy wouldn't intervene until too late.

At paragraph 8 of her statement, Pupil D stated that she recalled Mr McCarthy instructing a boy to bring her bicycle to his classroom, whereupon he put the saddle up and made salacious comments about her riding a bicycle in front of the class. In oral evidence she said that the class were giggling and, whilst she could not remember the exact words, she felt that there was a, 'sexual innuendo'.

Pupil D also referred to other incidents including an occasion on which she overheard Mr McCarthy telling another Pupil that, '[Pupil D] might be good looking but she hasn't got the personality that you have'.

Mr McCarthy denied this allegation. He stated that his teaching style was, 'on the harsh side of fair' but that he was no harsher with Pupil D than with others. He did not accept that he had let the other girls tackle Pupil D especially hard. He accepted that he might

have told Pupil D she had handled the situation maturely, but explained this would have been because she was one of the younger ones in the group.

Asked about the bicycle incident, Mr McCarthy denied that it ever happened and queried why no other witnesses had been found and this issue had never been brought to his attention before. He said that there would not have been enough room in the lab for a bicycle. He said that he had no reason to have a bicycle in his laboratory; he might have used a pump and wheel, or even talked about gearing ratios, but he would not have had a bicycle brought in.

Having considered the evidence in the round, the panel has concluded that the bicycle incident referred to above did occur. However, the panel is concerned that Pupil D may have misinterpreted innocent remarks by Mr McCarthy and, given the passage of time and the lack of evidence from any other pupils present during the incident, the panel does not consider that it has sufficient evidence for it to conclude on the balance of probabilities that he was treating her harshly or humiliating her. Similarly, in relation to the rugby incident, the panel does not consider that it has been shown that the actions of Mr McCarthy went beyond the scope of normal rugby teaching techniques at the time. Whether or not this amounted to humiliation, the panel does not consider that it would contribute to a conclusion that an inappropriate relationship existed. Equally the panel does not consider that the evidence put forward by the National College of other incidents is sufficient for the case to be proved in relation to this particular.

Allegation b(i) is therefore found not proved.

ii) encouraging other pupils to bully her

The panel has already referred to the alleged incidents in the rugby field. The panel is not satisfied that Mr McCarthy's behaviour in these incidents amounted to bullying or went beyond what might normally be expected in the context of rugby coaching.

Pupil D told the panel that she felt Mr McCarthy enjoyed setting the girls off against one another and watching girls bully her. Mr McCarthy denied this and the suggestion generally that he encouraged other pupils to bully Pupil D.

Whilst it accepts that the evidence of Pupil D represented an honest account of her recollection of events, the panel preferred Mr McCarthy's explanation in relation to these aspects, and finds allegation 1(b)(ii) not proved.

iii) making derogatory comments about her to other pupils;

Pupil D stated at paragraph 6 of her statement that Mr McCarthy told other students that she was a stalker and that she bored him. At paragraph 34 of her statement she described an incident where she had fallen out with a friend, and Mr McCarthy intervened in a way which turned it into a discussion about him. She described another pupil admitting that she was jealous of someone because, 'of the attention she gets from him [Mr McCarthy]'. In oral evidence, Pupil D described this as, 'a pattern of him playing us off

each other'. She alleged that she then heard that Mr McCarthy had told another pupil that Pupil D was jealous of her and had a crush on him. At paragraph 10 of her statement Pupil D recounts overhearing a comment made by Mr McCarthy to another pupil that Pupil D, 'might be good looking but she hadn't got the personality that you have'.

Mr McCarthy denied having made derogatory comments about Pupil D to other pupils. He said that the allegation that he called her stalker was, 'nonsense'.

Mr McCarthy accepted that he may have sat the pupils down to talk about their differences, but denied that he was playing them off against each other. Asked how he dealt with situations where there was bullying or arguments between pupils, Mr McCarthy said that as far as he could recall there were no guidelines or policies around bullying, but he sat pupils down together and told them they should get on because they had been friends for a long time.

Having considered all the evidence, the panel concludes that Mr McCarthy did make derogatory comments about Pupil D to other pupils. However (and leaving aside the general question as to whether such behaviour is acceptable) the panel does not consider that this is evidence of an inappropriate relationship with Pupil D as such. It appears consistent with his general approach when dealing with all pupils. As such, the panel therefore finds allegation 1(b)(iii) not proved.

iv) making derogatory comments about her to other teachers at the school;

In oral evidence, Pupil D said that she recalled the geography teacher encouraging pupils to take part in a fun day. She said she remembered him saying, 'come on, Mr McCarthy's going to be there – he says you have been giving him the glad eye'.

Mr McCarthy denied having made any such comments to other teachers.

The panel concludes on balance that Mr McCarthy is more likely than not to have made these comments. However, the panel does not consider that they were inappropriate in and of themselves or that they evidence an inappropriate relationship with Pupil D.

Allegation 1(b)(iv) is therefore found not proved.

c) engaged in conversations of a sexual nature with her;

Pupil D's evidence in relation to this allegation is contained principally in paragraphs 13 to 15, 18 and 24 onwards of her statement. In short, it is alleged that Mr McCarthy told her and other pupils stories of a sexual nature relating to a previous post as a teacher. It is alleged that he gave the class an account of a sexual encounter and subsequent fight as an explanation for his appearance at school with a black eye and bruised face. It was also alleged that he made comments about male teachers or pupils who had their hands in their pockets and told Pupil D, 'you don't know what sex is yet darling, do you?', after calling her a, 'nymph'. Pupil D then alleges that a series of further conversations of a

sexual nature took place after the point at which she was taken to his house (the subject matter of allegation 1(f)). These included, amongst other matters, sexual references relating to other pupils.

Mr McCarthy flatly denied all these allegations. He stated that he was not aware of anyone else having recalled or complained about an incident involving him appearing at school with a black eye. He denied that the incident ever occurred. He said that comments regarding people with hands in their pockets were, 'a stupid teenage joke' and he would not have made such remarks. He denied the suggestion at paragraphs 29 and 35 of Pupil D that he made sexual comments regarding another pupil. He denied that he had ever had a conversation of a sexual nature with Pupil D.

The panel has considered the conflicting accounts carefully.

Turning first to the allegation at paragraphs 13 and 14 of Pupil D's statement. The Panel considered Pupil D a credible witness in other respects. However, there was no evidence of concerns having been raised by any pupils or of the school investigating the episodes. Further, the panel has not had the benefit of evidence from other pupils who were present at the time. In all the circumstances, the panel did not consider that there was sufficient evidence available for it to conclude on the balance of probabilities that the words spoken by Mr McCarthy were as alleged by Pupil D.

The panel takes a different view in relation to the reference at paragraph 15 of Pupil D's statement. The panel considers it more likely than not that Mr McCarthy did make comments about men or boys with hands in their pockets as alleged.

The panel then turned to Pupil D's account of having been called a, 'nymph', which is also relevant to allegation 1(d), and their subsequent related exchanges.

Pupil D's evidence, set out in her statement at paragraph 18 on page 30, was that, after dancing with Pupil D at a church barn dance (something which she said was not unusual in the particular community at the time), Mr McCarthy stated to Pupil D's mother that she would, 'grow up to be a stunner' and told Pupil D that she was a, 'nymph'. She stated that he subsequently wrote the phrase 'my little nymph' on essays. Pupil D stated that she did not understand what the phrase meant until he told her at a later point.

Mr McCarthy, in his statement (at page 149) and in oral evidence, denied calling Pupil D a, 'nymph' nor ever writing such things as alleged on any school work.

The context of these comments was rather different from the others we have already addressed. They appear to have taken place on a one-to-one basis in the context of a community barn dance. Taking into account these circumstances, on balance, the panel considers it more likely than not that Mr McCarthy did call Pupil D a 'nymph'. Further, the panel considers it to have been intended to carry a sexual meaning. The panel is also persuaded by the evidence of Pupil D that Mr McCarthy went on to state, after explaining the term 'nymph', 'you don't know what sex is yet darling, do you?'

The panel also considered communications set out in paragraphs 24 onwards in the statement, in the context of the events with which allegation 1(f) is concerned. These included comments directly related to sexual encounters between Pupil D and Mr McCarthy (paragraphs 24, 36, 39) and sexual comments about other people (29, 32, 33, 35 and 39). Mr McCarthy denies that any of the incidents in which these comments are alleged to have been made took place at all. However, for reasons which the panel will explain in setting out our findings under allegation 1(f), we have found Pupil D's account persuasive as regards allegation 1(f)(i to iv) and have concluded on the balance of probabilities that these events did occur. We are also content, on the basis of the clear account given by Pupil D that the words alleged were used and that conversations of a sexual nature took place. For reasons which again, we will set out shortly, allegation 1(f)(v) has been found not proved and therefore we have discounted the comments alleged at paragraph 41 of Pupil D's statement from our assessment of allegation 1(c).

The panel finds allegation 1(c) to have been proved.

d) called her a “nymph”;

The panel has already set out its findings in relation to this matter under allegation 1(c). allegation 1(d) is found to have been proved on the same basis.

e) gave her your personal telephone number;

Pupil D's evidence was that Mr McCarthy gave her his telephone number and told her she could ring 'any time if I needed to talk to him or needed a lift home'. In oral evidence she explained that the number had been given to her brother by Mr McCarthy, with an instruction that he pass it on to her.

Mr McCarthy accepted that he may have given his telephone number to Pupil D's mother when he took her home in his car after she was bullied. He said that there was no formal pastoral system at the school, but he would have asked her to call him if she needed to. Mr McCarthy said that he would have had the contact details of many parents.

The lack of consistency between Pupil D's oral evidence and her statement as to whom the number was given suggested some confusion on her part in relation this point. That, combined with Mr McCarthy's account as to the circumstances in which he may have given the number, led the panel to conclude that allegation 1(e) has not been proved on the balance of probabilities.

f) took her to your home where you:

- i) gave her alcohol;**
- ii) kissed her;**
- iii) engaged in sexual contact with her on approximately 5 to 20 occasions;**
- iv) engaged in sexual intercourse with her on approximately 3 or more**

occasions;

- v) directed her to lick up your semen after you had had sexual intercourse with her.**

Pupil D's evidence and that of Mr McCarthy were entirely at odds in relation to this allegation. The panel deliberated for a significant time over the matter and was careful, as with the other allegations from the same period, to take into account the historic nature of the matters alleged and the impact of the passage of time on the evidence available and the recollection those involved.

Pupil D's account, set out in her statement and in oral evidence before the panel, was, in short, that Mr McCarthy took her to his house, gave her a glass of lemonade with Martini, and left suggesting that, 'You're a big girl so when I come back I expect some of that to be gone'. She stated that he likened her to Scarlet O'Hara. Mr McCarthy returned with Pupil F, Pupil G or both of them and told them that she had helped herself to the alcohol. Thereafter he kissed her, took her to his bedroom, kissed her again and then engaged in further sexual activity before taking her to the kitchen and, with assistance from a lodger, attempting to sober her up.

Pupil D gave an account of subsequent encounters, including full sexual intercourse. She stated that this happened on at least 3 occasions and there was sexual contact on 'more than 5 to 6 and less than 20 occasions'. There appeared to be some variation in the evidence given by her at different stages as to the number of occasions on which sexual activity took place. Pupil D gave an account in her statement (paragraph 41) of his directing her to lick up his semen, amongst other details.

Mr McCarthy adamantly denied the entire allegation. His account, given in oral evidence, was that he had arrived at the house in the middle of the day at a weekend, in the company of Pupils F and G, to find Pupil D present in the kitchen with the lodger, who stated, 'this girl's had a drink' or words to that effect and that he had given her something to sober her up. Mr McCarthy said that she was in his company for three minutes before he took her home. He stated that he never saw her drinking. He stated that on the journey to her home he had been angry, but she was apologetic and told him not to tell her mother. He was persuaded by this and did not speak to her mother about the incident. He said that he never spoke to Pupil D about the incident afterwards.

No other witnesses could assist the panel in relation to these allegations. The panel had no direct corroborative evidence of the account given by Pupil D to the police in the period immediately after the alleged events, and had only partial notes from police investigations in 2012, many years after the alleged incident. However, after a careful and lengthy process of deliberation, taking into account all the evidence presented to it, the panel finds itself persuaded by the detailed and clear account of Pupil D, which it prefers to that of Mr McCarthy in relation to allegation f (i) to (iv). The panel has considered carefully the impact of time on the memories of witnesses. However, it found Pupil D persuasive; her evidence stood up well to cross examination. The panel noted

that she was somewhat uncertain about details such as the number of incidents, but finds these understandable, and her recollection of specific smells and details entirely consistent with a traumatic event which has taken place many years ago but which clearly remains etched in her memory.

Whilst it has considered carefully Mr McCarthy's contrasting account, which was presented for the first time at this hearing, the panel preferred the evidence of Pupil D, which it concluded presented an accurate reflection of the facts in relation to this incident. Accordingly, the panel finds on the balance of probabilities that Mr McCarthy did take Pupil D to his home, gave her alcohol, kissed her, engaged in sexual contact with her on approximately five to twenty occasions and engaged in sexual intercourse with her on approximately three or more occasions. It finds also that these activities constitute an inappropriate relationship, not least since Pupil D was thirteen at the time and was a pupil at the school.

Allegations f(i) to f(iv) are therefore found to have been proved.

The facts alleged at allegation f(v) are of a particularly extreme nature and unlike allegations (i) to (iv) cannot easily be seen as part of a logical progression towards full sexual intercourse. Notwithstanding its position in relation to the remainder of the allegation, the panel was not convinced that it had been provided with sufficient contextual evidence to conclude that the behaviour described in relation to this allegation had been proved on the balance of probabilities to have occurred. The panel therefore finds allegation f(v) not proved.

2) Had an inappropriate relationship with Pupil E in that you:

i) kissed her on school premises;

Pupil D alleged (paragraph 33 of her statement at page 32) that she had walked into the science laboratory and had seen Mr McCarthy kissing Pupil E. She stated that he had winked at her over Pupil E's shoulder.

Asked in oral evidence whether her account was, 'born of her imagination' she was adamant that she had seen Mr McCarthy kissing Pupil E in school.

Mr McCarthy accepted that he had had a relationship with Pupil E when she left school. Indeed, a certificate of their marriage in 1992 was provided to the panel (page 99), [Redacted]. However, Mr McCarthy was adamant that the relationship had not started until after she had left the school. He denied having kissed Pupil E on school premises.

Again, the evidence came down largely to conflicting accounts of Pupil D and Mr McCarthy. In this instance, having weighed these carefully, the panel prefers the evidence of Pupil D and finds that, on the balance of probabilities Mr McCarthy did kiss Pupil E on the school premises. The panel considers her detailed account of this event convincing, and entirely consistent with fact that a more significant relationship between them developed some time later.

The panel considers any relationship between teacher and pupil which involves kissing on school premises is wholly inappropriate. Allegation 2(i) is therefore proved on the balance of probabilities.

ii) allowed her to visit your home;

The main evidence for this is found at paragraphs 30 and 31 of Pupil D's statement. She recalls being told by another pupil that he had visited Mr McCarthy's house and that Pupil E had answered the door wearing a bath robe. She then recalled being with Mr McCarthy in his bedroom when Pupil E managed to push his key out with hers and come in to the room. Pupil D went on to state that Mr McCarthy had told her he had slept with Pupil E.

Mr McCarthy stated that Pupil E had been the babysitter of a lodger in his house. The house was owned by him and rented out to lodgers, although he did not live there himself most of the time. He speculated that she may have had a key from her sister who lodged there with her baby. He denied that Pupil E had come into the house when Pupil D was there.

Mr McCarthy denied having told Pupil D that he slept with Pupil E. As we have indicated, his account was that the relationship started after Pupil E had left the school.

Having assessed the evidence available, the panel considers that, in circumstances where her sister lived on the premises, it was reasonable to expect that Pupil E would have a key to the house. The panel remains unclear as to how it could be that this key gave her access to Mr McCarthy's room (as alleged by Pupil D). Nevertheless, given the clear justification for Pupil E being in a possession of a key to the house, the panel does not consider that his allowing her access to the house was evidence of an inappropriate relationship.

Allegation 2(ii) is therefore found not proved.

iii) engaged in sexual intercourse with her whilst she was aged 16.

Pupil D stated (paragraph 32 at page 32) that she had been told by Mr McCarthy that he had slept with Pupil E. Mr McCarthy denied this. [Redacted]. It was not disputed that Pupil E left the school in the summer of 1990.

It was not possible for the panel to hear evidence from Pupil E, and no other clear evidence was available positively demonstrating that that sexual intercourse took place whilst Pupil E was 16.

In these circumstances, having considered all the evidence available to it, the panel finds allegation 2(iii) not proved on the balance of probabilities.

3) When applying to work at Academy A, you failed to disclose on your application form that:

- a) you had worked at Comprehensive A;
- b) you had worked at Academy B;
- c) you had worked at the School;
- d) you had been dismissed from the School for gross misconduct;
- e) you had been investigated by the Police on matters of a safeguarding nature.

Mr McCarthy admitted allegations 3(d) and (e). Nevertheless the panel turned its independent mind to the whole allegation.

The panel was shown a teacher's record card (page 115 of the bundle). This recorded him being employed at Comprehensive A, Academy B and at the School.

The panel was also directed to the application at page 101 which fails to list these roles or record his dismissal for gross misconduct or his investigation by the police.

Mr McCarthy's argument (recorded in a document responding to the 2014 investigation into this issue at page 127 of the bundle) was that he had given up his teaching post to focus on the family business and that he also did what he called, 'supply teaching'. He listed all three institutions as being part of this supply teaching. He said that his omission of those institutions from the application had not been a, 'conscious decision'.

The panel is satisfied that Mr McCarthy taught at the schools listed in allegation 3 a to d, that his roles went beyond what could properly be characterised as 'supply' work and that, in subsequently applying for a teaching post at another school, Mr McCarthy should have identified that he had taught at these schools. Any teaching experience was relevant and should have been disclosed, even if it were supply teaching. allegations 3 a to c are therefore found to have been proved on the balance of probabilities.

In relation to allegation 3(d), the panel has not seen any clear evidence that Mr McCarthy was in fact dismissed for gross misconduct. His evidence was that he had resigned, and the panel was provided with a letter of resignation at page 128. Given this, the panel is not satisfied that that it has been proved on the balance of probabilities that Mr McCarthy was in fact dismissed, and allegation 3(d) is therefore found not proved.

The position in relation to allegation 3(e) is more complex. Mr McCarthy stated that he was aware of no obligation to report a police investigation in circumstances where there had been no charge or caution. The panel is sympathetic to this argument. The panel has seen no evidence that Mr McCarthy was obliged to disclose the position. The panel considers it implicit from the use of the word 'failed' in the allegation that for the particular to be found proved there must have been an obligation to disclose the information. Given the lack of any clear evidence of such a obligation in relation to allegation 3(e) the panel finds allegation 3(e) not proved.

4) Whilst employed at Academy A, you acted inappropriately towards one or more pupils in that:

a) in June 2013 you visited Pupil A's home:

- i) uninvited;**
- ii) without permission from the Academy's Senior Leadership Team;**
- iii) contrary to the Academy's policy for Safer Working Practice;**

The panel did not have the benefit of witness evidence from Pupil A and the evidence in general in relation to this allegation was limited. The panel was referred to notes at page 129 of the bundle which record a meeting between Mr McCarthy and staff at the school. The document records Mr McCarthy apologising for what he had done. Mr McCarthy said that he had seen Pupil A having an argument with her mother. He subsequently went to her house to check if Pupil A was ok. He stated that he did not see anything untoward with this and he knew that her parents would be in.

The panel is satisfied that Mr McCarthy did attend Pupil A's house. This appears to have taken place without the school's permission. However, the panel is not satisfied that it has been demonstrated on the balance of probabilities that permission was needed at the relevant point in time. Further, whilst the panel have been referred to the Academy's policy for Safer Working Practice, is not clear whether Mr McCarthy had been made aware of the details of this policy prior to the incident in June 2013. In all the circumstances, the panel is not satisfied that the visit has been shown to have been inappropriate. On the balance of probabilities allegation 4(a) is found not proved.

b) in October 2013 you visited Pupil C's home:

- i) uninvited;**
- ii) without permission from the Academy's Senior Leadership Team;**
- iii) contrary to the Academy's policy for Safer Working Practice**
- iv) contrary to a direct management instruction.**

This allegation was admitted by Mr McCarthy. Nevertheless, the panel turned its own independent mind to the matter.

The only witness to give oral evidence for the National College in relation to this allegation was Pupil B. She was not physically present at the scene of the incident, but stated that she was on the telephone to Pupil C when Pupil C stated that Mr McCarthy was knocking at the door. The panel did not hear from Pupil C herself, although a handwritten account made by her was provided at pages 133 and 134 of the bundle. In it, she describes Mr McCarthy's being at the door.

Mr McCarthy's evidence was that he was concerned that Pupil C had misunderstood comments he had made regarding tutoring arrangements. He knew her family and, passing her house, saw a van in the drive. Realising that this meant Pupil C's father was present, he knocked on the door intending to speak to her parents. Both the outer and

inner door were open and there was loud music inside. He stood outside, knocked on the door and rang the door bell. When there was no response he pulled the door shut and left for a lesson. Mr McCarthy said that these events took about 3-4 minutes. He also telephoned to highlight that the family did not seem to be around, but had left the door open.

The final paragraph of the school's notes of the meeting on 11 June 2013 (page 129) had stated 'TH agreed that if there was a tutor relationship in place, there would be an assumption that MM would have made arrangements with the parents to go to a student's house, and as this is a private arrangement this would be between him and the parents'. Mr McCarthy, referring to this, said in oral evidence that he had understood this to indicate that he was able to continue tutoring where a relationship with the parents existed. He said he was waiting for clarification as to whether private tutoring was acceptable.

The panel accepts Mr McCarthy's account of his appearance at Pupil C's house. In circumstances where he was intending to visit Pupil C's parents to discuss an issue related to tutoring, and given the ambiguity as to the position of the school regarding tutoring visits, the panel is not satisfied that the permission of the senior management at the school was required in this case. Similarly, given the comments made on page 129 the panel is also not satisfied that Mr McCarthy's actions were contrary to school policies. They make no reference to any prohibition on visits being made to pupil's parents, and in any event Mr McCarthy was entitled to interpret them in the light of the specific comments made regarding tutoring arrangements in the document at page 129.

As such, the panel finds allegation 4(b) (ii-iv) not proved. Furthermore, although the panel accepts that Mr McCarthy's visit had been uninvited, the panel consider that the National College have failed to prove Mr McCarthy's visit was inappropriate.

Accordingly the panel finds allegation 4(b) not proved.

c) Made derogatory remarks about Pupil C to Pupil B.

The panel heard oral evidence from Pupil B. Pupils B and C both received private tuition from Mr McCarthy outside of school.

Pupil B stated that Mr McCarthy had pulled her out of the tutor group and made a comment about Pupil C. The details of this comment are outlined in a handwritten statement at page 135 of the bundle. In short, Pupil B stated that Mr McCarthy had told her he wasn't worried about her and that, 'she [Pupil B] isn't as bright as you'. Pupil B went on to praise Mr McCarthy's abilities as a teacher and volunteered about him that 'you couldn't ask for a nicer teacher'.

Mr McCarthy's evidence was that he had told Pupil B she was much more confident than Pupil C, and that tutoring them together had not worked well. He was adamant that he had not discussed the pupils' ability. Mr McCarthy stated that his comment was never

intended to hurt and that the situation had been, 'massively jumped up'. He denied he had told Pupil B not to tell Pupil C what he had said.

The panel prefers the evidence of Mr McCarthy in relation to this allegation. The panel is not satisfied that it has been established the remarks made by Mr McCarthy were derogatory. The panel accepts that he was seeking to do the best by both pupils.

Allegation 4(c) is found not proved.

5. Your conduct at allegation 3 was dishonest in that you sought to conceal your previous employment history.

The panel has considered allegation 5 only as regards 3(a)-(c), having found 3(d) and (e) not proved.

It was suggested by the National College that Mr McCarthy deliberately hid information about certain aspects of his employment history, including at the School, in order to avoid information about previous investigations being disclosed.

In his evidence, Mr McCarthy accepted that the effect of leaving the information out may have been to deprive the schools of the ability to identify the previous investigations, but he denied that this was his intention. He described a chaotic working life whilst at the School including time spent working in the family business. He saw the role at the School as being a temporary/supply post as he knew that the job would disappear.

The panel has considered the position carefully. It understands that Mr McCarthy's working life was indeed, 'chaotic'. However, the fact is that Mr McCarthy failed to disclose 18 months of teaching experience when applying for a teaching role. As a consequence, the school to which he was applying was at risk of being left oblivious to allegations made previously. Applying the relevant legal test, the panel considers that this was dishonest by the standards of an ordinary and reasonable person, and, further, that Mr McCarthy himself appreciated that it was dishonest.

Allegation 5 is therefore found to have been proved on the balance of probabilities.

To summarise therefore, the panel has found allegations 1c, 1d, 1f(i) to (iv), 2(i), 3(a to c) and 5 to have been proved.

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

Having found allegations 1c, 1d, 1f(i) to (iv), 2(i), 3(a to c) and 5 to have been proved, the panel has gone on to consider whether the facts of those proved allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

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

The panel is satisfied that the conduct of Mr McCarthy in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, 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 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 Mr McCarthy, which included amongst other things; sexual activity with a 13 year old pupil and dishonest omission of significant details from a teaching application, fell significantly short of the standards expected of the profession.

The panel has also considered whether Mr McCarthy’s conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that activity associated with the offences of serious dishonesty and sexual activity were involved.

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

In circumstances where the behaviour found proved related to a pupil at the school and applications for a teaching post, the panel does not consider that the behaviour can properly be regarded as being outside the education setting. In any event, the panel is satisfied that the behaviour significantly risked pupils being exposed to or influenced in a harmful way.

Accordingly, the panel satisfied that Mr McCarthy is guilty of unacceptable professional conduct.

The panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the

community. The panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

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

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

In summary therefore, having found the facts of particulars 1c, 1d, 1f(i) to (iv), 2(i), 3(a to c) and 5 proved, we further find that Mr McCarthy's conduct amounts 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 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 protection of other members of the public, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr McCarthy, which involved, amongst other matters, sexual activity with a thirteen year old girl and a dishonest failure to disclose his employment history, there is a strong public interest consideration in respect of the protection of pupils.

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

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

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

In carrying out the balancing exercise the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr 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:

- a serious departure from the personal and professional conduct elements of the Teachers' Standards;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- a deep-seated attitude that leads to harmful behaviour;
- abuse of position of trust or violation of the rights of pupils;
- dishonesty especially where there have been serious consequences, and/or it has been repeated and/or covered up. In this case the dishonesty has not been shown to have been repeated, but it was of a serious nature and might potentially have had an impact on the awareness of a prospective employer regarding previous allegations.
- sexual misconduct, e.g. involving actions that were sexually motivated or of a sexual nature and/or that use or exploit the trust, knowledge or influence derived from the individual's professional position;

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. There is no evidence that Mr McCarthy's actions were not deliberate. The panel heard evidence from Mr McCarthy that he was under great stress in around 1990 supporting a family business and needy members of his family. Nevertheless, the panel does not consider that Mr McCarthy can have been said to have been acting under duress. The panel nevertheless notes that Mr McCarthy had a previously good history and no further allegations of misdemeanours of the type found to have occurred in around 1990 have come to the panel's attention.

There is evidence suggesting that Mr McCarthy has great strengths as a teacher. Pupil B, in oral evidence, volunteered that he was an excellent teacher and that, 'you couldn't

ask for a nicer teacher'. Although the evidence of good character is limited, the panel was struck by these remarks, which relate to Mr McCarthy's recent performance as a teacher, and accepts that Mr McCarthy appears to have been a popular and successful teacher of high ability.

Notwithstanding these points, the panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr McCarthy. The serious nature of the actions found proven in the period around 1990, the concern to protect pupils and others, and the fact that Mr McCarthy subsequently dishonestly omitted details of teaching posts from a job application were particularly significant factors in forming that opinion.

Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel went on to consider whether or not it would be appropriate for them to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice recommends that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include, amongst others, serious dishonesty and serious sexual misconduct, e.g. where the act was sexually motivated and resulted in, or had the potential to result in, harm to a person or persons, particularly where the individual has used their professional position to influence or exploit a person or persons. The panel has found that Mr McCarthy has been responsible for behaviour falling into both these categories.

The panel accepts that Mr McCarthy is an able teacher, and faced challenging personal circumstances, particularly during the period around 1990 when many of the events in question occurred. Nevertheless, Mr McCarthy has denied the central allegations found against him and as such, has shown no insight into his actions nor any remorse.

The panel felt the findings indicated a situation in which a review period would not be appropriate and, as such, decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have considered very carefully the findings and recommendations of the panel in this case. I have noted where the panel has made findings of fact and unacceptable professional conduct, and conduct likely to bring the profession into disrepute. I note where the panel has made no such findings and I have put these from my mind.

The panel is satisfied that the conduct of Mr McCarthy, which included amongst other things, sexual activity with a thirteen year old pupil and dishonest omission of significant details from a teaching application, fell significantly short of the standards expected of the profession. I agree with that view.

The panel has found that that activity associated with the offences of serious dishonesty and sexual activity were involved and breached the following Teachers' 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 on serving proper boundaries appropriate to a teacher's professional position;
 - having regard for the need to safeguard pupils' wellbeing, in accordance with statutory provisions.
- teachers must have proper and professional regard for those, 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 have considered the public interest in this case. I agree with the panel that a number of public interest considerations are relevant in this case, namely: the protection of pupils; the protection of other members of the public; the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings of sexual activity with a thirteen year old girl and dishonesty, I agree with the panel's view that there is a strong public interest consideration in respect of the protection of pupils. I agree with the panel that Mr McCarthy's conduct was outside that which could reasonably be tolerated. There is no evidence that Mr McCarthy's actions were not deliberate, nor that he was acting under duress. In balancing the public interest considerations both in favour of and against prohibition, against those of Mr McCarthy, the panel has decided the public interest considerations outweigh the interests of Mr McCarthy. I agree with that view.

I note that on the facts, the panel was satisfied that a prohibition order was necessary and proportionate in order to maintain the reputation of the profession and the public's trust in the profession. I agree with the panel that prohibition is both proportionate and appropriate.

I now turn to the matter of a review period. Taking account of the seriousness of the sexual misconduct, serious dishonesty and the fact that Mr McCarthy has shown no insight into his actions nor remorse, the panel has recommended that a review period would not be appropriate. I agree with the panel's view.

Due to the serious sexual misconduct and dishonesty in this case and for the reasons set out above, I agree with the panel's recommendation, that a prohibition order should be imposed and that no review period should be allowed.

This means that Mr Michael McCarthy is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr McCarthy shall not be entitled to apply for restoration of his eligibility to teach.

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

Mr 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.

A handwritten signature in black ink, appearing to read 'J. Millions', with a small dot at the end of the signature.

Decision maker: Jayne Millions

Date: 17 May 2016

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