



National College for
Teaching & Leadership

Mr Duncan McTier: Professional conduct panel outcome

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

June 2016 (Revised October 2017)

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

Teacher: Mr Duncan McTier

Teacher ref number: 8401328

Teacher date of birth: 21 November 1954

NCTL case reference: 14571

Date of determination: 28 June 2016

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 28 June 2016 at Ramada Hotel, The Butts, Coventry, CV1 3GG to consider the case of Mr Duncan McTier.

The panel members were Mr John Elliott (lay panellist – in the chair), Mr Mike Carter (teacher panellist) and Ms Esther Maxwell (lay panellist).

The legal adviser to the panel was Ms Isabelle Mitchell of Eversheds LLP.

The presenting officer for the National College was Mr Ben Chapman of Browne Jacobson LLP.

As this was a meeting, the parties were not present.

The meeting took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Meeting dated 8 June 2016.

The allegations against Mr McTier are that whilst employed as a private music teacher Mr McTier:

1. Was convicted before Liverpool Crown Court on 11 November 2014 of:
 - a. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956, s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;
 - b. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956 s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;
 - c. Attempting to indecently assault a female 16 or over in contravention of the Criminal Attempts Act 1981, s.1(1); for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement; and a Sex Offenders Notice for 7 years.

In the Statement of Agreed Facts, Mr McTier admitted the facts of the allegations and that they amounted to conviction, at any time, of a relevant offence.

C. Preliminary applications

Shortly before the meeting was due to commence, the panel received two emails from Mr McTier's legal representative, Charlotte Ellis from Burton Copeland, both dated 28 June 2016 and timed at 10.24 and 12.54. The panel noted the contents of the two emails and the concerns set out by Ms Ellis as to her late receipt of the bundle of papers. Having taken legal advice, the panel did not consider that either of these emails constituted a withdrawal by Mr McTier of his request that the case be dealt with by the panel at a meeting or an application on behalf of Mr McTier for the panel to adjourn and reconvene at a later date.

The panel has taken into account the representations from Mr McTier's legal representatives, Burton Copeland, dated 26 June 2016, also received shortly before the meeting on 28 June 2016 (and considered further below under "Summary of Evidence"). The panel has taken into account Mr McTier's request at paragraph 14 of the representations (which was repeated at the fifth paragraph of Ms Ellis' email timed at 12.54), namely that the panel should put out of its mind the information contained at

paragraphs 13 to 17 of the prosecutor's case opening dated 3 November 2014 (contained at pages 30 to 31 of the bundle) as these are not relevant and do not form part of the presenting officer's case against Mr McTier. Having received legal advice, the panel confirmed it was satisfied that, as a professional panel, it was capable of putting the contents of paragraphs 13 to 17 of the prosecutor's case opening out of its mind when considering the allegations pleaded against Mr McTier. The panel was mindful of the legal advice that it had received that any evidence contained in the bundle of papers which is irrelevant to the allegations before it should be disregarded when making its decision. The panel was therefore satisfied that it could continue.

On receipt of the additional papers submitted by Mr McTier's legal representatives, in particular the bundle of testimonial letters, one of the panel members declared that they indirectly knew the author of one of the letters in a professional capacity, although they had had no direct dealings with the individual. Following the receipt of legal advice, the panel member in question was satisfied that this did not constitute a conflict of interest as this did not affect their ability to turn an independent mind to the case in question. The panel was therefore satisfied that the independence of the panel was not compromised.

Whilst there were no preliminary applications, the panel also considered at the outset whether the allegations should be considered at a public hearing which the parties would be entitled to attend, or a private meeting without the parties present. The panel considered the interests of justice and given that the facts of the allegation have been admitted, that Mr McTier and the presenting officer had requested a meeting and the panel had the benefit of Mr McTier's representations, the panel was of the view that justice would be adequately served by considering this matter at a meeting.

The panel carefully considered the public interest. The panel noted that if the case proceeded in a meeting, there would be a public announcement of the panel's decision. The panel also had in mind that if a hearing were convened, there would be a cost to the public purse, which may not be justified if the matter could be determined in a meeting. The panel also had regard to the delay that would be caused by convening a hearing and considered it to be in the public interest to reach a final determination in this matter without further delay. The panel therefore decided to proceed with a meeting, but noted that it could, at any stage of the meeting, reconsider this issue.

D. Summary of evidence

Documents

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

Section 1: Chronology, anonymised pupil list and list of key people – pages 2 to 3

Section 2: Notice of Referral, response and Notice of Meeting – pages 5 to 11b

Section 3: Statement of Agreed Facts and presenting officer representations – pages 13 to 18

Section 4: NCTL documents – pages 20 to 41

In addition, the panel agreed to exercise its discretion at paragraph 4.18 of the Teacher Misconduct Disciplinary Procedures for the Regulation of the Teaching Profession, which is referred to as the ‘Procedures’ and accept the additional papers as set out below. These additional papers were submitted by Mr McTier’s legal representatives, Burton Copeland, and the presenting officer, shortly before the meeting on 28 June 2016. The presenting officer has consented to Mr McTier’s documents being accepted into evidence and although Mr McTier’s representatives have not explicitly consented to the presenting officer’s additional documents being admitted into evidence, the panel considers that the documents may reasonably be considered to be relevant to the case (they respond to the representations made by Mr McTier), and consider that it is fair in all the circumstances to do so. The additional documents have been added to the bundle and comprise as follows:

- Mr McTier’s representations dated 26 June 2016, relevant emails and bundle of testimonial letters (pages 43 to 94)
- The presenting officers’ representations dated 28 June 2016 and relevant emails (pages 95 to 104).

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

Witnesses

The matter was convened as a meeting and no oral evidence was heard.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr McTier was convicted on 11 November 2014 before Liverpool Crown Court of indecent assault against Pupil A in 1988, indecent assault against Pupil B in 1994 and attempting to indecently assault Pupil C in 1985. Mr McTier pleaded guilty to these offences.

Findings of fact

Our findings of fact are as follows:

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

Whilst employed as a private music teacher Mr McTier:

1. Was convicted before Liverpool Crown Court on 11 November 2014 of:

- a. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956, s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;**

Mr McTier admitted the above allegation in the Statement of Agreed Facts signed by him on 14 March 2016 (pages 13 to 16). The panel has also seen a copy of the Certificate of Conviction or Finding (page 35) which confirms the conviction.

The panel was therefore satisfied that this allegation was proven.

- b. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956 s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;**

Mr McTier admitted the above allegation in the Statement of Agreed Facts signed by him on 14 March 2016 (pages 13 to 16). The panel has also seen a copy of the Certificate of Conviction or Finding (page 35) which confirms the conviction.

The panel was therefore satisfied that this allegation was proven.

- c. Attempting to indecently assault a female 16 or over in contravention of the Criminal Attempts Act 1981, s.1(1); for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement; and a Sex Offenders Notice for 7 years.**

Mr McTier admitted the above allegation in the Statement of Agreed Facts signed by him on 14 March 2016 (pages 13 to 16). The panel has also seen a copy of the Certificate of Conviction or Finding (page 35) which confirms the conviction.

The panel was therefore satisfied that this allegation was proven.

Findings as to a conviction, at any time, of a relevant offence

Having found the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to a conviction, at any time, of a relevant offence.

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

The panel is satisfied that the conduct of Mr McTier in relation to the facts it has found proved, was contrary to the Teachers’ Standards. We consider that by reference to Part Two, Mr McTier’s conduct 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.

The panel noted that Mr McTier’s actions were relevant to teaching and working in an education setting as the convictions all related to indecent assault or an attempted indecent assault against pupils who were being taught music by Mr McTier at the time of the assaults or attempted assault. However the panel noted that the convictions all related to pupils aged 17 and over.

The panel noted that the behaviour involved in committing the offences could have had an impact on the safety or security of pupils. One of the pupils related to one of the convictions considered that the events had had an ongoing effect on her confidence and career.

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

The panel noted that Mr McTier’s behaviour has ultimately led to him receiving a sentence of imprisonment, albeit that it was suspended, which is indicative of the seriousness of the offences committed.

This is a case involving offences related to sexual activity, which the Advice states is likely to be considered a relevant offence.

The panel has taken into account that Mr McTier pleaded guilty to the offences. The panel has also noted the sentencing remarks made by the sentencing judge on 11 November 2014, notably that “this was not the most serious of incidents” and that the commission of the offences took place a long time ago.

Nevertheless the panel has found the seriousness of the offending behaviour that led to the convictions is relevant to Mr McTier’s ongoing suitability to teach. The panel considers that a finding that these convictions are relevant offences is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel’s recommendation to the Secretary of State

Given the panel’s findings in respect of a conviction of a relevant offence, 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr McTier were not treated with the utmost seriousness when regulating the conduct of the profession. The panel also considered that a public interest consideration in declaring proper standards of conduct in the profession was present as the conduct found against Mr McTier was outside that which could reasonably be tolerated.

The panel took into account the remarks made by the sentencing judge on 11 November 2014 that “you [Mr McTier] do not pose a risk for the future” and therefore did not consider that the public interest consideration of the protection of pupils and the public was relevant in this case.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate and appropriate to impose a

prohibition order taking into account the effect that this would have on Mr McTier and all the circumstances on the case.

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 McTier. 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- 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;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

Although there were behaviours that may point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

The panel has found that Mr McTier's actions in committing the offences were deliberate and that he was not acting under duress. The panel has however taken into account that although Mr McTier was convicted in 2014, the offences were committed by Mr McTier several decades ago; the first being over 30 years ago and the most recent over 20 years ago. The panel has seen no evidence to suggest that any similar concerns or incidents have occurred since that date or to suggest that Mr McTier poses a continuing risk. The panel notes the remark from the sentencing judge in 2014 referred to above that Mr McTier poses no risk for the future.

The panel has noted the many testimonials provided in support of Mr McTier's good character, his abilities as a teacher, his integrity and professionalism. There are 34 testimonials provided in support of Mr McTier. These include comments such as: "his personal and professional behaviour have been exemplary at all times [sic]"; he is a "person of integrity"; "an excellent colleague and teacher"; "an inspirational teacher"; "I

genuinely feel it would be of no benefit, indeed would deprive students of a great teacher, if he were to pay a further price for his misdemeanours”. The panel find the testimonials to be convincing and persuasive, and whilst predominantly from fellow musicians, the panel consider them to be representative of how the admitted misconduct of Mr McTier might be viewed by members of the public.

The panel has taken note of the remarks made by the sentencing judge. Although the offences were sexual misconduct offences, the judge commented that “this was not the most serious of incidents”. The panel has also taken account of the fact that Mr McTier pleaded guilty to the offences and he admitted the allegations in this case. In so doing he has demonstrated an element of remorse. The sentencing judge also noted that Mr McTier was “clearly remorseful”.

In light of all the circumstances of this particular case, the panel does not consider that prohibition is a proportionate and appropriate response. The panel is mindful that its decision should not be punitive. Mr McTier has been convicted of his offences, has lost his good character as a result and remains on the sex offenders register until 2021. The panel has also carefully considered the following factors: the nature and severity of the behaviour which is at the less serious end of the spectrum – there is no suggestion that Mr McTier ever sexually assaulted any children or made any inappropriate advances towards girls under the age of 17; the offences were committed several decades ago and there has been no evidence of repetition; there is no suggestion of continuing risk. Balancing the public interest considerations both for and against prohibition and the interests of Mr McTier, the panel has determined that it would be disproportionate to prohibit Mr McTier and therefore makes a recommendation that no prohibition order be imposed.

Decision and reasons on behalf of the Secretary of State

I have had this matter passed to me to make a fresh decision in the light of the judgment of the High Court taken on 16 February 2017. I have had no prior involvement in the consideration of this case.

I have considered this case and the findings made by the panel and the recommendation made by the panel in respect of sanction very carefully. Mr McTier was convicted of three offences before Liverpool Crown Court on 11 November 2014. The details of the convictions are set out above. Mr McTier admitted all three allegations and the panel found the convictions to be relevant.

Throughout my consideration of this case, I have taken into account the Advice that the Secretary of State has published concerning the prohibition of teachers.

I have also put from my mind the decision in this matter taken by the previous decision maker on behalf of the Secretary of State. I am therefore taking a fresh decision following the High Court judgement, in the light of the panel's recommendation.

In this case, the panel has found the allegations against Mr McTier proven and the panel has found that those proven facts amounted to convictions of relevant offences. The panel has made a recommendation to the Secretary of State that Mr McTier should not be the subject of a prohibition order.

The panel found that Mr McTier 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.

I also note that the panel has taken 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- 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;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

The panel has found that Mr McTier's actions in committing the offences were deliberate and that he was not acting under duress. However, the panel also made clear that

although Mr McTier was convicted in 2014, the offences were committed by Mr McTier several decades ago; the first being over 30 years ago and the most recent over 20 years ago. The panel also stated that they have seen no evidence to suggest that any similar concerns or incidents have occurred since that date or to suggest that Mr McTier poses a continuing risk. The panel has given significant weight to the remark from the sentencing judge in 2014, that Mr McTier poses no risk for the future.

It is important, at this stage in setting out my decision, that I am clear that I have understood the reference to the term “pupils” when used by the panel in this case. I am clear about the underlying agreed facts in this case: that student A was 22 when indecently assaulted in 1998, student B was aged 21 when indecently assaulted in 1994, and so neither were “pupils” as defined within the meaning of the relevant legislation. Student C was 17 and Mr McTier was found guilty of one charge of attempting indecently to assault her in 1985. However, it is not necessary for an offence to be committed against a pupil for it to be “*relevant*”.

It is also important that I set out that I understand that the fact that Mr McTier’s name will remain on the sex offenders’ register until 2021 is an automatic consequence of the convictions, prescribed by statute, and runs from the date of the convictions rather than the date of the offences. It is not of itself determinative of the seriousness of the offences. I do not therefore consider that the fact that Mr McTier’s name will continue to appear on the register for some years has any relevance to my decision.

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 twofold, 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 either or both of those aims whilst also taking into account the impact that a prohibition order will have on the individual teacher. I have also asked myself whether or not a less intrusive measure, such as the published finding of a relevant conviction, would itself be sufficient to achieve either or both of the overall aims. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered whether or not prohibiting Mr McTier, and the impact that will have on him personally, is proportionate.

In this case therefore I have first considered the extent to which a prohibition order would protect children. The panel has observed that it “*has seen no evidence to suggest that any similar concerns or incidents have occurred since that date or to suggest that Mr McTier poses a continuing risk. The panel notes the remark from the sentencing judge in 2014 referred to above that Mr McTier poses no risk for the future.*”

A prohibition order is not necessary to achieve, in this case, the aim of prevention of the risk of further sexual assault. I have also noted the fact that the sentencing judge

accepted that Mr McTier's remorse at the offences was genuine. I also accept that Mr McTier's remorse is genuine. I have not given any weight to this element of the aim of a prohibition order in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the teaching profession. The panel observe that it "*considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr McTier were not treated with the utmost seriousness when regulating the conduct of the profession. The panel also considered that a public interest consideration in declaring proper standards of conduct in the profession was present as the conduct found against Mr McTier was outside that which could reasonably be tolerated.*"

The Advice published by the Secretary of State states that a prohibition order is likely to be appropriate when the behaviour of the person concerned has been fundamentally incompatible with being a teacher.

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

I have noted that the trial judge considered "*this was not the most serious of incidents*". That comment was made in the context of sexual offences, not in the context of teacher misconduct. The sentence given by the judge was nonetheless a custodial one, albeit suspended.

The Advice also refers to actions "*contrary to the standards of personal and professional conduct expected of a teacher*", and "*likely to affect public confidence in the teaching profession if the teacher were allowed to continue teaching*".

The Advice identifies behaviours that are considered to be incompatible with being a teacher, which include "*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*".

The panel states "*Mr McTier's actions were relevant to teaching and working in an education setting as the convictions all related to indecent assault or an attempted indecent assault against those who were being taught music by Mr McTier at the time of the assaults or attempted assault. However, the panel noted that the convictions all related to women aged 17 and over.*"

These are all reasons why a prohibition order is likely to be necessary to achieve the second overall aim and for that reason I have given them a considerable amount of weight.

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

Although Mr McTier has indicated that he does not intend to teach again in schools, I am clear that a prohibition order will prevent Mr McTier from giving tuition, for example, in the form of a master class, to one or more music students, in any of the settings to which a prohibition order applies. That is the effect of a prohibition order in practical terms.

I have therefore considered whether the publication of a finding of a relevant conviction, in the absence of a prohibition order, can itself be regarded by the ordinary intelligent well informed person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the public interest in not depriving society of Mr McTier's expertise as a double bass player and teacher of the instrument. Whilst Mr McTier has stated that he does not intend to teach again, without the imposition of a prohibition order Mr Mc Tier could teach. I have therefore given some weight to the public interest in the need to prohibit him from teaching again.

I differ from the panel in my decision. I do not consider that in this case the panel has given sufficient weight to the damage to the reputation of the profession that will follow if a prohibition order is not made. To that extent I consider that the panel has given undue weight to the insight and remorse shown by Mr McTier. I also think that the panel has given undue weight to the fact that these behaviours took place some time ago. The behaviours, whenever they occurred, are very serious ones and ones that are wholly incompatible with being a teacher. Mr McTier was found guilty of three separate assaults or attempted assaults.

I have placed considerable weight on the behaviours that have been found proven in this case. Although committed many years ago the offences were still of sufficient seriousness to merit a suspended custodial sentence. The behaviours, whenever they were committed, are significantly outside of those acceptable to the teaching profession.

I recognise that Mr McTier is a world-renowned music teacher. I do not consider that his personal reputation should stand above the wider reputation of the teaching profession. The offences of which he was convicted have the potential to bring the reputation of the profession into serious disrepute. I do not consider that the panel has given that sufficient weight in this case.

I have taken account of the testimonials provided on behalf of Mr McTier but have placed less weight on those than I have on the sexual behaviours that led to the convictions.

On balance, I believe that the reputation of the profession is more important than the impact of a prohibition order on Mr McTier. In my view this is especially the case when the behaviours involved sexual assault or attempted assault, on three separate occasions, even though those were some years ago and recognising that Mr McTier already has the impact of a conviction for them.

I believe that a prohibition order in this case will maintain public confidence in the profession in a way that the publication of a finding of a relevant conviction will not. I believe that to be proportionate and in the public interest as set out above.

I have gone on to consider the matter of a review period. In this case, evidently, the panel made no recommendation on this matter.

I have therefore referred to the Secretary of State's Advice on these matters in order to consider whether in this case any review period or a review period of longer than the minimum two-year review period is appropriate.

The Advice as published by the Secretary of State says that "a panel should consider recommending to the Secretary of State that a prohibition order is imposed with no provision for the teacher to apply for it to be set aside after any period of time where the case involved or permitted any of the following:

"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".

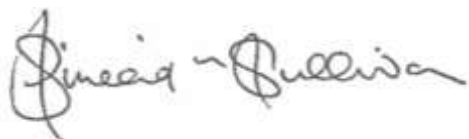
Mr McTier's behaviour clearly falls into this category. Even taking into account the age of two of his victims, Mr McTier used his professional position to influence or exploit a person or persons.

In my judgement, taking all the relevant factors into account, a prohibition order with no provision for review is in the public interest and is proportionate.

This means that Mr Duncan McTier 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 Duncan McTier 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 Duncan McTier 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: Sinead O'Sullivan

Date: 17 October 2017

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

ANNEX A

PLEASE NOTE THAT THIS DECISION NOTICE WAS REVISED ON 17 OCTOBER 2017 AND THIS VERSION IS ANNEXED HERE FOR INFORMATION ONLY



National College for
Teaching & Leadership

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June 2016

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Teacher: Mr Duncan McTier
Teacher ref number: 8401328
Teacher date of birth: 21 November 1954
NCTL case reference: 14571
Date of determination: 28 June 2016
Former employer: N/A

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 28 June 2016 at Ramada Hotel, The Butts, Coventry, CV1 3GG to consider the case of Mr Duncan McTier.

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The legal adviser to the panel was Ms Isabelle Mitchell of Eversheds LLP.

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As this was a meeting, the parties were not present.

The meeting took place in private, save for the announcement of the panel's decision, which was announced in public and recorded.

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The panel considered the allegations set out in the Notice of Meeting dated 8 June 2016.

The allegations against Mr McTier are that whilst employed as a private music teacher Mr McTier:

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 - b. **Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956 s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;**
 - c. **Attempting to indecently assault a female 16 or over in contravention of the Criminal Attempts Act 1981, s.1(1); for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement; and a Sex Offenders Notice for 7 years.**

In the Statement of Agreed Facts, Mr McTier admitted the facts of the allegations and that they amounted to conviction, at any time, of a relevant offence.

C. Preliminary applications

Shortly before the meeting was due to commence, the panel received two emails from Mr McTier's legal representative, Charlotte Ellis from Burton Copeland, both dated 28 June 2016 and timed at 10.24 and 12.54. The panel noted the contents of the two emails and the concerns set out by Ms Ellis as to her late receipt of the bundle of papers. Having taken legal advice, the panel did not consider that either of these emails constituted a withdrawal by Mr McTier of his request that the case be dealt with by the panel at a meeting or an application on behalf of Mr McTier for the panel to adjourn and reconvene at a later date.

The panel has taken into account the representations from Mr McTier's legal representatives, Burton Copeland, dated 26 June 2016, also received shortly before the meeting on 28 June 2016 (and considered further below under "Summary of Evidence"). The panel has taken into account Mr McTier's request at paragraph 14 of the representations (which was repeated at the fifth paragraph of Ms Ellis' email timed at 12.54), namely that the panel should put out of its mind the information contained at

paragraphs 13 to 17 of the prosecutor's case opening dated 3 November 2014 (contained at pages 30 to 31 of the bundle) as these are not relevant and do not form part of the presenting officer's case against Mr McTier. Having received legal advice, the panel confirmed it was satisfied that, as a professional panel, it was capable of putting the contents of paragraphs 13 to 17 of the prosecutor's case opening out of its mind when considering the allegations pleaded against Mr McTier. The panel was mindful of the legal advice that it had received that any evidence contained in the bundle of papers which is irrelevant to the allegations before it should be disregarded when making its decision. The panel was therefore satisfied that it could continue.

On receipt of the additional papers submitted by Mr McTier's legal representatives, in particular the bundle of testimonial letters, one of the panel members declared that they indirectly knew the author of one of the letters in a professional capacity, although they had had no direct dealings with the individual. Following the receipt of legal advice, the panel member in question was satisfied that this did not constitute a conflict of interest as this did not affect their ability to turn an independent mind to the case in question. The panel was therefore satisfied that the independence of the panel was not compromised.

Whilst there were no preliminary applications, the panel also considered at the outset whether the allegations should be considered at a public hearing which the parties would be entitled to attend, or a private meeting without the parties present. The panel considered the interests of justice and given that the facts of the allegation have been admitted, that Mr McTier and the presenting officer had requested a meeting and the panel had the benefit of Mr McTier's representations, the panel was of the view that justice would be adequately served by considering this matter at a meeting.

The panel carefully considered the public interest. The panel noted that if the case proceeded in a meeting, there would be a public announcement of the panel's decision. The panel also had in mind that if a hearing were convened, there would be a cost to the public purse, which may not be justified if the matter could be determined in a meeting. The panel also had regard to the delay that would be caused by convening a hearing and considered it to be in the public interest to reach a final determination in this matter without further delay. The panel therefore decided to proceed with a meeting, but noted that it could, at any stage of the meeting, reconsider this issue.

D. Summary of evidence

Documents

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

Section 1: Chronology, anonymised pupil list and list of key people – pages 2 to 3

Section 2: Notice of Referral, response and Notice of Meeting – pages 5 to 11b

Section 3: Statement of Agreed Facts and presenting officer representations – pages 13 to 18

Section 4: NCTL documents – pages 20 to 41

In addition, the panel agreed to exercise its discretion at paragraph 4.18 of the Teacher Misconduct Disciplinary Procedures for the Regulation of the Teaching Profession, which is referred to as the ‘Procedures’ and accept the additional papers as set out below. These additional papers were submitted by Mr McTier’s legal representatives, Burton Copeland, and the presenting officer, shortly before the meeting on 28 June 2016. The presenting officer has consented to Mr McTier’s documents being accepted into evidence and although Mr McTier’s representatives have not explicitly consented to the presenting officer’s additional documents being admitted into evidence, the panel considers that the documents may reasonably be considered to be relevant to the case (they respond to the representations made by Mr McTier), and consider that it is fair in all the circumstances to do so. The additional documents have been added to the bundle and comprise as follows:

- Mr McTier’s representations dated 26 June 2016, relevant emails and bundle of testimonial letters (pages 43 to 94)
- The presenting officers’ representations dated 28 June 2016 and relevant emails (pages 95 to 104).

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

Witnesses

The matter was convened as a meeting and no oral evidence was heard.

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

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

Mr McTier was convicted on 11 November 2014 before Liverpool Crown Court of indecent assault against Pupil A in 1988, indecent assault against Pupil B in 1994 and attempting to indecently assault Pupil C in 1985. Mr McTier pleaded guilty to these offences.

Findings of fact

Our findings of fact are as follows:

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

Whilst employed as a private music teacher Mr McTier:

1. Was convicted before Liverpool Crown Court on 11 November 2014 of:

- a. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956, s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;**

Mr McTier admitted the above allegation in the Statement of Agreed Facts signed by him on 14 March 2016 (pages 13 to 16). The panel has also seen a copy of the Certificate of Conviction or Finding (page 35) which confirms the conviction.

The panel was therefore satisfied that this allegation was proven.

- b. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956 s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;**

Mr McTier admitted the above allegation in the Statement of Agreed Facts signed by him on 14 March 2016 (pages 13 to 16). The panel has also seen a copy of the Certificate of Conviction or Finding (page 35) which confirms the conviction.

The panel was therefore satisfied that this allegation was proven.

- c. Attempting to indecently assault a female 16 or over in contravention of the Criminal Attempts Act 1981, s.1(1); for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement; and a Sex Offenders Notice for 7 years.**

Mr McTier admitted the above allegation in the Statement of Agreed Facts signed by him on 14 March 2016 (pages 13 to 16). The panel has also seen a copy of the Certificate of Conviction or Finding (page 35) which confirms the conviction.

The panel was therefore satisfied that this allegation was proven.

Findings as to a conviction, at any time, of a relevant offence

Having found the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to a conviction, at any time, of a relevant offence.

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

The panel is satisfied that the conduct of Mr McTier in relation to the facts it has found proved, was contrary to the Teachers’ Standards. We consider that by reference to Part Two, Mr McTier’s conduct 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.

The panel noted that Mr McTier’s actions were relevant to teaching and working in an education setting as the convictions all related to indecent assault or an attempted indecent assault against pupils who were being taught music by Mr McTier at the time of the assaults or attempted assault. However the panel noted that the convictions all related to pupils aged 17 and over.

The panel noted that the behaviour involved in committing the offences could have had an impact on the safety or security of pupils. One of the pupils related to one of the convictions considered that the events had had an ongoing effect on her confidence and career.

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

The panel noted that Mr McTier’s behaviour has ultimately led to him receiving a sentence of imprisonment, albeit that it was suspended, which is indicative of the seriousness of the offences committed.

This is a case involving offences related to sexual activity, which the Advice states is likely to be considered a relevant offence.

The panel has taken into account that Mr McTier pleaded guilty to the offences. The panel has also noted the sentencing remarks made by the sentencing judge on 11 November 2014, notably that “this was not the most serious of incidents” and that the commission of the offences took place a long time ago.

Nevertheless the panel has found the seriousness of the offending behaviour that led to the convictions is relevant to Mr McTier’s ongoing suitability to teach. The panel considers that a finding that these convictions are relevant offences is necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel’s recommendation to the Secretary of State

Given the panel’s findings in respect of a conviction of a relevant offence, 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 maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr McTier were not treated with the utmost seriousness when regulating the conduct of the profession. The panel also considered that a public interest consideration in declaring proper standards of conduct in the profession was present as the conduct found against Mr McTier was outside that which could reasonably be tolerated.

The panel took into account the remarks made by the sentencing judge on 11 November 2014 that “you [Mr McTier] do not pose a risk for the future” and therefore did not consider that the public interest consideration of the protection of pupils and the public was relevant in this case.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate and appropriate to impose a

prohibition order taking into account the effect that this would have on Mr McTier and all the circumstances on the case.

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 McTier. 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- 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;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

Although there were behaviours that may point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

The panel has found that Mr McTier's actions in committing the offences were deliberate and that he was not acting under duress. The panel has however taken into account that although Mr McTier was convicted in 2014, the offences were committed by Mr McTier several decades ago; the first being over 30 years ago and the most recent over 20 years ago. The panel has seen no evidence to suggest that any similar concerns or incidents have occurred since that date or to suggest that Mr McTier poses a continuing risk. The panel notes the remark from the sentencing judge in 2014 referred to above that Mr McTier poses no risk for the future.

The panel has noted the many testimonials provided in support of Mr McTier's good character, his abilities as a teacher, his integrity and professionalism. There are 34 testimonials provided in support of Mr McTier. These include comments such as: "his personal and professional behaviour have been exemplary at all times [sic]"; he is a "person of integrity"; "an excellent colleague and teacher"; "an inspirational teacher"; "I

genuinely feel it would be of no benefit, indeed would deprive students of a great teacher, if he were to pay a further price for his misdemeanours”. The panel find the testimonials to be convincing and persuasive, and whilst predominantly from fellow musicians, the panel consider them to be representative of how the admitted misconduct of Mr McTier might be viewed by members of the public.

The panel has taken note of the remarks made by the sentencing judge. Although the offences were sexual misconduct offences, the judge commented that “this was not the most serious of incidents”. The panel has also taken account of the fact that Mr McTier pleaded guilty to the offences and he admitted the allegations in this case. In so doing he has demonstrated an element of remorse. The sentencing judge also noted that Mr McTier was “clearly remorseful”.

In light of all the circumstances of this particular case, the panel does not consider that prohibition is a proportionate and appropriate response. The panel is mindful that its decision should not be punitive. Mr McTier has been convicted of his offences, has lost his good character as a result and remains on the sex offenders register until 2021. The panel has also carefully considered the following factors: the nature and severity of the behaviour which is at the less serious end of the spectrum – there is no suggestion that Mr McTier ever sexually assaulted any children or made any inappropriate advances towards girls under the age of 17; the offences were committed several decades ago and there has been no evidence of repetition; there is no suggestion of continuing risk. Balancing the public interest considerations both for and against prohibition and the interests of Mr McTier, the panel has determined that it would be disproportionate to prohibit Mr McTier and therefore makes a recommendation that no prohibition order be imposed.

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.

This is a case where the teacher has been convicted. Mr McTier was convicted before Liverpool Crown Court on 11 November 2014 of:

- a. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956, s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;
- b. Indecent assault on a female 16 or over in contravention of the Sexual Offences Act 1956 s.14 for which he was sentenced to imprisonment for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement;
- c. Attempting to indecently assault a female 16 or over in contravention of the Criminal Attempts Act 1981, s.1(1); for which he was sentenced to imprisonment

for 3 months, wholly suspended for a period of 2 years and a 240 hours unpaid work requirement; and a Sex Offenders Notice for 7 years.

Mr McTier admitted all three allegations and the panel found that the convictions to be relevant.

The panel found that Mr McTier's conduct 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.

The panel has taken 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;
- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;
- 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;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

I have also taken into account the need to balance the public interest with the interests of the individual teacher, Mr McTier. I have also taken into account the need to be proportionate. I have also given very careful consideration to the need to maintain public confidence in the profession.

I have given careful consideration to the recommendation of the panel, noting their comments on the case and on the comments made by the judge. I have also noted the elements of mitigation considered.

I have also given particular consideration to the time factors of this case and to the comments made in respect of risk of harm.

Nevertheless, I differ in my judgement from that of the panel. I have decided, that the seriousness of the convictions, such that they led to a custodial sentence, albeit suspended, is relevant. In addition in considering the need to maintain public confidence in the profession, I do not consider that whilst Mr McTier has a Sex Offenders notice he should be allowed to teach.

That Sex Offenders Notice was imposed for a period of 7 years. That was in 2014.

I consider that Mr McTier should be prohibited from teaching. A review period of 5 years will allow the Sex Offenders notice to expire and at that point Mr McTier can consider whether he wishes to apply to teach again.

In my view this decision takes the published guidance fully into account, is proportionate, is in the public interest and maintains public confidence in the profession.

This means that Mr Duncan McTier 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 2021, 5 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 Duncan McTier remains prohibited from teaching indefinitely.

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

Mr Duncan McTier 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: 1 July 2016

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