



National College for
Teaching & Leadership

Mr Denis Hays: Professional conduct panel outcome

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

March 2017

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

Teacher: Mr Denis Hays
Teacher ref number: 6311116
Teacher date of birth: 23 February 1945
NCTL case reference: 14641
Date of determination: 21 March 2017
Former employer: Greasbrough Primary School, Rotherham

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 20 and 21 March 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Denis Hays.

The panel members were Ms Mary Speakman (teacher panellist – in the chair), Professor Roger Woods (lay panellist) and Mr John Matharu (lay panellist).

The legal adviser to the panel was Mr Harry Rasmussen of Eversheds Sutherland solicitors.

The presenting officer for the National College was Sarah Przybylska of 2 Hare Court, instructed by Nabarro LLP solicitors.

Mr Denis Hays was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 11 October 2016.

It was alleged that Mr Denis Hays was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that whilst he was working as a teacher at Greasbrough Primary School ("the School") during the 1970s, he:

1. Failed to maintain appropriate professional boundaries in that:
 - a. between approximately 1975 and 1977 he asked pupils to attend at his home for the purpose of taking part in a "child development study" ("the Study"), namely:
 - i. Pupil A,
 - ii. Pupil B,
 - iii. Pupil C;
 - b. The Study was not linked to any school, agency, or third party;
 - c. In relation to Pupil A, then aged approximately 11 years:
 - i. they attended his home on a monthly basis for approximately two years;
 - ii. no other adult was present during some of these visits;
 - iii. he asked Pupil A to undress;
 - iv. he took measurements of Pupil A whilst he was naked;
 - v. he measured Pupil A's penis;
 - vi. he held Pupil A's naked penis whilst measuring it;
 - d. In relation to Pupil B:
 - i. they attended his home on a monthly basis for approximately two years;
 - ii. no other adult was present during some of these visits;
 - iii. he asked Pupil A to undress;
 - iv. he took measurements of Pupil A whilst he was naked;
 - v. he measured Pupil A's penis;
 - vi. he held Pupil A's naked penis whilst measuring it;

- e. In relation to Pupil C:
 - i. they attended his home on a monthly basis for approximately two years;
 - ii. no other adult was present during some of these visits;
 - iii. he asked Pupil A to undress;
 - iv. he took measurements of Pupil A whilst he was naked;
 - v. he measured Pupil A's penis;
 - vi. he held Pupil A's naked penis whilst measuring it;
2. His conduct as described at allegation 1 above was sexually motivated.

C. Preliminary applications

Proceeding in the absence

The panel heard an application from the presenting officer that the hearing should proceed in Mr Hays' absence.

The panel is satisfied that National College has complied with the service requirements of paragraph 19.a. to 19.c. of the Teachers' Disciplinary (England) Regulations 2012, (the "Regulations").

The panel is also satisfied that the Notice of Proceedings complies with paragraphs 4.11. and 4.12. of the Teacher misconduct - Disciplinary procedures for the teaching profession (the "Procedures"). Additionally, the panel also heard evidence that Mr Hays has been notified of the change in the constitution of the panel, further to the National College's letters to Mr Hays' representative, dated 3 March 2017 and 7 March 2017. The presenting officer stated that in the event that the hearing proceeds in the absence of Mr Hays, an application will be made to request that such letters are included in the hearing bundle.

The panel has determined to exercise its discretion under paragraph 4.29. of the Procedures to proceed with the hearing in the absence of Mr Hays.

The panel understands that its discretion to commence a hearing in the absence of the teacher has to be exercised with the utmost care and caution, and that its discretion is a severely constrained one.

In making its decision, the panel has noted that the teacher may waive his right to participate in the hearing. The panel has taken account of the various factors drawn to its

attention from the case of *R v Jones [2003] 1 AC1*. The panel is satisfied that the Notice of Proceedings was brought to the attention of Mr Hays and that Mr Hays is aware of the proceedings. The panel noted that Mr Hays, via his professional representative, "Voice", has responded to the Notice of Proceedings on 20 October 2016, to confirm that he will not be in attendance at the hearing. The panel noted that Mr Hays has provided a letter from his GP, dated 11 March 2016, to explain that he feels unable to attend the hearing and that he wishes to be represented. The panel considered a letter from Mr Hays' representative, dated after his GP's letter, of 22 February 2017, which again notified that Mr Hays would not be in attendance at the hearing but also that he would not be represented.

The panel considers that Mr Hays has consistently expressed the view that he does not wish to attend the hearing. The panel noted from the papers that Mr Hays has the benefit of representation but has expressed the intention not to be represented at the hearing. The panel therefore considers that Mr Hays has waived his right to be present at the hearing in the knowledge of when and where the hearing is taking place. The panel also noted that Mr Hays has not requested that the hearing be adjourned.

The panel has had regard to the requirement that it is only in rare and exceptional circumstances that a decision should be taken in favour of the hearing taking place. The panel felt that there is no indication that an adjournment might result in Mr Hays attending the hearing at a later date, and noted from Mr Hays' GP letter which states that "he feels unable to attend any future hearings including this [hearing]".

The panel has had regard to the extent of the disadvantage to Mr Hays in not being able to give his account of events at the hearing, having regard to the nature of the evidence against him. The panel notes that it has the benefit of a witness statement from Mr Hays, dated 20 February 2017, and further a letter from Mr Hays' representative, dated 22 January 2016, which provides the position adopted by Mr Hays in response to the allegations against him. The panel notes from Mr Hays' representative's letter, dated 22 February 2017, that Mr Hays admits allegations 1.a. to 1.e. inclusive, but denies allegation 2. It is also noted that Mr Hays received the proposed hearing bundle from the National College and stated that he had no objection to the content of the bundle or had any additional documents to adduce.

In light of the documentation supplied by Mr Hays, the panel is able to ascertain his lines of defence. The panel has his evidence addressing mitigation and would be able to take this into account at the relevant stage should this become necessary.

The panel has noted that Pupil A will be called by the National College to give evidence, and the panel can test that evidence by questioning Pupil A, considering such points as are favourable to the teacher, which are available on the evidence. The panel has not

identified any significant gaps in the documentary evidence provided to it and should such gaps arise during the course of the hearing, it may take this into consideration in determining whether the hearing should be adjourned for such documents to become available and in considering whether the presenting officer has discharged the burden of proof.

The panel is also able to exercise vigilance in making its decision, taking into account the degree of risk of the panel reaching the wrong decision as a result of not having heard the teacher's account.

The panel also notes that there is a witness present at the hearing, who is prepared to give evidence, and that it would be inconvenient and potentially distressing for him to return again in the case of an adjournment.

The panel has had regard to the seriousness of this case, and the potential consequences for the teacher and has accepted that fairness to the teacher is of prime importance. However, it considers that in light of the teacher's waiver of his right to appear and taking account of the inconvenience an adjournment would cause to the witness, on balance, the public interest in this hearing proceeding within a reasonable time is in favour of this hearing continuing today.

Amending the allegations

The panel considered an application from the presenting officer to amend the allegations, to correct what is submitted to be a typographical error in the Notice of Proceedings, dated 11 October 2016.

The presenting officer submitted that allegations 1.d.iii. to 1.d.vi. inclusive, and 1.e.iii to 1.e.vi. inclusive contain typographical errors, in that they mistakenly refer to "Pupil A" throughout, as opposed to "Pupil B" and "Pupil C" respectively. The presenting officer requested that the relevant allegations be amended to read as follows:

"d. In relation to Pupil B:

- i. they attended his home on a monthly basis for approximately two years;
- ii. no other adult was present during some of these visits;
- iii he asked Pupil B to undress;
- iv. he took measurements of Pupil B whilst he was naked;
- v. he measured Pupil B's penis;
- vi. he held Pupil B's naked penis whilst measuring it;

e. In relation to Pupil C:

- i. they attended his home on a monthly basis for approximately two years;
- ii. no other adult was present during some of these visits;
- iii. he asked Pupil C to undress;
- iv. he took measurements of Pupil C whilst he was naked;
- v. he measured Pupil C's penis;
- vi. he held Pupil C's naked penis whilst measuring it."

The panel was referred to paragraph 4.56. of the Procedures, which states that the panel has the power to amend an allegation at any stage before making its decision, where it is in the interests of justice to do so. The panel was advised that in considering the interests of justice it should be mindful of whether there is a risk that prejudice would be caused to the teacher if the amendments were allowed. If such a risk exists, the panel must consider whether it would be just to allow the application.

The panel was referred to Article 6 of the European Convention on Human Rights and the various relevant factors that it incorporates, such as the right to be informed promptly and in detail, of the nature and cause of the accusation against the teacher; and the right to have adequate time and the facilities for the preparation of the teacher's defence.

The panel was advised that, generally, an amendment will cause unfairness or prejudice to the teacher if it changes the nature of the allegation or makes it more serious than before, or changes the factual basis upon which the allegation is founded. Therefore, the panel considered whether the teacher's case would have been presented differently if the amendment had been made at an earlier stage.

The panel took the view that the proposed amendments did not change the nature of the allegations such that they would cause unfairness or prejudice to Mr Hays, or that they changed the factual basis upon which the allegations are founded. The panel noted that in his witness statement dated 20 February 2017, Mr Hays has responded to the allegations as if the above requested amendment to the allegations had been made. It appears that Mr Hays had spotted the typographical error contained within the Notice of Proceedings when responding to the allegations, and has responded to what would have been the correctly drafted allegations. Notwithstanding Mr Hays' absence, the panel considered that this clearly illustrates that Mr Hays would not be prejudiced by the proposed amendment.

The panel therefore determined that the allegations should be amended in the form requested, as set out above. In reaching this view, the panel was mindful of Mr Hays' absence from the hearing and maintained extra vigilance when reaching its decision.

Admissibility of additional documents

The panel heard an application from the presenting officer for additional documents to be admitted to the bundle, these being letters from the National College to the teacher's representative, dated 3 March 2017 and 7 March 2017, both of which notify the teacher of a change in the constitution of the panel before the hearing.

The panel considered whether to exercise its discretion under paragraph 4.18. to admit the aforementioned documents which had not been submitted to the panel and the other party to the proceedings at least 4 weeks prior to the hearing. The panel noted that it may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

The panel decided to admit the documents. The panel noted that the additional documents do not provide additional evidence or allegations against Mr Hays and also considered that, given the nature of the additional documents, Mr Hays and/or his representative would already have received the additional documents. Therefore, the panel felt that it is clear that Mr Hays is not being disadvantaged by the admission of the additional documents. In reaching this decision, the panel maintained extra vigilance, noting Mr Hays' absence from the hearing.

The panel directed the additional documents be paginated sequentially to allow for inclusion into the hearing bundle, as follows:

Letter from the National College to the teacher, dated 3 March 2017 – pages 47 to 48

Letter from the National College to the teacher, dated 7 March 2017 – pages 49 to 50

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 2 to 3

Section 2: Notice of Proceedings and response – pages 5 to 11

Section 3: NCTL witness statements – pages 13 to 16

Section 4: NCTL documents – pages 18 to 31

Section 5: Teacher documents – pages 33 to 46

In addition, the panel agreed to accept the following:

Letter from the National College to the teacher, dated 3 March 2017 – pages 47 to 48

Letter from the National College to the teacher, dated 7 March 2017 – pages 49 to 50

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

Witnesses

The panel heard oral evidence from Pupil A, on behalf of the National College.

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 Denis Hays was employed as a teacher at Greasbrough Primary School (the “School”). During the summer of 1975, he invited two pupils from the School to his home on the basis that they were to take part in a developmental study on a monthly basis. A further pupil also joined in attending Mr Hays’ home for this purpose during the following year.

On 25 March 2015, the School was contacted by the police following an intelligence report being submitted by Pupil A, who had attended Mr Hays’ home for the purpose of the developmental study. At the point of submitting the intelligence report, Pupil A was a police officer. Mr Hays was consequently suspended from his position and an investigation was commenced. Mr Hays was subsequently interviewed by South Yorkshire Police on 8 June 2015 and declined to answer police questions in interview. A safeguarding meeting was held on 22 June 2015, with a further investigative meeting taking place at the School on 14 July 2015. Mr Hays was subsequently dismissed for gross misconduct, following a disciplinary hearing on 1 October 2015.

Findings of fact

Our findings of fact are as follows:

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

1. Failed to maintain appropriate professional boundaries in that:

a. between approximately 1975 and 1977 you asked pupils to attend at your home for the purpose of taking part in a “child development study” (“the Study”), namely:

i. Pupil A,

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

The panel also heard evidence from Pupil A that he and Pupils B and C attended Mr Hays’ home, for the purpose of assisting Mr Hays conduct a child developmental study. Pupil A stated he and the other boys attended Mr Hays’ home for this purpose approximately once every month. Pupil A stated that he and Pupil B were asked by Mr Hays to attend his home on this basis, on their last day of primary school – in the summer of 1975. Pupil A stated that Pupil C, who was an academic-year younger than Pupils A and B, was asked to attend the Study on his last day of primary school – in the summer of 1976.

The panel therefore found this allegation proven.

ii. Pupil B,

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence, Pupil A corroborated Mr Hays’ admission of this allegation.

The panel therefore found this allegation proven.

iii. Pupil C,

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

The panel noted that Pupil A corroborated Mr Hays’ admission of this allegation, in his live evidence. Pupil A stated that Pupil C commenced attending the Study later than he

and Pupil B, albeit that the three boys stopped attending the Study at the same time (when Pupil A turned 13 or 14).

The panel therefore found this allegation proven.

In his witness statement, dated 20 February 2017, Mr Hays stated that he met with each of Pupil A, B and C's parents to seek their permission for the attendance of their children at the Study. In his live evidence, Pupil A commented that since recently speaking with his father on this subject, whilst it was agreed by Pupil A's father that Pupil A could participate in the Study, Pupil A's father was not aware that Pupil A was to be "measured" in the manner alleged, and had he been aware, he would not have authorised his son's attendance at the Study.

The panel therefore finds allegation 1.a. proven.

b. The Study was not linked to any school, agency, or third party;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

The panel noted from Mr Hays' witness statement, dated 20 February 2017, that he did not notify or seek any guidance from any academic organisation in respect of the Study. Mr Hays states that his behaviour in this regard was naïve.

The panel therefore finds this allegation proven.

c. In relation to Pupil A, then aged approximately 11 years:

i. they attended your home on a monthly basis for approximately two years;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence, Pupil A corroborated Mr Hays' admission of this allegation. Pupil A confirmed that he attended Mr Hays' home in the manner alleged from shortly after he left primary school, in around the autumn of 1975, until he reached the age of 13 or 14. Pupil A commented that as he entered adolescence he felt increasingly uncomfortable in being examined and measured by Mr Hays in the manner alleged during the Study. In his live evidence, Pupil A commented that he attended Mr Hays' home on a monthly basis to take part in the Study.

The panel therefore finds this allegation to be proven.

ii. no other adult was present during some of these visits;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence, Pupil A corroborated Mr Hays' admission. He stated that the only adult he and Pupils B and C saw during the evenings they attended the Study was Mr Hays' wife, who they only ever saw very briefly, when she was either leaving Mr Hays' home as the pupils arrived or when she was arriving back home around the time the pupils were leaving after the Study sessions.

The panel therefore finds this allegation proven.

iii. you asked Pupil A to undress;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

This was corroborated by Pupil A during his live evidence. Pupil A confirmed during his live evidence that Mr Hays asked each of the boys to undress to allow them to be measured. Pupil A gave a credible account illustrating how all of the boys would be naked in the same room together with Mr Hays. Pupil A stated that Mr Hays would conduct his measurements on one of the boys whilst the others undressed, in readiness for them being measured in turn. The panel noted that Pupil A's account in this regard partially conflicted with paragraph 14 of Mr Hays' witness statement, dated 20 February 2017. Notwithstanding this, the panel found Pupil A to be a particularly reliable witness, and therefore accepted his evidence on this allegation.

The panel therefore finds this allegation proven.

iv. you took measurements of Pupil A whilst he was naked;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

This was corroborated by Pupil A when giving his live evidence. Pupil A described how measurements of each of the boy's various body parts were taken by Mr Hays during the Study sessions, once every three months. Pupil A gave credible evidence that this involved Mr Hays measuring his, Pupil B's and Pupil C's head, arms, legs, neck, chest and penis, whilst the boys were naked. Mr Hays also examined the boys' testicles.

Pupil A stated that these measurements were taken relatively quickly, with all of the boys' measurements being completed in around 15 to 20 minutes. Pupil A stated that once the

measuring had been completed, he and Pupils B and C would stay at Mr Hays' house and socialise for around 90 minutes. Pupil A recalled on occasion watching television with the boys and Mr Hays, after the measurements had been taken.

The panel therefore found this allegation proven.

v. you measured Pupil A's penis;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

Pupil A corroborated Mr Hays' admission in relation to this allegation. Pupil A gave credible evidence that during the evenings on which the boys were measured, Mr Hays measured each boy's penis, in a non-erect state.

Pupil A commented that as part of the Study, Mr Hays wished to take measurements of the boys' erect penises. He stated that whilst Mr Hays placed no pressure on him to produce an erection, on one occasion Mr Hays measured Pupil A's erect penis.

The panel therefore finds this allegation proven.

vi. you held Pupil A's naked penis whilst measuring it,

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

Mr Hays' admission was corroborated by Pupil A during his live evidence.

The panel therefore finds this allegation proven.

d. In relation to Pupil B:

i. they attended your home on a monthly basis for approximately two years;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

Additionally, the panel noted that this allegation was corroborated by Pupil A during his live evidence. Pupil A stated that he and Pupil B commenced attending the Study together in around the autumn of 1975. They both attended Mr Hays' home on a monthly basis up until Pupil A turned 13 or 14, when their attendance (as well as Pupil C's attendance) at the Study sessions ceased.

The panel therefore finds this allegation proven.

ii. no other adult was present during some of these visits;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

Additionally, this allegation was corroborated by Pupil A, during his live evidence, as set out in respect of allegation 1.c.ii. above.

Accordingly, the panel therefore finds this allegation proven.

iii. you asked Pupil B to undress;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence before the panel, Pupil A stated that he had been in the same room as Pupil B when Pupil B undressed on the instruction of Mr Hays. Pupil A gave a credible account of how each of the pupils would undress in the same room as each other, in the presence of Mr Hays. Pupil A stated that Mr Hays would conduct his measurements on one of the boys whilst the others undressed, in readiness for them being measured in turn. The panel noted that Pupil A's account in this regard partially conflicted with paragraph 14 of Mr Hays' witness statement, dated 20 February 2017. Notwithstanding this, the panel found Pupil A to be a particularly reliable witness, and therefore accepted his evidence on this allegation.

The panel therefore finds this allegation proven.

iv. you took measurements of Pupil B whilst he was naked;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

This was corroborated by Pupil A when giving his live evidence. Pupil A described how measurements of each of the boy's various body parts were taken by Mr Hays during the Study sessions, once every three months. Pupil A gave credible evidence that this included measuring his, Pupil B's and Pupil C's head, arms, legs, neck, chest and penis, whilst the boys were naked. Mr Hays also examined the boys' testicles.

Pupil A stated that these measurements were taken relatively quickly, with all of the boys' measurements being completed in around 15 to 20 minutes. Pupil A stated that once the measuring had been completed, he and Pupils B and C would stay at Mr Hays' house and socialise for around 90 minutes. Pupil A recalled on occasion watching television with the boys and Mr Hays, after the measurements had been taken.

The panel therefore finds this allegation proven.

v. you measured Pupil B's penis;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence before the panel, Pupil A stated that he had been in the same room as Pupil B and C when Pupil B's penis was measured by Mr Hays. Pupil A gave a credible account of how he, Pupil B and Pupil C would joke with each other in relation to the measurements taken by Mr Hays.

The panel therefore finds this allegation proven.

vi. you held Pupil B's naked penis whilst measuring it;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence before the panel, Pupil A corroborated Mr Hays' admission.

The panel therefore finds this allegation proven.

e. In relation to Pupil C:

i. they attended your home on a monthly basis for approximately two years;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

On the evidence provided by Pupil A during the hearing, the panel considered that Pupil C attended Mr Hays' home for the purpose of the Study approximately once per month, along with Pupils A and B. Pupil A stated, however, that Pupil C started attending Mr Hays' home for this reason after Pupils A and B, and that Pupil C began attending Mr Hays' home approximately one year after Pupils A and B. Pupil A confirmed during his live evidence that he, Pupil B and Pupil C all stopped attending Mr Hays' home at the same time, when Pupil A reached the age of 13 or 14.

Notwithstanding that the panel noted that Pupil C may have attended Mr Hays' home for a total period of less than two years, it found this allegation proven. The panel found that Pupil C did attend Mr Hays' home on a monthly basis for an extended period of time, and that the wording of the allegation states "approximately" two years. Furthermore, in reaching its decision, the panel had in mind Mr Hays' admission of this allegation.

ii. no other adult was present during some of these visits;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

Additionally, this allegation was corroborated by Pupil A, during his live evidence, as set out in respect of allegation 1.c.ii. above.

Accordingly, the panel therefore finds this allegation proven.

iii. you asked Pupil C to undress;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence before the panel, Pupil A stated that he had been in the same room as Pupil C when Pupil C undressed on the instruction of Mr Hays. Pupil A gave a credible account of how each of the pupils would undress in the same room as each other, in the presence of Mr Hays. Pupil A stated that Mr Hays would conduct his measurements on one of the boys whilst the others undressed, in readiness for them being measured in turn. The panel noted that Pupil A's account in this regard partially conflicted with paragraph 14 of Mr Hays' witness statement, dated 20 February 2017. Notwithstanding this, the panel found Pupil A to be a particularly reliable witness, and therefore accepted his evidence on this allegation.

The panel therefore finds this allegation proven.

iv. you took measurements of Pupil C whilst he was naked;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

This was corroborated by Pupil A when giving his live evidence. Pupil A described how measurements of each of the boy's various body parts were taken by Mr Hays at the Study, once every three months. Pupil A gave credible evidence that this involved Mr Hays measuring his, Pupil B's and Pupil C's head, arms, legs, neck, chest and penis, whilst the boys were naked. Mr Hays also examined the boys' testicles.

Pupil A stated that these measurements were taken relatively quickly, with all of the boys' measurements being completed in around 15 to 20 minutes. Pupil A stated that once the measuring had been completed, he and Pupils B and C would stay at Mr Hays' house and socialise for around 90 minutes. Pupil A recalled on occasion watching television with the boys and Mr Hays, after the measurements had been taken.

The panel therefore finds this allegation proven.

v. you measured Pupil C's penis;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

In his live evidence before the panel, Pupil A stated that he had been in the same room as Pupil B and C when Pupil C's penis was measured by Mr Hays. Pupil A gave a credible account of how he, Pupil B and Pupil C would joke with each other in relation to the measurements taken by Mr Hays.

The panel therefore finds this allegation proven.

vi. you held Pupil C's naked penis whilst measuring it;

The panel noted that Mr Hays has admitted this allegation in the response to the Notice of Proceedings, dated 20 October 2016. Furthermore, the panel found that Mr Hays had also admitted this allegation in his witness statement, dated 20 February 2017.

The panel therefore finds this allegation proven.

In light of the above, the panel also finds that Mr Hays failed to maintain appropriate professional boundaries. The panel noted from his witness statement dated 20 February 2017, that Mr Hays admits that his behaviour as set out above, and as admitted, went beyond acceptable professional boundaries.

2. Your conduct as described at allegation 1 above was sexually motivated.

The panel noted that Mr Hays has denied this allegation in his response to the Notice of Proceedings, dated 20 October 2016 and in his witness statement, dated 20 February 2017.

Mr Hays states that in conducting the Study in the manner set out above (and as admitted) he was motivated by nothing more than a naïve wish to obtain further qualifications so that he could progress up the teaching pay scales and provide for his family. Mr Hays, in his witness statement, describes how his then headteacher suggested that he obtain a degree to increase his chances of promotion, and with this in mind, Mr Hays decided to undertake a private study into child development, the detail of which Mr Hays could use for any subsequent course he enrolled upon.

In his witness statement, Mr Hays describes how he did not discuss his private study with anyone that he worked with, or anyone from any academic institute. Mr Hays describes how he did not tell the School or the secondary school at which each of the pupils were attending, that the Study was being undertaken. Mr Hays states that this was not done to be secretive, but rather the thought to provide such notification never occurred to him.

The panel notes that from the documentation submitted on Mr Hays' behalf that he did not go on to undertake a further degree course, due to a change in his personal circumstances alleviating the need for an increased income.

Notwithstanding the absence of Mr Hays at the hearing and the extra vigilance maintained by the panel in light of this, the panel did not accept Mr Hays' account that his actions were not sexually motivated, and were simply naïve.

In reaching its conclusion, the panel was advised to consider whether reasonable persons would think the actions found proven against Mr Hays could be sexual, this being the objective test. Notwithstanding that the conduct found against Mr Hays took place in the 1970s, the panel felt that reasonable persons would consider that Mr Hays' actions could be sexual. The panel felt that Mr Hays' repeated measuring and manipulation of Pupils A, B and C's genitals had no basis or foundation in academic study – reflected by the fact that no academic institute was aware of or involved in the Study. There was no need for the boys to be naked whilst their other body parts were measured and the panel felt that the reasonable person could only conclude that Mr Hays' measuring of a pupil's erect penis was sexually motivated. The panel accepted submissions from the presenting officer that Mr Hays only appeared to select young boys to undertake the Study, and noted that no girls were invited to participate in what was reportedly a child developmental study.

The panel then considered whether, in all the circumstances of the conduct in the case, Mr Hays' purpose behind such actions was sexual, this being the subjective test. On the balance of probabilities, the panel found that this subjective test was satisfied.

The panel noted that Mr Hays had waited until each of the pupils participating in the Study had left the school at which he taught, and that Mr Hays did not request that the Study be supervised by other adults. Mr Hays did not seek to cross-reference the work undertaken during the Study with other professionals, and nor did Mr Hays ultimately go on to use the information gained during the Study for any means to progress his career. Pupil A gave evidence indicating that his father was not given a full account of the Study, and he confirmed that his father would not have allowed Pupil A to attend the Study had he known of the measurements being taken.

The panel considers that, on balance, Mr Hays was intentionally trying to keep a true account of the Study from others in the knowledge that the Study was inappropriate. The panel is satisfied that Mr Hays' motivation for initiating and undertaking the Study was, at least in part, sexual.

The panel therefore finds this allegation proven.

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

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

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

The panel is satisfied that the conduct of Mr Hays in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Hays 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; and
 - showing respect for the rights of others.

With regard to showing respect for the rights of others, the panel considered that Mr Hays’ conduct in measuring and holding each boy’s genitals represented a failure to appreciate their rights as individuals to be free from such molestation.

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

The panel has also considered whether Mr Hays’ conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of sexual activity is relevant. The panel found that Mr Hays’ behaviour in measuring and holding the boys’ genitals without convincing evidence to the contrary, could clearly be associated with an offence of sexual activity. The Advice indicates that where behaviours associated with an offence of sexual activity exist, a panel is likely to conclude that an individual’s conduct would amount to unacceptable professional conduct.

The panel notes that the allegations took place outside of the education setting. The panel did not find, on the evidence, that the allegations found proven affected the manner in which Mr Hays fulfils his teaching role. In this regard, it was noted that Pupil A, during his live evidence, found Mr Hays to be a good teacher whom he respected. However, the panel determined that the behaviour found proven against Mr Hays clearly may lead to pupils being exposed to or influenced by such behaviour in a harmful way. The panel accepted submissions from the presenting officer that Mr Hays targeted boys who had just left the primary school at which he taught. Pupils A, B and C were each asked by Mr Hays to attend the Study on their final day of primary school. In light of this, the panel considered that there was clear potential for Mr Hays to target boys whom he taught at the School.

Accordingly, the panel is satisfied that Mr Hays 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 considered that the misconduct found against Mr Hays is serious, and that the conduct displayed would have a negative impact on Mr Hays' status as a teacher, and would damage the public perception of the profession.

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

Having found the facts of the allegations against Mr Hays proven, the panel further finds that Mr Hays' 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 considered whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. The panel understands that 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 and the protection of other members of the public; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and the interest of retaining the teacher in the profession.

In light of the panel's findings against Mr Hays, which involved the systematic and repeated measurement and handling of Pupils A, B and C's genitals, there is a strong public interest consideration in respect of the protection of pupils and other members of the public. The findings against Mr Hays are serious, and indicate that Mr Hays' sexually motivated behaviour was targeted at young boys who he had, up until very shortly before their involvement in the Study, previously taught. The panel acknowledged that, due to his age and the unlikelihood of Mr Hays returning to teaching, there is a reduced risk of harm to pupils and protection of the public. Nevertheless, the panel felt that in the event

that Mr Hays had the opportunity to teach again he could pose a risk to pupils of his and other schools.

The panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Hays were not treated with the utmost seriousness when regulating the conduct of the profession. The panel felt that the public should, quite rightly, expect that teachers could not permissibly demonstrate the type of conduct found proven against Mr Hays, and that the regulator should be seen to be treating such conduct with the utmost seriousness.

Additionally, 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 Hays was clearly outside that which could reasonably be tolerated by the profession.

The panel considered the public interest consideration in retaining Mr Hays in the profession, since, as per the letter from Mr Hays' representative, dated 22 January 2016, Mr Hays has reportedly taught at the School for 46 years without any other complaint. The panel accepted this and felt that Mr Hays is clearly an experienced educator. The panel also felt, however, that Mr Hays has shown a limited understanding of the implications of his behaviour – merely describing his admitted conduct as naïve and regrettable. Additionally, the panel has seen no references or statements from third parties attesting to the abilities of Mr Hays as a teacher.

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

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 Hays. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours, the panel considered the following to be relevant in this case:

- 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;

Notwithstanding that 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.

The panel considers that Mr Hays' actions were deliberate and that Mr Hays was not acting under duress. The panel gave consideration to Mr Hays' submissions that, save for this matter, he had undertaken a long career at the School – which exceeded 46 years, and has received no other complaints. Notwithstanding this, the panel found it noteworthy that despite Mr Hays' long-standing period of working at the School without complaint, he has presented no character references from colleagues or third parties, supporting his ability as a teacher or his good character.

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

The panel is of the view that in applying the standard of the ordinary intelligent citizen, it would be inappropriate to recommend that no prohibition order be imposed. The panel considered that merely recommending the publication of adverse findings against Mr Hays would unacceptably compromise the public interest considerations present in this case. This is notwithstanding the severity of the consequences for Mr Hays when faced with prohibition. The panel felt that in meeting the public interest considerations relevant to this matter, it was necessary, proportionate and appropriate to recommend that a prohibition order be made against Mr Hays.

The panel has decided that the public interest considerations outweigh the interests of Mr Hays in this case. The panel felt that the seriousness of the conduct found against Mr Hays along with the limited mitigation offered in his support, was a significant factor 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 to decide to recommend that a review period of the order should be considered. The panel was mindful that the Advice states that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. One such behaviour is serious sexual misconduct, for example, 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 considers that Mr Hays' proven conduct was sexually motivated, for the reasons set out above. It considers that his actions had the potential to harm the pupils involved in the Study. The panel also felt from Pupil A's live evidence, that Mr Hays relied upon his status as a respected and trusted teacher in order to have the boys participate in the study; it was noted that Pupil A had felt keen to please Mr Hays. The panel therefore felt that Mr Hays had exploited his position in conducting his sexually motivated behaviour.

The panel does not consider that Mr Hays has shown any real insight into his behaviour. He does not appear to have acknowledged the potential impact that his behaviour could have had on the pupils involved in the Study, but rather simply describes his conduct as naïve. In a letter from Mr Hays' representative to the National College, dated 22 January 2016, it is said that Mr Hays had reflected on his experience and learned where he went wrong. The letter goes on to state that Mr Hays should have protected himself and the pupils by having another adult present. The panel considers that Mr Hays does not grasp the seriousness of his conduct, its potential impact on the pupils involved, or its negative impact upon the reputation of the profession, which, in any event would not be ameliorated merely by the presence of another adult.

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 given very careful consideration to this case and to the recommendation made by the panel in respect of both sanction and review.

In considering the case I have also taken into consideration the advice that is published by the Secretary of State concerning the prohibition of teachers.

I have also had due regard to the fact that in this case the teacher has admitted the allegations. I have also balanced the historic nature of these allegations with the seriousness of the behaviours.

In this case the panel has found that Mr Hays 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; and

- showing respect for the rights of others.

With regard to showing respect for the rights of others, the panel considered that Mr Hays' conduct in measuring and holding each boy's genitals represented a failure to appreciate their rights as individuals to be free from such molestation.

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

The panel has also considered whether Mr Hays' conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice. The panel has found that the offence of sexual activity is relevant. The panel found that Mr Hays' behaviour in measuring and holding the boys' genitals without convincing evidence to the contrary, could clearly be associated with an offence of sexual activity. The Advice indicates that where behaviours associated with an offence of sexual activity exist, a panel is likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel in this case has found both unacceptable professional conduct and conduct that may bring the profession into disrepute. Having found that the panel has recommended to me that Mr Hays should be prohibited from teaching. The panel considered the following to be relevant in this case:

- 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.

In considering whether or not to impose a prohibition order on Mr Hays I have weighed the various elements of the public interest alongside the interests of the teacher. I have also recognised that a prohibition order should not be imposed as a punitive measure even though it may have a punitive effect.

In considering whether to impose a prohibition order I have considered the option that a publicly declared finding of unacceptable professional conduct or conduct that may bring the profession into disrepute may, in some cases, be a proportionate outcome to a case.

In this case I have also had to consider the fact that these allegations relate to behaviours that are historic. Nonetheless I have had to also take into account the very

serious nature of the behaviours. The panel state that “Mr Hays had exploited his position in conducting his sexually motivated behaviour.”

For these reasons I am accepting the recommendation of the panel and am imposing a prohibition order on Mr Hays. In my judgement and having weighed all the issues and considered the published advice I consider that to be proportionate and in the public interest.

I have gone on to consider the matter of a review period. In considering this I have noted the panel’s comments on the degree of insight and remorse shown by Mr Hays. The panel are clear that Mr Hays has shown only limited insight.

I have taken particular account of the panel’s comment that “Mr Hays does not grasp the seriousness of his conduct, its potential impact on the pupils involved, or its negative impact upon the reputation of the profession, which, in any event would not be ameliorated merely by the presence of another adult.”

In my view it is therefore proportionate and in the public interest that the prohibition order should be imposed with no opportunity for review.

This means that Mr Denis Hays 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 Denis Hays 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 Denis Hays 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: 23 March 2017

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