



National College for  
Teaching & Leadership

# **Mr Ultan Joseph McCarthy: Professional conduct panel outcome**

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

**April 2015**

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

**Teacher:** Mr Ultan Joseph McCarthy

**Teacher ref no:** 9142342

**Teacher date of birth:** 18 August 1970

**NCTL case ref no:** 12168

**Date of determination:** 7 April 2015

### **A. Introduction**

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 7 April 2015 at 53-55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Ultan McCarthy in a meeting.

The panel members were Mr Mike Carter (teacher panellist – in the chair), Mr Tony Heath (lay panellist) and Mrs Sarah Evans (teacher panellist).

The legal adviser to the panel was Mr Graham Miles of Blake Morgan LLP Solicitors.

The meeting took place in private, save that the decisions of the panel on facts and unacceptable professional conduct were announced in public and were recorded.

### **B. Allegations**

The panel considered the allegation set out in the Notice of Meeting dated 13 March 2015.

It was alleged that Mr McCarthy was guilty of unacceptable professional conduct, in that [redacted]:

1. He accessed inappropriate websites using his school laptop.
2. And in doing so at paragraph 1 his actions were sexually motivated.
3. He was cautioned on 29 January 2014 for the offence of: Possessing an indecent photograph or pseudo-photograph of a child contrary to section 160 (1) (2A) and (3) of the Criminal Justice Act 1988.

Mr McCarthy admitted the alleged facts and admitted that he was guilty of unacceptable professional conduct.

## **C. Preliminary applications**

There were no preliminary applications.

## **D. Summary of evidence**

### **Documents**

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

- Section 1: Chronology, with page number 2
- Section 2: Notice of Referral, response and Notice of Meeting, with page numbers from 4 to 8b
- Section 3: Statement of agreed facts and presenting officer representations, with page numbers from 10 to 15
- Section 4: National College for Teaching and Leadership documents, with page numbers from 17 to 72
- Section 5 – Teacher documents,, with page numbers from 74 to 172

The panel also received an additional bundle of documents from Mr McCarthy containing the following documents:

1. Statement of Individual A (to replace pages 129 to 137 of the original bundle);
2. Statement of Individual B (to replace pages 154 to 155 of the original bundle);
3. Statement of Individual C (to replace page 158 of the original bundle);
4. Statement of Individual D (to replace page 159 of the original bundle).
5. Extract from [redacted] (to replace page 172 of the original bundle);
6. Detailed chronology;
7. Lucy Faithfull Completion Letter;
8. [redacted] Working for Wellbeing (redacted).

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

On the day of the meeting, the panel received an email from Mr McCarthy dated 26 March 2015.

## **E. Decision and reasons**

The panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

Mr McCarthy was employed as a teacher at [redacted] ('the college') from 1 September 2006 to 5 January 2014. He was issued with a work laptop by the college. He accessed inappropriate websites using his school-based laptop, consisting of viewing adult softcore and hardcore pornography whilst at home. This contravened the Code of Conduct for use of ICT at the college. These actions by Mr McCarthy were sexually motivated. On 9 October 2013 the college was notified of Mr McCarthy's browsing of inappropriate images by its IT company. On 15 October 2013, Mr McCarthy was arrested by the police and interviewed. The police seized all of his computer equipment from his family home for investigation in addition to his school-issued laptop. The police investigation found that on the night of 1 to 2 September 2012, Mr McCarthy downloaded and viewed 15 indecent images classed as level 1 on the COPINE scale on his school-issued laptop. On 29 January 2014, Mr McCarthy accepted a caution for the offence of possessing 15 indecent photographs or pseudo-photographs of children contrary to section 160(1), (2A) and (3) of the Criminal Justice Act 1988.

### **Findings of fact**

Our findings of fact are as follows:

**It was alleged that Mr McCarthy was guilty of unacceptable professional conduct, in that [redacted]:**

- 1. He accessed inappropriate websites using his school laptop.**
- 2. And in doing so at paragraph 1 his actions were sexually motivated.**
- 3. He was cautioned on 29 January 2014 for the offence of: Possessing an indecent photograph or pseudo-photograph of a child contrary to section 160 (1) (2A) and (3) of the Criminal Justice Act 1988.**

The panel finds the facts proved, based on Mr McCarthy's admissions, the statement of agreed facts and, in relation to allegation 3, his acceptance of the police caution.

## Findings as to unacceptable professional conduct

The panel noted that Mr McCarthy admitted the alleged facts and that his conduct amounted to unacceptable professional conduct. The panel took this admission into account, but made its own determination.

The panel is satisfied that accessing inappropriate websites using the school laptop was a serious departure from the personal and professional conduct elements of the Teachers' Standards. Mr McCarthy failed to have proper and professional regard for the ethos, policies and practices of the college in which he taught.

In relation to allegation 3, Mr McCarthy accepted a caution for an offence of possessing an indecent photograph or pseudo-photograph of a child. The panel is satisfied that this would be found to be a relevant offence if it had resulted in a conviction.

The panel is satisfied that Mr McCarthy's actions in accessing inappropriate websites using the school laptop and possessing indecent images of children amount to misconduct of a serious nature falling significantly short of the standard of behaviour expected of a teacher. Accordingly, the panel is satisfied that unacceptable professional conduct has been established.

## Panel's recommendation to the Secretary of State

The panel considered that Mr McCarthy's actions are incompatible with continuing to be a teacher in that:

- Using the school laptop to access inappropriate material of a sexual nature was a serious departure from the personal and professional conduct elements of the Teachers' Standards.
- Mr McCarthy's actions in possessing indecent photographs or pseudo-photographs of children involved sexual misconduct and the commission of a serious criminal offence and resulted in a caution. [redacted]

The panel considered the mitigation put forward. The Panel recognised that Mr McCarthy has a previous good history and this is supported by references from a number of former colleagues and family members. It is clear from the material submitted that Mr McCarthy was a very committed teacher and was significantly involved in outreach and extra-curricula activities. Mr McCarthy commissioned his own independent psychological assessment. The panel note that this report stated that Mr McCarthy is 'psychologically inquisitive and above all is motivated to understand his thoughts and behaviours, especially those that led to his sexual offending behaviour'. The report makes three recommendations, which Mr McCarthy has begun to address. The panel noted that Mr McCarthy has voluntarily attended an individualised course at his own expense run by The Lucy Faithfull Foundation. The areas addressed by the course included education, exploration and practical advice. In addition, Mr McCarthy has attended counselling with

a Psychological Wellbeing Practitioner. The panel considered whether the actions of Mr McCarthy had been deliberate or careless. The panel concluded that the actions were deliberate, having regard to the fact that during a session of accessing adult pornography by computer, he chose to view and download 15 separate indecent images of children. The panel is satisfied for a prohibition order to be imposed in order to maintain public confidence in the profession and to declare and uphold proper standards of conduct. This is the recommendation of the panel.

The panel considered whether to recommend that Mr McCarthy be allowed to make a future application to have the prohibition order set aside. In this context, the mitigating circumstances referred to above are compelling. The panel also noted that there is no evidence of further illegal internet activity between the 1<sup>st</sup> / 2<sup>nd</sup> September 2012, when the downloading of child pornography occurred, and his arrest on 15 October 2013. This supports Mr McCarthy's assertion that this was the only occasion on which he accessed illegal child pornography and counteracts the suggestion that his behaviour represented an escalation from adult pornography to increasingly hardcore child pornography. The fact that Mr McCarthy has voluntarily taken the steps described above to address his addiction to pornography encourages the panel to consider that Mr McCarthy should have the opportunity to apply to have the prohibition order set aside after a period of 3 years. This is the panel's recommendation.

## **Decision and reasons on behalf of the Secretary of State**

I have carefully considered the findings and recommendations of the panel in this case.

The panel have found all the allegations proven and judged that Mr McCarthy is guilty of unacceptable professional conduct.

The facts of the case are that Mr McCarthy used his school laptop to access softcore and hardcore pornography whilst at home. The police were involved and found that Mr McCarthy had downloaded 15 indecent images of children on his school-issued laptop. He was subsequently cautioned for the offence of possessing an indecent photograph or pseudo-photograph of a child contrary to section 160 (1) (2A) and (3) of the Criminal Justice Act 1988.

The panel have properly considered the public interest considerations in this case, namely the maintenance of public confidence in the profession and upholding proper standards of conduct. They have determined that Mr McCarthy's actions were deliberate but have recognised his previous good history, supported by a number of positive references.

I agree with their recommendation that a prohibition order is an appropriate and proportionate sanction.

The panel have gone on to consider whether to recommend that Mr McCarthy should be allowed to apply to have the order set aside after a future date. They have taken account of the voluntary steps Mr McCarthy has taken to address his addiction to pornography. The panel found the mitigating circumstances compelling and have recommended a 3 year review period. However, the Secretary of State's advice '*Teacher misconduct: the prohibition of teachers*' makes it clear that in some circumstances a panel should consider recommending that a prohibition order is imposed with no provision for the teacher to apply for it to be set aside. These circumstances include specifically 'any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph or image or pseudo-photograph or image of a child'.

In the circumstances I have decided that the prohibition order should be without the opportunity to apply for it to be set aside.

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

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

Mr Ultan Joseph McCarthy has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.

**NAME OF DECISION MAKER: Paul Heathcote**

A handwritten signature in black ink, appearing to read 'P Heathcote', with a large, sweeping flourish at the end.

**Date: 8 April 2015**

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