



National College for
Teaching & Leadership

Mr Graham Smart: Professional conduct panel outcome

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

July 2015

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

Teacher:	Mr Graham Smart
Teacher ref no:	0349178
Teacher date of birth:	20 February 1968
NCTL Case ref no:	11083
Date of Determination:	16 July 2015
Former employer:	Priory School, Isle of Wight

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 19 May 2015 for three days and again on 16 July for one day at 53-55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr Graham Smart.

The panel members were Mr Mark Tweedle (teacher panellist and chair), Mr William Brown OBE (lay panellist), and Mrs Janet Draper (lay panellist).

The legal adviser to the panel was Mr Parminder Benning of Eversheds LLP.

The presenting officer for the National College was Mr Christopher Gillespie of Counsel.

Mr Graham Smart was present on the second and third (final) days of the hearing only and was represented by Mr Simon Pettet of NASUWT at all times.

The hearing took place in public and was recorded.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 16 February 2015, as amended by application on 19 May 2015.

It was alleged that Mr Graham Smart was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed at Priory School, Isle of Wight (“the School”) between 2012 and 2013, in that:

1. In relation to Pupil A:
 - a. on 7 December 2012, went into a dark and/or darkened room with Pupil A on his own,
 - b. on dates unknown during the Autumn term 2012, despite having no pastoral role in the School at that time, he:
 - i. met Pupil A alone,
 - ii. asked Pupil A to talk to him about a problem of a personal nature on one or more occasions,
 - iii. engaged Pupil A in conversations about spiritual experiences,
 - iv. told Pupil A that he:
 1. saw spirits,
 2. had premonitions about disasters,
 3. “saw death following her” or word to that effect,
 - v. having been told by Pupil A that his comments set out at 1(b)(iv) above scared her, he continued to make such comments,
 - c. on dates unknown he:
 - i. insisted that Pupil A spend her study time in his classroom,
 - ii. suggested that Pupil A meet him outside of school hours on one or more occasions,
 - iii. provided private tuition to Pupil A without the School’s consent;
2. In relation to Pupil B he:
 - a. on a date unknown during the Autumn term 2012 said to Pupil B:
 - i. “has your boyfriend raped you?” or words to that effect,

- ii. “what would you do if he raped you?” or words to that effect,
 - iii. “have you ever been sexually abused by an adult?” or words to that effect,
 - iv. that she “should never be alone with her boyfriend” or words to that effect,
 - b. on a date unknown in March 2013, he told Pupil B to put her leg up on a chair and thereafter tied Pupil B’s shoe lace,
 - c. on a date unknown during Autumn term 2013, whilst Pupil B was unwrapping a lollipop, he said “you look experienced at that” or words to that effect,
 - d. his comments set out at 2(c) above was a sexual innuendo;
- 3. In relation to Pupil C:
 - a. on 7 and/or 14 November 2012, despite having no pastoral role in the school at that time, he:
 - i. asked Pupil C questions about a distressing incident which had occurred at her previous school,
 - ii. told Pupil C that he knew everything about the incident which had occurred,
 - b. by his actions set out at 3(a) above he caused Pupil C to become
 - i. distressed,
 - ii. frightened,
 - c. on a date unknown he unnecessarily touched Pupil C’s cheeks and said they were warm or words to that effect;
- 4. On a date unknown, in relation to Pupil A and/or Pupil B he:
 - a. offered to give them a lift in his car,
 - b. told them to wait around the side of the school,
 - c. told them not to tell the Principal about matters set out at 4(a) and/or 4(b);
- 5. On dates unknown, he acted inappropriately towards pupils in that he:
 - a. invited Pupils A and D to meet him outside school hours in Newport,

- b. met Pupil A and D in Newport,
 - c. gave Pupils A and D sweets from his car,
 - d. used sweets to make shapes of genitalia,
 - e. used inappropriate language in the presence of the pupils including:
 - i. making sexual reference to the effect that X:
 - a. places sweets on her breasts and/or created shapes of genitalia with them,
 - b. asked him to spank her,
 - ii. using words not in an educational context including paedophile;
6. He deliberately ignored management instructions not to involve himself in matters of pupil pastoral care;
7. His conduct as set out at 2(a) and/or 2(b) and/or 2(c) and/or 5(d) and/or 5(e) above was sexually motivated.

C. Preliminary applications

Application to amend allegations

At the hearing on 19 May 2015, the presenting officer made an application for the particulars of the allegations to be amended as follows:

Paragraph 7 – the text “7.” be added at the beginning of the paragraph, as due to a typographical error, the number of the allegation was removed.

Paragraph 7 – the words “and/or” be added between each allegation outlined in the paragraph, to provide clarity that the panel must find, in the case of each allegation referenced, that the conduct was sexually motivated.

The teacher’s representative did not object to the amendments.

Subsequently, the teacher’s representative made an application for the particulars of the allegations to be amended as follows:

Paragraph 5e(i) – references to the individual named be deleted and replaced with the word “X” as the individual is a minor and falls within the criteria of a vulnerable witness as outlined in paragraph 4.71 of the Procedures. Furthermore, the individual would be easily identified unless the reference is amended.

The presenting officer did not object to the amendments.

Before the panel considered its decision, the legal adviser declared the following advice:

- The panel had a discretion to amend an allegation or particulars of an allegation at any stage before deciding whether the facts of the case were proved;
- Any amendment should be in the interest of justice (Paragraph 4.56 of the Procedures);
- Article 6 of the European Convention of Human Rights enshrines the right to a fair trial; and
- The panel should take into account the submissions of the presenting officer and the teacher's representative, as well as considering any objections raised, or lack thereof.

The panel were content for the amendments to be made, as they did not consider these proposed amendments changed the nature of the allegations nor would they cause unfairness or prejudice to Mr Smart. Furthermore, the panel did not consider that the amendments would change the factual basis upon which the allegation is founded.

Admission of hearsay evidence and documents

The Presenting Officer made an application to admit into the evidence the statements of Pupil A, Pupil B and Individual D (Pupil C's form tutor), none of whom were available to give evidence for various medical reasons, and pages 57a, 57b, 57b(i) and 57b(ii), being a typed contemporaneous note of a meeting with Pupil A and B when the allegations were initially raised by the pupils, as documents that were relevant to the case.

Having initially raised objections prior to the hearing, the teacher's representative confirmed, during the hearing, that they no longer objected to the admission of the evidence.

The panel were minded to exercise their discretion under paragraph 4.18 of the Procedures and admit these documents into the evidence.

Admission of documents

The teacher's representative made an application to admit into the evidence the following categories of documents:

1. [redacted],
2. Decision from the Isle of Wight Children Services,
3. Employment Tribunal documentation, and
4. Maps and Google Earth street views of Newport.

The teacher's representative made the following submissions in respect of each category of document:

1. The hearing bundle comprises, at pages 65 – 69, a statement from Witness B, which was prepared in connection with [redacted]. It was submitted that it would be fair, in all the circumstances, for the panel to be presented [redacted] which stemmed from the statement, in order that they are presented with a full picture. Furthermore, the outcome and the findings are directly relevant to a number of the allegations raised.
2. This document outlines the findings of Children Services who launched an investigation specifically arising out of an allegation raised. The outcome from this investigation is directly relevant to the allegations raised by the National College against Mr Smart.
3. The documents will assist the panel in determining the processes followed by the School in investigating the various incidents and allegations raised leading up to and including Mr Smart's dismissal in autumn 2013.
4. These documents will assist the panel and the witnesses when turning their minds to allegations 5a – c and therefore are relevant to the case.

The presenting officer had no objections to the inclusion of item 4, he did, however, raise objections to the inclusion of items 1 – 3. The objections raised were on the grounds that the panel was neither sitting to consider whether the decisions taken by other bodies or tribunals were correct nor to consider whether these other bodies had followed due process. Indeed, the panel has been constituted to specifically consider the allegations raised by the National College and to review the evidence presented in connection with those allegations. Furthermore, the panel are not to consider the findings of another body or tribunal when forming its decision, as these decisions represent nothing more than a factual decision taken. Accordingly, it was submitted that the additional documentation is not relevant to the case at hand.

The panel had regard to Paragraph 4.18 of the Procedures which provides the "*panel may admit any evidence, where it is fair to do so, which may reasonably be considered relevant to the case*". In view of the nature and seriousness of the allegations, the panel held that the documents were relevant and would go to the heart of the allegations raised. Furthermore, the panel considered the need for fairness.

The panel were minded to exercise its discretion and admit all categories of documents.

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 – 4
Section 2:	Notice of Proceedings and Response	Pages 6 – 13
Section 3:	National College for Teaching and Leadership Witness Statements (excluding the witness statements of Pupil A, Pupil B and Individual D)	Pages 25 – 34 and Pages 38 - 40
Section 4:	National College for Teaching and Leadership Documents	Pages 42 – 69
Section 5:	Teacher Documents	Pages 71 – 133

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

In addition, the panel agreed to accept the following:

Section 3:	Witness Statements of Pupil A	Pages 15 – 20
Section 3:	Witness Statements of Pupil B	Pages 21 – 24
Section 3:	Witness Statements of Individual D (teacher)	Pages 35 – 37
Section 4:	Signed contemporaneous note of the meeting where Pupil A and Pupil B raise allegations against Mr Smart	Pages 57a – 57bii
Section 5:	Maps and Google Earth street views of Newport	Pages 134 – 143
Section 5:	Employment Tribunal documentation	Pages 144 – 155
Section 5:	Decision from the Isle of Wight Children Services	Page 156
Section 5:	Correspondence with [redacted]	Pages 157 – 161

All additional documents admitted were read by the panel.

Witnesses

The panel heard oral evidence from:

Pupil D	Student	Witness for National College
Witness A	Teacher at School	Witness for National College
Witness B	School Principal	Witness for National College
Graham Smart	Teacher	
Witness C	Wife of Mr Smart	Witness for Teacher

E. Decision and reasons

The panel announced its decision and reasons as follows:

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

The panel confirm that it has read all the documents provided in the bundle in advance of the hearing and those subsequently admitted during the course of the hearing. The panel has taken into due consideration the volume of hearsay evidence presented in this case and accordingly, has attached the appropriate weight to such evidence. Furthermore, it is noted that those witnesses called to give evidence, other than Pupil D and Mr Smart, were not always the direct source of the information and were giving second hand accounts of the incidents. The panel has noted the advice declared by the legal adviser noting that hearsay evidence will usually carry less weight than evidence which has been tested. However, there is no rule of law that prevents the panel from relying upon hearsay solely or to a decisive degree, if the panel is satisfied with the strength of that evidence.

The panel noted that Mr Smart had been employed at The Priory School from October 2006 until October 2013. Mr Smart was employed as a Geography and Maths Teacher.

Between 2012 and 2013, it was alleged that Mr Smart had, on several occasions, acted inappropriately with a number of female pupils at the School.

Management at the School warned Mr Smart verbally and in writing that his behaviour was inappropriate and unacceptable, however, Mr Smart continued with his behaviour and on one occasion admitted to “slipping up”.

On 16 November 2012 and 9 December 2012, management wrote to Mr Smart and gave specific instructions to be adhered to. Mr Smart failed to adhere to the instructions and was dismissed from the School in October 2013. Witness B, the Principal at the School, wrote to Mr Smart on 19th October 2013 notifying him of the dismissal.

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:

1b. In relation to Pupil A: on dates unknown during the Autumn term 2012, despite having no pastoral role in the School at that time, you:

- i. met Pupil A alone,**
- ii. asked Pupil A to talk to you about a problem of a personal nature on one or more occasions,**
- iii. engaged Pupil A in conversations about spiritual experiences,**

These allegations are denied by Mr Smart. The panel note the written statement of Pupil A and the documentary evidence supporting her version of events. The panel also considered the oral and written evidence of Witness A, which was consistent with the written account of Pupil A. The panel found the oral evidence of Witness A to be credible, cogent, honest and consistent. The panel also note that Pupil B, in her written evidence, refers to Mr Smart talking about spirits.

The disclosure made by Pupil A in October 2013 to Witness A is consistent with the account contained in the statement prepared for this panel. Pupil A and Witness A's evidence has been accepted by the panel.

The panel also note the written evidence of Pupil A and the documentary evidence produced also supports the contention that the events are more likely than not to have occurred. The panel therefore finds, on the balance of probabilities, that this allegation has been proven.

1c(ii). In relation to Pupil A: on dates unknown you: suggested that Pupil A meet you outside of school hours on one or more occasions,

The allegation is denied by Mr Smart, but supported by the written and oral evidence of Pupils A and D. As stated below, the oral evidence of Pupil D was extremely credible. The panel has accepted the evidence of the pupils. In reaching its decision, the panel took into account the facts surrounding Particulars 4(a) – (c) and 5(a) – (c). The panel also note Mr Smart had, himself, said to the Principal that Pupil B “*is completely at ease around my company and sees nothing wrong with me giving a lift on her own*” (page 132). On the balance of the evidence, the panel find this allegation proven as it is more likely than not that Mr Smart suggested Pupil A meet him outside of school hours.

2a. In relation to Pupil B you: on a date unknown during the Autumn term 2012 said to Pupil B:

- i. has your boyfriend raped you?” or words to that effect,**
- ii. “what would you do if he raped you?” or words to that effect,**
- iii. “have you ever been sexually abused by an adult?” or words to that effect,**
- iv. that she “should never be alone with her boyfriend” or words to that effect,**

The panel considered the contemporaneous note taken by Witness A when Pupil A and Pupil B first made the disclosures (“the Note”) which refer to the incident and specifically outline the allegations at Particular 2(a)(i)-(iii) (pages 57a - 57bii). Witness A, who took the Note, confirmed in oral evidence that the Note was an accurate record of the words used by Pupil A and Pupil B. She explained that the Note was read aloud to the pupils, during their meeting with the Principal, and when asked whether it was accurate, they confirmed it was. As stated above, the oral evidence of Witness A was extremely credible.

The panel have also considered the written evidence of Pupil B (page 22), describing this incident. Her evidence is consistent with the account outlined in the Note. Furthermore, Pupil B’s account is reinforced by the written evidence of Pupil A (page 19).

These allegations were denied by Mr Smart. In his oral evidence, Mr Smart acknowledged that the nature of the questions is wholly inappropriate. He stated that such language does not form part of his daily vocabulary. He also explained that the sixth form area, where this conversation is said to have taken place, was a considerable distance from his usual teaching room and he would have no need to be in that room or its immediate vicinity. Furthermore, the room was said to be accessed through another teaching room which would have been in use at the time of the alleged incident. The panel noted that plans for the relevant classrooms had not been produced in evidence.

In view of his denial that this conversation took place, Mr Smart was unable to provide any reasoning explaining why the pupils made these assertions if they were false. Indeed, the panel noted Mr Smart’s views of Pupil B’s character, where in an email to the Principal, dated 29 November 2011, Mr Smart states that Pupil B “*is a pretty straight girl*” and “*I feel [she] sees me as a surrogate or substitute father*” (page 132).

The panel note that in the investigatory meeting held on 16 October 2013, these allegations were put to Mr Smart and his recorded response was that he had “*no memory*” of the incident (page 61). The panel has taken into consideration Mr Smart’s email to the Principal following the meeting (dated 16 October 2013) where he does not seek to address any of the allegations raised or refute them (page 62). The panel also

noted Mr Smart's oral evidence where he stated he was not notified of the nature of the meeting nor of the allegations prior to meeting. He explained he was in a confused state of mind, as he had not slept for 7 days. However, the panel noted Mr Smart was accompanied by his Trade Union representative to the meeting and at no stage during the meeting did the representative raise any concerns nor did they express such concerns after the meeting.

The panel therefore finds, on the balance of probabilities, these allegations to be proven.

2b. In relation to Pupil B: on a date unknown in March 2013, you told Pupil B to put her leg up on a chair and thereafter tied Pupil B's shoelace,

Mr Smart accepted in his written evidence (page 82) that he tied Pupil B's shoelaces. This is also admitted in oral evidence, where he confirmed that he tied her shoelace whilst her leg was up on a chair. Mr Smart explained that [redacted] and he was concerned for the pupil's welfare, as the un-tied shoelaces posed a trip hazard. Indeed, Pupil B, in her written evidence, confirmed that [redacted].

In his oral evidence, Mr Smart initially denied asking Pupil B to place her leg on the chair. He went onto explain that he had a large volume of papers in his hand which he placed on the chair before tying the shoelaces. Furthermore, in her written evidence, Pupil B stated, "*Mr Smart asked me to put my foot up onto a chair*" (page 22). Therefore, on the balance of probabilities, the panel find this allegation proven.

2c. In relation to Pupil B: on a date unknown during Autumn term 2013, whilst Pupil B was unwrapping a lollipop, you said "you look experienced at that" or words to that effect,

It is accepted that Pupil B had purchased a lollipop and Mr Smart passed comment whilst she was attempting to unwrap it. However, Mr Smart denied passing the comment alleged. In his oral evidence, Mr Smart recalled Pupil B had purchased a lollipop and noted that Pupil B was in fact having difficulty in unwrapping the lollipop. He asserts that he said "*you are making a right pig's ear of that*" and went to find a pair of scissors to open the wrapper.

In her written evidence, Pupil B's recollection of the events contradicts Mr Smart's version (page 23). Pupil B specifically recalls Mr Smart using the form of words as outlined in the allegation; she makes no reference to Mr Smart assisting her in any way to remove the wrapper. Pupil B's recollection of events is corroborated by Pupil A's written evidence (page 19) and with the content of the Note (page 57b). The panel noted that when these allegations were put to Mr Smart in the investigatory meeting on 16 October 2013 he responded "*No memory*" (page 61) and did not put forward the version of events presented to the panel. The panel have also taken into consideration Mr Smart's email to the Principal following the meeting (dated 16 October 2013) where he does not seek to address any of the allegations raised or refute them (page 62).

The panel, on the balance of probabilities, conclude that words as prescribed above or words to that effect were used and therefore find this allegation proven.

3a. In relation to Pupil C: on 7 and/or 14 November 2012, despite having no pastoral role in the school at that time you:

i. asked Pupil C questions about a distressing incident which had occurred at her previous school,

ii. told Pupil C that you knew everything about the incident which had occurred,

The panel noted that, throughout the course of the hearing, it was accepted that Mr Smart had approached Pupil C on 7 and/or 14 November 2012 and referred to the incident at her previous school, albeit the nature of the discussions was disputed.

Mr Smart's evidence is that he did not question Pupil C about the incident at her former school nor did he say the he knew about the incident. He recalled that during a lesson, Pupil C made reference to a "creepy" teacher at her previous school. He swiftly reported this to Individual D, Pupil C's form tutor and also mentioned the same to the Principal.

Upon reviewing all the evidence, the panel noted the following points, which led them to conclude that this allegation is proven:

1. Pupil C recounts to Individual D that it was Mr Smart who had approached her about the incident at her previous school and told her "*that he knew everything about what had happened*" (pages 35 – 37).
2. Individual D subsequently wrote to the Principal on 14 November 2012, notifying him of the incident (pages 45 – 46) and noted that "*she said that Mr Smart had been asking her about what had happened to her at [school]*" and that "*he had taken her out of assembly today [14 November 2012] and on the previous Wed [7 November 2012]*". This was verified through the evidence of the Principal (page 28 – 31).

However, Pupil C did not provide direct evidence to the panel for the reasons outlined in the written statement of the Principal (pages 32 – 34) and instead her evidence was provided by way of the written statement of Individual D. The panel note that Individual D was unable to provide live evidence and her written statement was admitted as hearsay evidence.

Despite this, the panel noted that the details of these allegations are verified elsewhere in the bundle. Following notification of the incident from Individual D on 14 November 2012, the Principal convened a meeting with Mr Smart on 15 November 2012, where Mr Smart was issued with a formal written warning (page 29). This meeting was followed up with an email from the Principal to Mr Smart noting that Pupil C "*has been extremely upset by conversations regarding earlier incidents at [School], specifically on Wednesday 7th and*

14th of this month” and noting that it was “*not appropriate to discuss these matters with her whether raised by her or not*” (page 47). In response, on the same day, Mr Smart wrote “*Received and read*”. The following day, Mr Smart refers to the incident in an email to the Principal stating “*I am still shocked about Pupil C being terrified of me; as far as I am aware I have never been alone with her (apart from what I mentioned on Wednesday)*” (page 48).

The panel therefore finds, on the balance of probabilities, that this allegation is proven.

3b. In relation to Pupil C: by your actions set out at 3(a) above you caused Pupil C to become:

i. distressed,

ii. frightened,

Having found the facts of Particular 3(a) proven, the panel finds, on the balance of probabilities, that the words and actions of Mr Smart on 7 and/or 14 November 2012 caused Pupil C to become distressed and frightened.

In particular, the Principal and Individual D in their written statements to this panel refer to Pupil C as being “*extremely upset*” (page 36) and the incident leading the pupil to [redacted] (page 32). In other evidence presented to this panel, it was noted that Pupil C was “*very distressed*” (page 45) and “*extremely upset*” (page 47). Indeed, Mr Smart, himself accepted “*I am shocked about [Pupil C] being terrified of me*” (page 48). Therefore, the panel find this allegation proven.

4. On a date unknown, in relation to Pupil A and/or Pupil B you:

a. offered to give them a lift in your car,

b. told them to wait around the side of the school,

c. told them not to tell the Principal about matters set out at 4(a) and/or 4(b);

Mr Smart denied these allegations, stating he never offered the pupils a lift nor did he tell them to wait around the side of the school and not to tell the Principal. However, the panel noted that in an email from Mr Smart to the Principal on 29 November 2011, Mr Smart wrote Pupil B “*is completely at ease around my company and sees nothing wrong with me giving a lift on her own*”. The panel also refer to the written statements of Pupils A and B (pages 15 -24) and Witness A (pages 38 – 40). The statements are consistent and it is clearly alleged that Mr Smart did offer them a lift, told them to wait around the side of the school and told them not to tell the Principal.

Although the panel were not afforded with the opportunity to hear direct evidence from Pupil A and Pupil B, the panel did find the oral evidence of Witness A to be credible,

cogent, honest and consistent. The evidence did not appear to be exaggerated in any way and was consistent with the written evidence. The panel accepted the evidence of Pupil A, Pupil B and Witness A. Therefore, on the balance of probabilities, the panel find this allegation proven.

5. In relation to Pupil A and/or Pupil D: on dates unknown, you acted inappropriately towards pupils in that you:

- a. invited Pupil A and Pupil D to meet you outside school hours in Newport,**
- b. met Pupil A and Pupil D in Newport,**
- c. gave Pupil A and Pupil D sweets from your car,**

The presenting officer made submissions in respect of Particular 5(a), asking the panel to disregard the allegation that Mr Smart invited Pupil D to meet him outside school hours in Newport. Accordingly, the panel did not turn their minds to this part of the allegation.

Mr Smart denied the allegations outlined in Particulars 5(a) – (c). In his written evidence, Mr Smart said “*I did not arrange for Pupil A and Pupil D to meet me in Newport to get sweets from my car ... no such meeting occurred*” (page 82). He strongly denied the allegations in his oral evidence.

The panel considered the written evidence of Pupil A and Pupil D (pages 15 – 20 and 25 – 27 respectively) noting that each pupil presents a consistent account of the meeting. The Note records that “*Mr Smart has suggested to Pupil A that she meet him outside school hours. Once was recently, when he asked her and another pupil to meet him in Newport where he would give her sweets*” (page 57a). The panel also considered the oral evidence of Pupil D where the pupil clearly and accurately described Mr Smart’s car and pinpointed the location of both the meeting and the position in which the car was parked.

The panel found the oral evidence of Pupil D to be credible, cogent, honest and consistent. The evidence did not appear to be exaggerated in any way. Indeed, Mr Smart, in his oral evidence, could not provide a motive for Pupil D concocting such a story. The panel therefore prefer the evidence of Pupil A and Pupil D. Having regard to the teacher/pupil relationship, the panel concluded that these actions were inappropriate and consequently find the allegation proven.

5e(i). Used inappropriate language in the presence of the pupils including: making sexual reference to the effect that X:

- a. placed sweets on her breasts and/or created shapes of genitalia with them,**

Mr Smart denied this allegation.

The panel considered the written evidence of Pupil A and Pupil B (pages 15 – 20 and 21 – 24 respectively) noting that each pupil presented a consistent account of the incident. Furthermore, Pupil A referred to Mr Smart stating that X created shapes of genitalia with them. The Note records that the pupils reported this incident to Witness A: *“Both Pupil A and B stated that Mr Smart has talked about X inappropriately in lessons. He referred to X making lewd gestures with sweets, putting them on her breasts and creating shapes of genitalia with them”* (page 57a).

The panel also considered the two contemporaneous notes prepared by two individuals who attended the investigatory meeting on 16 October 2013, where Mr Smart’s response to these allegations is recorded. When the allegations were put to him, the first note taker records Mr Smart as saying, *“can’t remember, may have done”* (page 61) and the other note taker records Mr Smart as saying *“denied ... admitted he might have done. It is possible”* (page 58). The panel have taken into consideration Mr Smart’s email to the Principal following the meeting (dated 16 October 2013) where he does not seek to address any of the allegations raised or refute them (page 62).

On the balance of probabilities, the panel find that this allegation is proven.

5e(ii). Used inappropriate language in the presence of the pupils including: using words not in an educational context including paedophile;

Mr Smart denied this allegation. In his written evidence, Mr Smart explained, *“The word paedophile was commonplace language amongst the students”*. However, he stated *“I have never referred to paedophiles, sexual references”* (page 80). In his oral evidence, Mr Smart explained that it is the pupils who use language such as *“paedophile”* and he may have used that word when responding to a query raised by them. However, he denied using any other words or making sexual references.

The panel considered the email dated 16 November 2012 from the Principal to Mr Smart, following their discussion in connection with the allegations at Particular 3. The email seeks to *“confirm the substance of our discussions”* and at bullet 5 records *“All use of word with a sexual connection or connotation – recent examples include “knickers” “internet porn” “paedophiles” – are never to be used in front of children or within their hearing”* (page 47). Mr Smart replied to this email stating *“Received and read”* (page 47). In later correspondence, it is noted that Mr Smart does not seek to refute these allegations. This is corroborated by both the written evidence of the Principal noting that following the verbal warning it was *“agreed that no words with a sexual connotation should be used in front of pupils”* (page 29) and the oral evidence of the Principal. The evidence of Pupil B was also considered (page 23).

On the basis of the wording of the allegation as set out in Particular 5e(ii) of the Notice of Proceedings, the panel find this allegation proven.

6. You deliberately ignored management instructions not to involve yourself in matters of pupil pastoral care.

Following the incident with Pupil C, the Principal provided Mr Smart with instructions, which he outlined in an email dated 16 November 2012 (page 47). It was agreed that Mr Smart should not discuss the details of Pupil C's previous incident. Mr Smart was not to have a pastoral role, he was not to be in a room with pupils except in a teaching capacity and he was not to use words of a sexual connotation. Indeed, these instructions were repeated following an alleged meeting with Pupil A in a darkened room after which he received a written warning in December 2012.

In his oral evidence, Mr Smart denied this allegation. He explained that as part of his role as examination officer, he had a certain level of pastoral responsibilities. It was for him to collate any concerns expressed by pupils, parents or teachers in respect of exams – he acted as a conduit. It was part of his role, as examination officer, to take into account any extenuating circumstances, which ought to be brought to the attention of the relevant examination board or to determine whether special provisions needed to be made for certain pupils. Accordingly, he would be unable to effectively perform his role without the pastoral element. In all other respects, Mr Smart denies breaching any instructions.

The panel considered the evidence provided and heard, and the findings made by the panel in respect of Particulars 1(b)(i), (ii), (iii), 1(c)(ii), 2(a) to (c), 4(a) to (c), 5(a) to (c), 5(e)(i)(a) and 5(e)(ii). On the balance of probabilities, the panel find this allegation proven.

We have found the following particulars of the allegations against you not proven, for these reasons:

1a. In relation to Pupil A: on 7 December 2012, went into a dark and/or darkened room with Pupil A on your own.

Upon reviewing all the evidence available, the panel noted the documentary evidence referring to Mr Smart having been seen alone with Pupil A – this being an email from the Principal to Mr Smart dated 9 December 2012, where the Principal noted that he has received "*puzzling comments from staff and pupils on your being with Pupil A in classrooms on your own*" (page 55), and an email from Individual D subsequently reporting the incident to the Principal (pages 53 – 54). The panel also considered the evidence of Pupil A, who in her written evidence makes no reference to this incident at all. However, the panel noted that the Principal recorded that he had received accounts of Mr Smart being "*in a darkened room*" with Pupil A (page 67).

Both in his oral and written evidence, Mr Smart denied this allegation. He explained that he had been walking between all the classrooms, as the alleged incident is said to have taken place on the same day as the School's Christmas Fair, and may have been approached by Pupil A during this time. He noted that the lights in all classrooms at the

School were switched on and would only be switched off when the Principal left at the end of the school day. Indeed, the email from Individual D (pages 53 – 54) noted that upon learning of the incident she went to check the room immediately and “*there was no one in [the] room at all*”. Furthermore, the contemporaneous note taken by Witness A when Pupil A and Pupil B first made the disclosures (“the Note”) does not refer to this incident.

On the balance of the evidence, the panel find this allegation not proven.

1b(iv). In relation to Pupil A: on dates unknown during the Autumn term 2012, despite having no pastoral role in the School at that time, you: told Pupil A that you:

- 1. saw spirits,**
- 2. had premonitions about disasters,**
- 3. “saw death following her” or word to that effect,**

1b(v). Having been told by Pupil A that your comments set out at 1(b)(iv) above scared her, you continued to make such comments;

The panel noted the written evidence of Pupil A, which is consistent with the Note. In oral evidence, Witness A recounted overhearing Mr Smart informing other teachers, in the staff room, that he sees auras around people. Witness A also stated in her written evidence that Pupil A was angry and agitated. Indeed, in her oral evidence, Witness A stressed that Pupil A was angry; she made no reference to the pupil being scared. In his evidence, Mr Smart strongly denied these allegations, firmly stating that they did not take place.

The panel note that they have not had an opportunity to test the evidence of Pupil A but did test the evidence provided by Mr Smart. Therefore, the panel is satisfied that, on the balance of probabilities, that this allegation has not been proven.

1c(i). In relation to Pupil A: on dates unknown you: insisted that Pupil A spend her study time in your classroom,

Mr Smart, in his oral evidence, confirmed that a suggestion was made during parents evening that Pupil A would benefit from further Maths tuition. This resulted in Pupil A being provided with an opportunity to study in his classroom. Mr Smart explained that he did not insist on Pupil A spending study time in his classroom. The panel noted that the phrase “insist” derives from the Note (page 57a), which is the wording prepared by Witness A. The panel accept the written and oral evidence of Mr Smart and do not believe he “insisted” Pupil A spend her study time in his classroom. On the balance of probabilities, the panel do not find this allegation proven.

1c(iii). In relation to Pupil A: on dates unknown you: provided private tuition to Pupil A without the School's consent,

The presenting officer made submissions to the panel that the National College no longer intended to pursue this allegation due to lack of oral and written evidence in support of it. Accordingly, the panel have made no determination in respect of this allegation, as they were not required to consider it.

2d. In relation to Pupil B: your comments set out at 2(c) above was a sexual innuendo,

The panel noted Pupil B's belief that the comment was a sexual innuendo (pages 23 and 57b). The panel also noted the evidence of Pupil A who states "*he obviously meant as a sexual innuendo*" (page 19). However, the panel have not had an opportunity to obtain direct oral evidence from Pupils A and B nor test their evidence and gain a sound appreciation for the context in which the comments were made. Mr Smart denied this allegation.

The panel noted, from oral and written evidence that, prior to these comments being made, Pupil B had been suspended for misuse of social media. Given the context, the panel was of the view that Pupil B may have been sensitive to such comments and interpreted them as sexual innuendo, despite other interpretations being possible. On the balance of evidence the panel considered Pupil B may have misinterpreted the remark.

Despite the fact that the panel finds Particular 2(c) proven, for the reasons set out above, the panel does not find it proven that Mr Smart's comment was a sexual innuendo.

3c. In relation to Pupil C: on a date unknown you unnecessarily touched Pupil C's cheeks and said they were warm or words to that effect;

The presenting officer made submissions to the panel that the National College no longer intended to pursue this allegation due to lack of oral and written evidence. Accordingly, the panel did not consider this allegation.

5d. On dates unknown, you acted inappropriately towards pupils in that you: used sweets to make shapes of genitalia,

The presenting officer made submissions to the panel that the National College no longer intended to pursue this allegation due to lack of oral and written evidence. Accordingly, the panel did not consider this allegation.

5e(i)(b). On dates unknown, you acted inappropriately towards pupils in that you: used inappropriate language in the presence of pupils including: making sexual references to the effect that X: Asked you to spank her,

Mr Smart denied this allegation. The panel noted that the only reference to this allegation is in the written statement of Pupil B (page 23). The panel noted that there is no evidence of this specific allegation in the contemporaneous note from the interview (pages 58 and 61) nor is it outlined in the Note prepared by Witness A which records the details of the allegations at Particular 5(e)(i)(b). Given the nature and seriousness of the allegation, on the balance of probabilities, the panel find this allegation is not proven.

7. Your conduct as set out at 2(a) and/or 2(b) and/or 2(c) and/or 5(d) and/or 5(e) above was sexually motivated.

In relation to Particulars 2(a) to (c), the panel considered the two stage test for sexual motivation – firstly whether the words/actions could be sexual and secondly whether the words/actions of Mr Smart were sexual in all of the circumstances of the case. Upon consideration of the evidence, the panel was not satisfied that Mr Smart’s words and actions could be viewed as sexually motivated and therefore did not consider the second limb of the test.

The panel did not consider Particular 5(d), as the presenting officer made submissions to the panel that the National College no longer intended to pursue this allegation due to lack of oral and written evidence.

Having reviewed all of the evidence, the panel did not find Particular 5(e)(i)(B) proven on the facts. Accordingly, the panel saw it superfluous to consider whether, in respect of this Particular, Mr Smart’s conduct was sexually motivated.

In relation to Particulars 5(e)(i)(a) and (ii), the panel considered the two stage test for sexual motivation. Firstly, whether the words/actions could be sexual. The panel consider that the reasonable man, would consider these words and actions could be sexual. Therefore, the panel find that the first limb of the test has been satisfied. Turning to the second limb, whether in all the circumstances of the conduct in the case, whether Mr Smart’s purpose of such words/actions was sexual. The panel was satisfied, as a result of the combination of the oral evidence and in particular Mr Smart’s resolve in denying the allegations and his general demeanour as a witness, and the written evidence supplied from [redacted] and the Isle of Wight Children Services, that Mr Smart’s intention behind these words and actions was not sexual.

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

Having found the facts of Particulars 1(b)(i), (ii), (iii), 1(c)(ii), 2(a) to (c), 3(a) to (b), 4(a) to (c), 5(a) to (c), 5(e)(i)(a), 5(e)(ii) and 6 proven, the panel further find that your actions amount to unacceptable professional conduct and conduct that may bring the profession into disrepute.

In considering the allegations that the panel has found proven, the panel has had regard to the definitions in the Teacher Misconduct – The Prohibition of Teachers advice, which we refer to as the ‘Advice’.

The panel is satisfied that the conduct of Mr Smart in relation to the facts found proven, involved breaches of the Teachers’ Standards. The panel considers that by reference to Part Two, Mr Smart 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;
 - showing tolerance of and respect for the rights of others: and
 - ensuring that personal beliefs are not expressed in ways which exploit pupils’ vulnerability or might lead them to break the law;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

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

The panel has also considered whether Mr Smart’s conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the Advice and the panel has found that none of these offences are relevant.

Accordingly, the panel is satisfied that Mr Smart 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 therefore finds that Mr Smart's actions constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, it is necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel has to consider whether it is an appropriate and proportionate measure, and whether it is in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel considered the particular public interest considerations set out in the Advice and having done so found a number of them to be relevant in this case, namely protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the panel's findings against Mr Smart, there is a strong public interest consideration in respect of the protection of pupils given the findings of inappropriate discussions with and conduct directed towards pupils and the harm caused thereby. In particular, the panel noted the impact of Mr Smart's conduct on Pupils A and B, who were said to be upset and angry, and Pupil C, [redacted].

The panel considered that Mr Smart had not shown insight into the consequences of his actions. In his statement, Mr Smart states "*I have no doubt that this has been a terrible time for the students concerned and I reiterate that I had no motive other than to assist students in their progress and welfare at the school*" (page 87). However, later on in the same paragraph he adds "*I am not a risk to children ... I can categorically say that I have never harmed a child*". In the view of the panel, these two statements are incompatible.

Within the School, Mr Smart repeatedly sought to explore issues of a personal nature with vulnerable pupils despite having no pastoral responsibility for those pupils. He offered selected pupils lifts and sweets outside of school. Whilst Mr Smart advanced arguments that there had been insufficient training and guidance from the School on safeguarding matters, as an experienced teacher, Mr Smart should have shown a greater appreciation of the appropriate boundaries that regulate the teacher/pupil relationship.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Smart was not treated with the utmost seriousness when regulating the conduct of the profession. In particular, the panel noted that the underlying facts giving rise to the allegations proven were not isolated

incidents. The allegations involved three pupils and multiple incidents in connection with each of Pupils A, B and C.

In view of the above, 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 Smart was outside that which could reasonably be tolerated.

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 Smart. 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.

The list of such behaviours contains the following that are relevant to this case, to varying degrees:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;

The panel has found that Mr Smart's conduct involved serious departures from the personal and professional conduct elements of the Teachers' Standards, as the panel has already detailed.

- misconduct seriously affecting the education and/or well-being of pupils, and particularly where there is a continuing risk;

The panel considered that Mr Smart's conduct, particularly that relating to the proven elements of allegations 1 to 6, seriously affected the well-being of pupils. Indeed, the panel note that in respect of Pupil C, Mr Smart's conduct did impact on her education and [redacted]. As noted above, the underlying incidents giving rise to the allegations were not isolated incidents and involved three pupils and events over a period of several months. This has led the panel to conclude there is a continuing risk.

- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils;

The panel considered that Mr Smart's conduct, in relation to all proven allegations, involved abuse of position or trust and his conduct as detailed in the proven elements of allegations 1 to 6 involved violation of the rights of pupils.

Notwithstanding the 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 Smart. Given the serious failings outlined above, the panel considered that prohibition was a proportionate measure.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel went on to consider whether or not there were sufficient mitigating

factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. In particular:

- The panel considered whether or not Mr Smart's actions were deliberate. The panel noted the written statement of Individual D (page 37) "*I do not think it was Mr Smart's intention to cause any harm; I genuinely believe he wanted to assist the pupils where he could*". Whilst the panel accepted that Mr Smart did not intend to harm pupils, it considered that his actions were deliberate. As identified above, the inappropriate nature of Mr Smart's conduct in the School was brought to his attention, despite this he did not seek to change his behaviour. Furthermore, there was evidence that Mr Smart had sought to conceal his contact with pupils outside of school, which suggests that he knew that such contact was inappropriate.
- There was no evidence to suggest that Mr Smart was acting under duress.
- The panel noted that, in his role as a teacher, Mr Smart had not been subject to any disciplinary proceedings or similar, prior to the events underlying these allegations.
- The panel also noted the evidence before it that Mr Smart was an effective teacher and drew upon the testimonies provided in the written statements of the Principal and Individual D.

In light of the above, the panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Smart. Mr Smart's abuse of his position of trust and the serious impact of his conduct on the welfare of the pupils were significant factors in forming that opinion. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

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

The Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended. These behaviours include 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.

The panel noted that Mr Smart has been found to have abused his position of trust and acted in an inappropriate way towards pupils however, this should not be seen as more serious than it is – the panel has not found that Mr Smart made any physical contact with any pupil; nor has it found Mr Smart to have been sexually motivated. Such conduct was not present in this case.

Mr Smart has, however, denied the allegations raised, and the panel note he has not demonstrated any insight into his inappropriate conduct or the impact thereby on the pupils, albeit he has expressed remorse for the resultant consequences of his actions.

The panel felt the findings indicated a situation in which a review period would be appropriate and proportionate given all the circumstances.

The panel considers that Mr Smart will require at least 3 years to reflect upon the inappropriateness of his behaviour and to develop a more profound insight into his conduct and its ramifications for the pupils.

Accordingly, the panel recommends a prohibition order with provision for Mr Smart to apply for the order to be set aside, once 3 years have elapsed from the date of the order.

Decision and reasons on behalf of the Secretary of State

I have given careful consideration to the findings and recommendations of the panel in this case.

The panel has found a number of the allegations proven and consider that those facts amount to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

In considering whether to recommend prohibition as an appropriate and proportionate sanction the panel has taken due account of the public interest considerations. The panel has found a number to be relevant in this case, namely the protection of pupils, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

The panel has found Mr Smart's actions to be deliberate and noted that there is no evidence to suggest he was acting under duress. He has shown no insight into his behaviour.

In the circumstances I agree with the panel that prohibition is both appropriate and proportionate.

Mr Smart has abused his position of trust and acted in an inappropriate way towards pupils. However, he has not made physical contact with pupils and nor was his behaviour sexually motivated. The panel has recommended a review period of 3 years in order that

Mr Smart has sufficient time to reflect on his actions and to develop appropriate insight into his conduct and its ramifications for pupils. I agree with the panel's recommendation.

This means that Mr Graham Smart 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 27 July 2018, 3 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 Graham Smart remains prohibited from teaching indefinitely.

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

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

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

Decision maker: Paul Heathcote

Date: 21 July 2015

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