



Teaching  
Regulation  
Agency

# **Mr David McCafferty: Professional conduct panel outcome**

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

**February 2023**

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

**Teacher:** Mr David McCafferty

**Teacher ref number:** 0609436

**Teacher date of birth:** 5 November 1980

**TRA reference:** 18486

**Date of determination:** 8 February 2023

**Former employer:** Hill Top School, Gateshead

### **Introduction**

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 7 to 8 February 2023 by way of a virtual hearing, to consider the case of Mr David McCafferty.

The panel members were Mr Alan Wells (former teacher panellist – in the chair), Ms Charlotte McCallum (lay panellist) and Mrs Victoria Jackson (teacher panellist).

The legal adviser to the panel was Ms Natalie Kent of Birketts LLP solicitors.

The presenting officer for the TRA was Mr Michael O'Donohoe of Browne Jacobson LLP solicitors.

Mr McCafferty was not present and was not represented.

The hearing took place in public and was recorded.

## Allegations

The panel considered the allegation set out in the notice of proceedings dated 25 November 2022.

It was alleged that Mr McCafferty was guilty of having been convicted of a relevant offence, in that:

1. On or around 19 September 2019, he was convicted of the offence of battery for which he received a Community Order with unpaid work and a rehabilitation activity requirement. Costs were ordered in the sum of £500 and a victim surcharge of £85.

Mr McCafferty admitted allegation 1, as set out in the response to the notice of proceedings dated 15 December 2022, and in the statement of agreed facts signed by Mr McCafferty on 18 January 2023. Mr McCafferty further admitted that those admitted facts amounted to a conviction of a relevant offence.

## Preliminary applications

### Application to proceed in the absence of the teacher

Mr McCafferty was not present at the hearing nor was he represented. The presenting officer made an application to proceed in the absence of McCafferty.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of *R v Jones [2003] 1 AC 1* (as considered and applied in subsequent cases, particularly *GMC v Adeogba*).

The panel was satisfied that the Notice of Proceedings had been sent to Mr McCafferty in accordance with the Teacher misconduct: Disciplinary procedures for the teaching profession April 2018 (the 'Procedures').

Noting the response to the Notice of Hearing dated 15 December 2022, the panel concluded that Mr McCafferty's absence was voluntary and that he was aware that the matter would proceed in his absence.

The panel noted that Mr McCafferty had not sought an adjournment to the hearing and the panel did not consider that an adjournment would procure his attendance at a hearing. There was no medical evidence before the panel that Mr McCafferty was unfit to attend the hearing. Whilst the panel was aware that Mr McCafferty had referred his case to the Criminal Case Review Commission, there was no date set for determination and the panel did not consider that it was in the public interest to adjourn the hearing pending resolution of that matter.

The panel therefore considered that it was in the public interest for the hearing to take place.

Having decided that it was appropriate to proceed, the panel agreed to seek to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mr McCafferty was neither present nor represented.

The panel noted that since the date of the referral to the TRA in this case, new 'Teacher misconduct: Disciplinary procedures for the teaching profession' were published in May 2020 (the 'May 2020 Procedures'). The panel understands that the earlier provisions contained within the 'Teacher misconduct: disciplinary procedures for the teaching profession' updated in April 2018 (the 'Procedures') apply to this case, given that those provisions applied when the referral was made. Although the panel has the power to direct that the May 2020 Procedures should apply in the interests of justice or the public interest, the panel had received no representations that this should be the case. For the avoidance of doubt, therefore, the panel confirms that it has applied the Procedures in this case.

## **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 5 to 6
- Section 2: Notice of hearing and response – pages 8 to 25
- Section 3: TRA documents – pages 27 to 254
- Section 4: Teacher documents – pages 257 to 284

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

### **Witnesses**

No witnesses were called to provide oral evidence at the hearing.

## **Decision and reasons**

The panel announced its decision and reasons as follows:

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

Mr McCafferty was employed as a teacher at the autism centre at Hill Top School ('the School') until he was dismissed on 29 November 2019.

On 31 October 2018, Mr McCafferty was accused of assaulting Pupil A. On 6 November 2018, Mr McCafferty was suspended from his role at the School.

Mr McCafferty was on trial from 18 to 19 September 2019 and was convicted of assault by beating. He appealed against the conviction and the date of his appeal was 26 November 2020. However the appeal was not successful in overturning the conviction.

## Findings of fact

The findings of fact are as follows:

The panel found the following particulars of the allegation against you proved, for these reasons:

- 1. On or around 19 September 2019, you were convicted of the offence of battery for which you received a Community Order with unpaid work and a rehabilitation activity requirement. Costs were ordered in the sum of £500 and a victim surcharge of £85.**

The panel noted that within the statement of agreed facts, signed by Mr McCafferty on 18 January 2023, Mr McCafferty admitted the facts of allegation 1. Notwithstanding, the panel made a decision based upon the evidence before it.

The panel noted page 8 of the Teacher misconduct: The prohibition of teachers ('the Advice') which states that where there has been a conviction at any time, of a criminal offence, the panel will accept the certificate of conviction as conclusive proof of both the conviction and the facts necessarily implied by the conviction, unless exceptional circumstances apply. The panel did not find that any exceptional circumstances applied in this case, although it was noted that Mr McCafferty has made an application to the Criminal Cases Review Commission for a review of his case.

The panel had been provided with a copy of the certificate of conviction dated 5 April 2022 from North Northumbria Magistrates Court, which detailed that Mr McCafferty had on 19 September 2019 been convicted of one count of assault by beating.

Mr McCafferty admitted that on Wednesday 6 February 2019, he attended Gateshead police station voluntarily where he was interviewed under caution by the police in respect of allegations that he assaulted Pupil A.

Mr McCafferty admitted that on 19 September 2019, he was found guilty at Newcastle-upon-Tyne Magistrates Court of one count of having assaulted Pupil A by beating him on 31 October 2018. Mr McCafferty further admitted that he was sentenced to the following:

a) to participate in any activity as required by the responsible officer up to a maximum of 12 days; b) to carry out unpaid work for 240 hours within 12 months; c) victim surcharge of £85; and d) prosecution costs of £500 to the crown prosecution service.

Mr McCafferty admitted that although he appealed his conviction to the Crown Court, his appeal was unsuccessful. Mr McCafferty's sentence was varied by the Crown Court as follows: a) a 2 year community order with a requirement to undertake a rehabilitation activity requirement for up to 40 days; b) unpaid work requirement removed; and c) Mr McCafferty to pay the victim surcharge and prosecution costs at a rate of £5 per week.

Mr McCafferty also admitted that by conviction of the offence set out above, he has been convicted of a relevant criminal offence.

Having considered the certificate of conviction as well as Mr McCafferty's admissions, the panel accordingly found allegation 1 proven.

## **Findings as to conviction of a relevant offence**

Having found the allegation proved, the panel went on to consider whether the facts of the proved allegation amounted to a conviction of a relevant offence.

In doing so, the panel had regard to the document Teacher misconduct: The prohibition of teachers, which is referred to as 'the Advice'.

The panel was satisfied that the conduct of Mr McCafferty, in relation to the facts it found proved, involved breaches of the Teachers' Standards. The panel considered that by reference to Part 2, Mr McCafferty was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
  - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
  - showing tolerance of and respect for the rights of others
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel noted that the behaviour involved in committing the offence could have had an impact on the safety and/or security of pupils.

The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr McCafferty's behaviour in committing the offence, which involved violence against a pupil, could undoubtedly affect public confidence in the teaching profession, particularly given the influence that teachers may have on pupils, parents and others in the community.

The panel considered that Mr McCafferty's conduct ran counter to what should have been at the very core of his practice as a teacher with a duty of care towards children. By virtue of his role as a teacher, Mr McCafferty was in a position of trust and responsibility in relation to Pupil A. He abused that position.

The panel noted that Mr McCafferty's behaviour did not lead to a sentence of imprisonment, which was indicative that the offence was at the less serious end of the possible spectrum. However, this was a case concerning an offence involving violence (and in particular against a pupil), which the Advice states is more likely to be considered a relevant offence.

The panel also found that the seriousness of the offending behaviour that led to the conviction was relevant to Mr McCafferty's ongoing suitability to teach. The panel considered that a finding that this conviction was for a relevant offence was necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

The panel therefore determined that Mr McCafferty had been convicted of a relevant offence.

## **Panel's recommendation to the Secretary of State**

Given the panel's findings in respect of a conviction of a relevant offence, it was 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 had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so.

The panel were aware 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 had regard to 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: the safeguarding and wellbeing 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 that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In light of the nature of the offence for which Mr McCafferty was convicted, there was an extremely strong public interest consideration in respect of the protection of pupils and other members of the public. His actions raised obvious and significant public and child protection concerns, as was clearly recognised by the court when imposing a sentence.

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

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

The panel noted that there was a public interest consideration in retaining the teacher in the profession, particularly as he had been working in a school with children with additional needs.

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 McCafferty. The panel was mindful of the need to strike the right balance between the rights of the teacher and the public interest.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mr McCafferty. 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 proved. In the list of such behaviours, those that were relevant in this case were:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- the commission of a serious criminal offence, including those that resulted in a conviction or caution, paying particular attention to offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.
- 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 pupils);
- failure to act on evidence that indicated a child's welfare may have been at risk e.g. failed to notify the designated safeguarding lead and/or make a referral to children's social care, the police or other relevant agencies when abuse, neglect and/or harmful cultural practices were identified;
- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE);
- violating of the rights of pupils;

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

There was no evidence that Mr McCafferty's actions were not deliberate.

There was no evidence to suggest that Mr McCafferty was acting under extreme duress.

No evidence was submitted to attest to Mr McCafferty's history or ability as a teacher. Nor was any evidence submitted which demonstrated exceptionally high standards in both personal and professional conduct or that he contributed significantly to the education sector.

No mitigation evidence was submitted on behalf of Mr McCafferty.

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 would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mr McCafferty of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mr McCafferty. The fact that the conviction was for assault by beating of a vulnerable child who was in the care of Mr McCafferty was a significant factor in forming that opinion. Accordingly, the panel made 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 it to decide to recommend a review period of the order. 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 proved, would militate against the recommendation of a review period. The panel found that Mr McCafferty was not responsible for any such behaviours.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period; violence was one such behaviour. The panel found that Mr McCafferty had been convicted for an offence of assault by beating of a vulnerable pupil.

The panel decided that the findings indicated a situation in which a review period would be appropriate, as the panel considered that the conduct leading to the conviction appeared to have been a one off incident. As such, the panel decided that it would be proportionate, in all the circumstances, for the prohibition order to be recommended with provisions for a review period in five years' time.

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

I have given very careful consideration to this case and to the recommendation of the panel in respect of both sanction and review period.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found the allegation proven and found that those proven facts amount to a relevant conviction.

The panel has made a recommendation to the Secretary of State that Mr McCafferty should be the subject of a prohibition order, with a review period of five years.

In particular, the panel has found that Mr McCafferty 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
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mr McCafferty, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and safeguard pupils. The panel has observed, "His actions raised obvious and significant public and child protection concerns, as was clearly recognised by the court when imposing a sentence." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "No mitigation evidence was submitted on behalf of Mr McCafferty." In my judgement, the lack of full insight means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "The panel also took account of the way the teaching profession is viewed by others. The panel considered that Mr McCafferty's behaviour in committing the offence, which involved violence against a pupil, could undoubtedly affect public confidence in the teaching profession, particularly given the influence that teachers may have on pupils, parents and others in the community."

I am particularly mindful of the finding of violence against a pupil in this case and the impact that such a finding has on the reputation of the profession.

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

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

I have also considered the impact of a prohibition order on Mr McCafferty himself. The panel comment, “No evidence was submitted to attest to Mr McCafferty’s history or ability as a teacher. Nor was any evidence submitted which demonstrated exceptionally high standards in both personal and professional conduct or that he contributed significantly to the education sector.”

A prohibition order would prevent Mr McCafferty from teaching and would also clearly deprive the public of his contribution to the profession for the period that it is in force.

In this case, I have placed considerable weight on the panel’s comments, “The panel found that Mr McCafferty had been convicted for an offence of assault by beating of a vulnerable pupil.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mr McCafferty has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by full remorse or insight, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended a 5 year review period.

I have considered the panel’s comments “The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period; violence was one such behaviour. The panel found that Mr McCafferty had been convicted for an offence of assault by beating of a vulnerable pupil.”

I have considered whether a 5 year review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, there are factors which mean that allowing a two-year review period is not sufficient to achieve the aim of maintaining public confidence in the

profession. These elements are the vulnerability of the pupil and the lack of insight or remorse.

I consider therefore that a five year review period is required to satisfy the maintenance of public confidence in the profession.

**This means that Mr David McCafferty 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 16 February 2028, 5 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If Mr David McCafferty does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Mr David McCafferty remains prohibited from teaching indefinitely.

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

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

A handwritten signature in grey ink, appearing to read 'Alan Meyrick', followed by a vertical line.

**Decision maker: Alan Meyrick**

**Date: 9 February 2023**

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