

**Complaints and Disciplinary Tribunal**

**DECISION NUMBER:** RSW2/D2/SWDT/2016

**IN THE MATTER** of a charge laid under the Social Workers Registration Act 2003

**BETWEEN** the Complaints Assessment Committee  
**Complainant**

**AND** Karen Austin  
**Respondent**

**BEFORE THE SOCIAL WORKERS REGISTRATION BOARD COMPLAINTS AND  
DISCIPLINARY TRIBUNAL**

**Present:** Catherine Garvey (Chairperson)  
Phil Comber, Lareen Cooper, Peter McGurk, Bernie Marra (Members)

Fleur Nicholas (Hearing Officer)

Adele Garrick and Alex Mills-Wallis (Counsel for the Complaints Assessment Committee)  
Laura McLoughlin-Ware (Counsel for Ms Austin)

**Hearing** 4 July 2016 in Christchurch

**Decision** 9 September 2016

## Introduction

1. On 1 February 2016 the Complaints Assessment Committee (“the CAC”) appointed by the Social Workers Registration Board (“the Board”) pursuant to section 66 of the Social Workers Registration Act 2003 (“the Act”) laid a disciplinary charge against Ms Austin.
2. On 8 June 2016 the CAC filed an amended disciplinary charge, together with an admission by Ms Austin of the proposed amended charge. The Tribunal consented to the amendment at the commencement of the hearing.
3. The amended charge reads as follows:

*“Pursuant to section 72(3) of the Act the Complaints Assessment Committee charges that Karen Austin, registered social worker, of Christchurch:*

*Breached the Code of Conduct issued by the Social Workers Registration Board pursuant to s 105 of the Act by:*

*(a) In late 2014 entering into an intense personal relationship with Client X, a client or former client, thereby putting at risk Ms Austin’s reputation and/or the reputation of the profession.*

*(b) Entering into an intense personal relationship with Client X when she knew he was vulnerable.*

*(c) Failing to discuss the development of her intense personal relationship with Client X with a supervisor or her employer thereby:*

*(d) Failing to bring an actual or potential conflict of interest to a supervisor’s or her employer’s attention.*

*And this conduct considered individually and/or cumulatively constitutes:*

*(e) professional misconduct pursuant to section 82(1)(a) of the Act.”*

4. The hearing took place on 4 July 2016, in Christchurch.

## Interim non publication orders

5. Prior to the hearing the Tribunal made, by consent, an interim order suppressing the names of Ms Austin’s family members (who we were told do not share Ms Austin’s surname), and the name of the client referred to in the charge and known only to the Tribunal as “Client X”. At the commencement of the hearing, and again by consent, the Tribunal made an interim order suppressing the name of Ms Austin to enable further consideration to be given to the effect of publication of her name on the other non-publication orders.

Counsel confirmed that Ms Austin did not intend to seek a permanent non-publication order.

### **Production of information to CAC**

6. Prior to the hearing the CAC sought an order for the production of Client X's name and contact details from Canterbury District Health Board ("CDHB"). Ms Austin and CDHB consented to such an order being made.
7. On 19 April 2016 the application was granted, with an order that the name and contact details for Client X be provided only to the CAC, and not to the Tribunal.

### **Agreed Statement of Facts**

8. The Tribunal received an Agreed Statement of Facts ("the Statement of Facts") including an admission of the charge by Ms Austin. This was signed by counsel for Ms Austin on 19 May, and by counsel for the CAC on 8 June 2016. The Tribunal also received an Agreed Bundle of Documents ("the bundle").
9. The Tribunal was concerned with some of the material that was included in the bundle. It contained documentation setting out conflicting explanations for Ms Austin's conduct, and these conflicts were not resolved within the Statement of Facts.
10. The lengthy Statement of Facts is set out below, with some detail redacted to protect the identity of Client X.
11. After recording the amended charge, the Statement of Facts reads:

#### *"Professional background and employment*

2. *Ms Austin completed a Diploma of Social Work, which at the time was a New Zealand qualification recognised by the Board, in 1990.*
3. *Ms Austin has been a social worker for 26 years.*
4. *Between 2001 and 2015, Ms Austin worked for Canterbury District Health Board (CDHB), working in mental health services. Ms Austin held a variety of roles for the CDHB. From 2005 until 2015, Ms Austin worked for the CDHB's [name of service redacted].*
5. *[Service] is a crisis mental health service that operates 24 hours a day, 7 days a week. The [service] team receives referrals from a variety of sources including doctors, police, family members or self-referrals.*

6. *Ms Austin's role in [service] was to triage clients, do both initial and full assessments of clients, liaise with family, police and relevant people in the community and to make recommendations as to a course of action. She was also a Duly Authorised Officer under the Mental Health (Compulsory Assessment and Treatment) Act 1992.*
7. *All social workers employed by CDHB have one-to-one supervision. Supervision involves taking ethical clinical, training and/or reflection issues for discussion.*
8. *Ms Austin's supervisor was [name redacted] who worked in the Mental Health Service. [Supervisor] was on leave in January 2015 but Ms Austin had informed [name redacted], who was responsible for overseeing social workers' supervision, that she would see [name redacted] as a supervisor in [supervisor]'s absence. [Name redacted] was the clinical social work specialist for the [service].*

**Registration as a social worker**

- 9 *Ms Austin has been registered as a social worker since 22 November 2012.*

**Client X**

- 10 *Client X is a 43 year old Maori male with a [significant psychiatric history] [health details redacted].*
- 11 *Client X had a number of brief contacts with [service] in 2014. A comprehensive psychiatric assessment was undertaken in June 2014.*

**Ms Austin's involvement as Client X's case manager**

- 12 *In September 2014, Client x was referred to [service] by [a general practitioner] following Client X's angry outbursts at [location redacted].*
- 13 *Ms Austin had responsibility for Client X as his case manager from 18 September 2014 to 12 October 2014.*
- 14 *Client X was first seen and assessed by Ms Austin on 18 September 2014. The Pukenga Atawhai (Maori Health Worker) was present during the assessment but the client was unaccompanied.*
- 15 *After this assessment Ms Austin wrote a detailed report to [GP]. This kind of assessment provides a significant amount of highly sensitive information about a person.*

- 16 *On 18 September 2014, Client X was also assessed by [name redacted], a consultant psychiatrist.*
- 17 *Following these assessments, Ms Austin arranged for a respite care for Client X, which he attended between 18 and 22 September 2014.*
- 18 *Ms Austin's progress notes indicate that as his case manager she continued to work with Client X until 12 October 2014. This included several phone calls to Client X, another arrangement for respite care from 29 September to 2 October 2014, two appointments at the office, a home visit to drop off medication on 7 October 2014 and a final office appointment on 11 October 2014.*
- 19 *Ms Austin wrote a discharge summary letter for Client X to [GP] on 12 October 2014, when Client X was discharged from her care as case manager. This was the usual practice for discharging clients at that time, although some cases would be discussed in a meeting prior to discharge. At the time, Client X's case appeared to Ms Austin to be unremarkable and so she did not consider a discharge meeting was required.*
- 20 *There are no clinical records of any clinical contact between Client X and Ms Austin subsequent to his discharge from the [service] on 12 October 2014. Ms Austin did not have any professional contact with Client X after Client X's discharge.*
- 21 *Since his discharge from Ms Austin's care, Client X had further contact with the CDHB Mental Health Service, including [service]. If a client who has been discharged from [service] gets into another crisis, he or she will come back into the [service].*

**Ms Austin's ongoing contact with Client X**

- 22 *Ms Austin remained in contact with Client X after his discharge from her care. This relationship was brought to the attention of CDHB in January 2015 as the result of a conversation between Police staff and a community mental health nurse, [name redacted].*
- 23 *On or around 4 or 5 January 2015 Client X moved into Ms Austin's home. Client X was on bail and Ms Austin's address had been approved by the Court as a suitable address for him to reside. Ms Austin had been to court with Client X to assist him with the 'approval' process.*

- 24 *In the early hours of the morning on 9 January 2015, Client X was stopped by Police in Manchester St, Christchurch, in Ms Austin's car.*
- 25 *Client X was taken to the Police station and processed. He was also assessed by [name redacted], a community mental health nurse. Client X was then released on bail.*
- 26 *[Name redacted] understood that Ms Austin was listed as Client X's next of kin and Client X gave her address as his bail address.*
- 27 *Later on that day, Ms Austin attended the bail counter to ask where her car was.*
- 28 *On 14 January 2015, Client X was stopped by Police in Cheviot due to concerns he was driving while intoxicated. The car he was driving was registered to Ms Austin. Client X was again bailed to Ms Austin's address.*

***Ms Austin's response to the complaint***

*CDHB investigation*

- 29 *In January 2015, the CHDB initiated an investigation into Ms Austin's relationship with Client X.*
- 30 *On 21 January 2015, Ms Austin attended a meeting with CDHB staff in order to discuss her relationship with Client X. As well as Ms Austin, the following people attended the meeting:*
- [relevant CDHB staff]*
- 31 *At this meeting, Ms Austin stated:*
- (a) She met Client X through her case management of him in September and October 2014. Nothing happened during that period but a rapport developed between them.*
  - (b) She and Client X began a friendship soon after he was discharged from her care-one week after. Their relationship was "close not sexual."*
  - (c) The friendship started after Client X texted Ms Austin. She had previously texted him from her personal mobile phone for professional reasons, so he had her number.*

- (d) *She thought there was six month stand down period but, after looking at the DHB and Aotearoa New Zealand Association of Social Workers (ANZASW) Codes of Conduct found no stand down period was stipulated. She therefore thought they could have a friendship-provided that there was “no money, no sex, no exploitation.”*
- (e) *She was aware of transference issues and that there was always the risk of a potential power differential between them, and that she would have to manage those issues in a friendship with Client X.*
- (f) *She acknowledged she could not now deal with him at [service]. She was aware that Client X had been seen by other [services] after the friendship had started because Client X had told her later.*
- (g) *She should have approached management and her supervisor.*

32 *Ms Austin resigned from the CDHB prior to the investigation into her relationship with Client X beginning, as she was unhappy with a restructure of [service] and the deterioration of pay and conditions. Her notice period was extended, and her resignation was effective from 5 February 2015. She stated at the meeting on 21 January 2015, that while the friendship was part of the reason for leaving [service], she had made the decision to resign regardless of the friendship with Client X.*

***Investigation by the Board and Complaints Assessment Committee***

33 *On 11 February 2015, Rose Henderson from the CDHB formally notified the Social Workers Registration Board (Board) of the circumstances surrounding Ms Austin’s resignation.*

34 *The Board sought Ms Austin’s response to Ms Henderson’s letter. Ms Austin responded by email to the Board on 13 April 2015.*

35 *On September 2015, following full disclosure of the information held by the Complaints Assessment Committee (Committee) in relation to this matter, Ms Austin responded through her legal counsel Tristan Sage.*

***Interview with Ms Austin***

36 *The Committee interviewed Ms Austin on 17 September 2015. Ms Austin attended the interview with Tristan Sage her lawyer. Ms Austin maintained the explanation she had given to CDHB although she*

*clarified that she had actually tendered her resignation in late December 2014 (prior to being investigated by CHDB) and that her resignation was because of an impending restructure.*

*Ms Austin's response to questions from the CAC*

37 *When questioned by the CAC as to the nature of her friendship with Client X, Ms Austin has provided the following answers:*

(a) *Ms Austin and Client X had developed a friendship following his discharge from [service]. At the beginning of the friendship, Ms Austin discussed the parameters of any friendship with Client X. Ms Austin told Client X that she understood they were allowed to be friends provided that they did not have a sexual relationship, she did not exploit him, and did not receive money or gifts from him. She also told him that she could not be his social worker again.*

(b) *Ms Austin was aware that Client X had moved out of his flat and was homeless. Ms Austin's husband suggested to Ms Austin that Client X would move into their home temporarily.*

(c) *Ms Austin stated that she was not listed as Client X's next of kin. She has never discussed or agreed that she would be next of kin for Client X and says that Client X has never regarded her as his next of kin.*

(d) *Client X came back to the service while Ms Austin still worked there but fortunately was seen at another sector base. She acknowledged that there were risks for his privacy in that if he turned up to [the service] and she was part of the team assigned to care for him there would have been a conflict of interest. She also acknowledged that she had been aware that in that situation she would have been unable to treat him.*

*Mobile phone data*

38 *Ms Austin subsequently obtained from 2degrees a record of text messages and calls to and from her personal mobile phone and Client X's personal mobile phone for the period between 18 September 2014, when Ms Austin became Client X's case manager, and 21 January 2015.*

39 *As 2degrees only retains text message content for six months, 2degrees provided a log that contained details of the time, date, the sender and receiver of text messages and phone calls and the duration of calls.*

- 40 *Ms Austin's personal mobile phone number of this time was [redacted].*
- 41 *Client X's personal mobile phone numbers over this time were [redacted]*
- 42 *The mobile phone data show that the first contact between Ms Austin and Client X was a text message sent by Ms Austin at 5.07pm on 15 October 2014. On that date, Ms Austin texted Client X six times and he replied three times.*
- 43 *On 22 October 2015, Ms Austin's legal counsel provided the mobile phone data to the Committee under a covering letter which gave Ms Austin's explanation for the difference between the mobile phone data and her previous statements that Client X had initiated the texting. Ms Austin said that she could not recall sending the first text message and that her recollection was that Client X initiated the contact between them.*
- 44 *The mobile phone data displays a pattern of frequent text message contact between Ms Austin and Client X, including:*
- (a) text message contact on 19, 20, 21 and 25 October every day from 27 October to 1 November (inclusive) and contact again on 3 and 4 November;*
  - (b) daily contact from 6 November to 7 December 2014;*
  - (c) on 9 November 2014, Ms Austin contacted Client X on 22 occasions with the last contact at 11.46pm;*
  - (d) daily contact resumed on 11 December 2014, when Ms Austin contacted Client X 37 times and he responded 17 times;*
  - (e) between 12 December 2014 and 20 December 2014, Ms Austin contacted Client X on average 32 times a day (ranging from 16 times on 20 December to 59 times on 18 December);*
  - (f) Ms Austin contacted Client X 17 times on both Christmas Day and Boxing Day 2014;*
  - (g) from 26 December [2014] to 9 January 2015 and from 11 to 17 January 2015, there is daily contact with Ms Austin contacting Client X between two and 23 times each day;*
  - (h) on 4 days, Ms Austin contacted Client X between 11pm and 2am in the morning.*

45 *Over this period Ms Austin also made a number of telephone calls to Client X, including:*

(a) *calls approximately half an hour long on 28 and 31 October, on 3, 18 and 22 November and 1 and 3 December 2014;*

(b) *a call between 30 and 60 minutes long on 9 November 2014; and*

(c) *a call over 90 minutes long on 11 November 2014.*

46 *Client X did not make phone calls to Ms Austin.*

47 *On 7 December 2015, Ms Austin responded to an enquiry by the Committee about the volume of text messages and length of the phone calls between her and client X. Ms Austin acknowledged that this was an “intense friendship” and said that she was providing support to Client X in view of very stressful circumstances that he was facing at that time.*

#### ***Current registration status***

48 *Ms Austin’s annual practising certificate expired on 30 June 2015.*

49 *Ms Austin does not hold a current practising certificate.*

50 *She is a non-practising member of ANZASW.*

#### ***Admission***

51 *Ms Austin confirms and admits the charge and agreed statement of facts and consents to the admission of the agreed bundle of documents.”*

12. An Agreed Statement of Facts should contain a clear description of the events relied upon to support the charge but should not include material that is plainly irrelevant and which is expressed in such terms as “*Ms Austin maintained...*” The parties did not clarify what was agreed as the basic facts of this matter. We note the following examples:

a. At paragraph 31(b) it is reported that Ms Austin advised her employer that the friendship between Ms Austin and Client X began one week after he was discharged from her care on 12 October;

b. At paragraph 31(c) it records that Ms Austin advised her employer that the friendship commenced after Client X texted her on her (personal)

mobile phone, having obtained that number when she previously texted him from her personal phone “*for professional reasons*”;

- c. At paragraph 37(c) it records that Ms Austin was not regarded as or listed as Client X’s “next of kin” by either of them;
- d. At paragraph 42 the data showing the actual mobile phone contact between Ms Austin and Client X is referred to and it is noted that this shows the first contact was made by Ms Austin on 15 October 2014;
- e. At paragraph 43 the Statement records advice from Ms Austin’s legal advisor that she could not recall initiating contact and maintaining that her recollection was that Client X initiated contact.

### **The Agreed Bundle of Documents**

13. The bundle includes the following documents (this list is not exhaustive):

- a. The original notice from Ms Austin’s employer to the Board dated 11 February 2015, advising of her resignation and the circumstances of the internal investigation regarding Ms Austin’s relationship with Client X;
- b. Client X’s anonymised records from CDHB dated between 19 September and 12 October 2014;
- c. Statements to the CAC by senior CDHB employees involved in the employment disciplinary process relating to Ms Austin’s relationship with Client X;
- d. An email from a fellow employee bringing Ms Austin’s relationship with Client X to the notice of her employer;
- e. Various communications between Ms Austin’s legal counsel and the CAC including detailed responses to the matters that are the subject of the charge;
- f. Ms Austin’s written statement to the CAC;
- g. A transcript of Ms Austin’s interview with the CAC on 17 September 2015;
- h. Cellphone data for the period 18 September 2014 to 21 January 2015 for the cellphone numbers belonging to Ms Austin and Client X namely the date, time and duration of phone contact;
- i. Ms Austin’s Personal Statement for the Tribunal.

14. What follows is a summary of the material in the bundle that the Tribunal considers to be most relevant to the charge. We use the following headings:
- a. The professional relationship between Ms Austin and Client X;
  - b. The commencement of the personal relationship between Ms Austin and Client X;
  - c. The telephone records between Ms Austin and Client X;
  - d. Whether Ms Austin was identified as Client X's 'next of kin';
  - e. Ms Austin's position as to a breach of standards;
  - f. Ms Austin's Personal Statement.

***The professional relationship between Ms Austin and Client X***

15. Ms Austin is an experienced social worker, with substantial experience in mental health. Ms Austin was a Duly Authorised Officer<sup>1</sup>, a position which indicates her seniority and working knowledge of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and relevant services.
16. Client X has a significant psychiatric history and social difficulties. When Ms Austin met Client X in September 2014 he was experiencing a mental health crisis requiring acute psychiatric assessment and respite care. His presentation included frequent suicidal ideation and planning.
17. Ms Austin was Client X's case manager from 18 September 2014 to 12 October 2014. They met in person on four documented occasions and had telephone contact on at least eight occasions. According to the telephone records available, no telephone contact occurred on the private cell phones of Ms Austin and Client X during this period. Information from CDHB indicated that there was nothing unusual about Ms Austin's management of Client X, or the timing of his discharge from the service.

***The commencement of the personal relationship between Ms Austin and Client X***

18. Ms Austin acknowledges that she gave Client X her personal mobile telephone number but has given differing explanations for why she did so. Either Ms Austin gave her personal number to Client X before 12 October 2014, or on that

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<sup>1</sup> A Duly Authorised Officer is appointed under the Mental Health (Compulsory Assessment and Treatment) Act by the Director of Area Mental Health, and has significant responsibilities under the Mental Health (compulsory Assessment and Treatment) Act 1992.

date; either for “professional reasons” (as Ms Austin advised her employer), or so that a friendship could occur (as she advised the CAC).

19. Whatever the case, on 15 October 2014, Ms Austin initiated contact with Client X by text message. This is contrary to her assertion in her statement to the CAC (see paragraphs 31(c) and 43 of the Statement of Facts) that the first text message came from Client X.
20. Between 15 October 2014 and 15 January 2015 Ms Austin maintained a close personal relationship with Client X without disclosing this to CDHB or her supervisor.
21. On 15 January 2015 one of Ms Austin’s co-workers notified CDHB by email of circumstances that disclosed the relationship. The email included the following allegations:
  - a. That Ms Austin had attended the bail counter on 9 January 2015 inquiring after her car, which had been impounded after Client X was stopped by Police while driving that car and was taken to the Police station for detoxification;
  - b. That Police custody staff informed Ms Austin’s co-worker that Ms Austin was listed as next-of-kin by Client X and he was bailed to her address;
  - c. That on 11 January 2015 Client X presented to the police station and was subsequently charged with breach of bail (his bail address being assumed to be Ms Austin’s home at this time);
  - d. On 14 January Client X was stopped while again driving Ms Austin’s car, and required medical detoxification. The bail address was again Ms Austin’s address.
22. This email includes the following comments:
  - a. That Ms Austin’s colleagues considered the circumstances described to be *“a significant ethical dilemma”*;
  - b. That there were *“very clear and apparent boundary, professional practice issues”*;
  - c. Expressing surprise at the behaviour of Ms Austin given her previously *“totally professional”* clinical practice.
23. A summary of these concerns was notified to Ms Austin on 16 January 2015, with CDHB giving notice that if substantiated the concerns constituted serious

misconduct. A copy of the email setting out the concerns was provided to Ms Austin.

24. An employment disciplinary meeting took place on 21 January 2015. At this meeting, notes of which were included in the bundle, Ms Austin asserted (in summary):

- a. At the time of discharging Client X from her care they discussed a friendship but that she explained they could not be friends as she believed there to be a six month stand down period before a personal relationship could commence. This belief was said to be based on her experience with a previous employer;
- b. That she *"looked up the DHB and ANZASW Codes of Conduct"* and found no stand down period so she *"thought we could have a friendship - no money, no sex, no exploitation etc."*
- c. That she should have approached management and her supervisor.
- d. That the friendship started one week after Client X was discharged by Ms Austin.
- e. That it was now *"hard for [Client X] to now access MH services"*;
- f. That Client X did not force her into the friendship.

25. The meeting notes record Ms Austin's acknowledgement that there was a power *"differential"* between herself and Client X, and that she was aware of issues of transference. Ms Austin stated that she intended to continue the friendship as she had resigned. Ms Austin's resignation was accepted by CDHB.

26. On 11 February 2015, CDHB wrote to the Board. On 13 April Ms Austin was advised of the CDHB notification. Ms Austin responded by email on the same date stating, amongst other things:

*"I was the case manager for this man for several weeks. At the end of my professional involvement with him, we discussed the possibility of becoming friends some time in the future. After I discharged him, he contacted me. I then researched the ANZASW Code of Conduct, the Registration Board protocols and the CDHB protocols in order to determine whether or not it was possible to befriend an ex consumer and whether or not there was any sort of stand down period. I found nothing of the sort. I then contacted him and we became friends. At the outset I explained the things I could not do, for example exploiting him*

*financially or having sex with him. These things have never been issues between us; he is gay and our relationship is not sexual.”*

27. Ms Austin’s legal advisor subsequently wrote to the Board in September on stating:

*“[18] ... Accordingly, Ms Austin gave Client X her personal mobile phone number during that meeting, saying that Client X could contact her in six months’ time.*

*[19] The following week, Client X contacted Ms Austin by text message. While she no longer has a copy of that text message, Ms Austin recalls that it was in a light-hearted tone, saying that Client X was looking forward to beginning a friendship in six months’ time.*

*[20] Uncertain how to respond, Ms Austin at that time reviewed, the Code, the ANZASW Code of Ethics and CDHB internal policies regarding relationships with clients. She found no specific prohibition to starting a friendship where the professional relationship was at an end, nor did she find any reference to a six month stand down period. Although her review of these documents reinforced to Ms Austin that:*

*20.1 Any relationship with Client X could not be sexual in nature;*

*20.2 She could not exploit Client X in any way;*

*20.3 She could not provide any professional services to Client X if he was referred again to [service].*

*[21] She therefore contacted Client X approximately 3-4 days after his text message. They went for a walk to discuss the possibility of a friendship. Ms Austin reiterated to Client X at that point the parameters of their friendship as set out above, namely that it could not be sexual, that she could not exploit him in any way and that if he was referred again to [service] she could not treat him. Client X accepted that and their friendship proceeded accordingly. That friendship continues.”*

**Telephone records between Ms Austin and Client X**

28. Regular and frequent contact occurred from 15 October 2014. On occasion voice calls were made by Ms Austin, but primarily this was by way of text message sent at all hours of the day and night. On several occasions Ms Austin sent well over 20 text messages and on other occasions there were over 50 messages to Client X in a 24 hour period.

29. Evidence as to the content of the messages is almost absent, summarised by the following statement to the CAC on behalf of Ms Austin:

*"...Ms Austin acknowledges this was an intense friendship and that Ms Austin was providing support to Client X in view of the circumstances Client X was facing at the time.*

*There is no evidence of exploitation of any kind and the volume and frequency of communications does not indicate otherwise, given the circumstances of the friendship which occurred during a very stressful time to Client X."*

**Next of kin**

30. The initial report to CMDHB included reference to Ms Austin being identified as Client X's next of kin to the Police. No documents recording this designation were obtained by the CAC. Ms Austin's position has varied, from outright denial to speculating circumstances in which she may have been recorded as Client X's next of kin, namely when he attended ED and the name of the person with him (Ms Austin) was recorded.

31. It was submitted to the Board on behalf of Ms Austin:

*"[...] Those actions [using Ms Austin's home as a bail address and acting as next of kin] do not constitute a breach of the Code. Ms Austin was unaware that she was listed as Client X's next of kin until the issue was raised by the CDHB. Clearly Client X considered that Ms Austin was responsible friend who could step in as "next of kin" because he has no contact with his own whanau. He did not consult with Ms Austin about this. She therefore had no knowledge of, or influence over, his decision on this matter..."*

**Ms Austin's position as to breach of professional standards**

32. Ms Austin and Client X quickly developed what is described in the charge as an "intense friendship." They were in almost daily telephone contact from 15 October 2014 to 21 January 2015 (that being the scope of the records obtained). Client X lived with Ms Austin and her husband for a period of time from 4 or 5 January; Ms Austin's home was used as the address for bail for Client X in January 2015, and Ms Austin moved to live with Client X in another South Island city. She returned to Christchurch in June 2015 and according to Ms Austin, Client X was imprisoned at this time.
33. Ms Austin maintained, until the hearing, that she had not acted unprofessionally. For example, Ms Austin wrote to the Board expressing that

the reasons for the final warning she received from her employer were “obscure” and “nonspecific apparent breaches of the ANZASW principles.”

34. In September 2015 it was submitted to the Board on Ms Austin’s behalf that:

*“At all times, Ms Austin’s conduct was appropriate and professional.”*

35. Ms Austin met with the CAC on 17 September 2015. She stated:

*“I was very aware of the power differential between us and I turned my mind often to whether or not I could exploit him. ‘Exploit’ is the word used in the standards and it is apt here. I have not exploited him. It upsets me to even think I may have harmed him in any way by befriending him, and I have reflected on this often. It would be difficult to show either way whether or not my friendship with him made him more or less vulnerable. In fact this disciplinary process and the effects of it on my future career have distressed him.”*

36. Ms Austin gave evidence to the CAC about her experience supervising students and other social workers. She said she did not speak to her supervisor because:

*“...I felt that I hadn’t breached the standards, you know this is 20/20 hindsight of course, you know, I supervise, I’ve supervised students for a long time and I’ve supervised other social workers and you know, I, when I think about it, it is certainly the sort of issue that should be raised in supervision...”*

37. Ms Austin was asked by the CAC whether she had given her personal contact details to any client previously, which she denied. Ms Austin said had she been asked by any other client she would have replied “no of course we can’t be friends...because I’m your social worker.”

#### ***Ms Austin’s Personal Statement to the Tribunal***

38. The Personal Statement is relevant both to liability and to matters of penalty. The statement includes the following:

*“It is difficult to describe the friendship I had with Client X. I suspect that the CAC is mystified by the fact that I formed a friendship with a man so different from myself, and that I saw the good in him despite his background. CX is an intelligent, thoughtful, personable man. I have always said that it is not that what I did was so very bad, but that it was incomprehensible, that was the problem.*

*The friendship was never sexual. I would never have sex with a client or ex client. It would be simply wrong to do so. Social workers on occasion*

*do have sex with their clients; it is reprehensible but understandable. What I did was something else entirely. I believe that breaking unspoken social norms was the real concern.*

*CX and I were I believe equals in our friendship. However I was always mindful of having been his social worker. I knew I needed to keep away from any treatment he had with mental health services. Other than failing to seek supervision and tell my employer, I felt in fact I handled the potential conflict of interest as well as I could.*

*I thought a lot about the power differential between us. We discussed this openly at times. All I can say is that I was very aware of it and it played out when I used my knowledge of systems when I spoke to his probation officer. On the one hand I knew I was just a friend, but on the other hand I knew I had prior understandings based on having been a social worker in the past. In some ways, this is no different from anyone who has a friend who knows about systems. But I was also aware I had a professional social worker's knowledge about CX himself and that I had to keep that separate, treat it as if it had not existed.*

*I have wondered over and over about whether I caused him any harm. I have also talked about this in counselling and given examples in counselling of how I handled the crises he experienced. It concerned me that maybe I thought of him as a project or a crusade rather than fully as a friend. This would be a subtle form of harm. I don't think I did think of him in that way. I honestly do not believe I did him harm. I don't believe the public was ever at risk from me.*

...

*If I could turn back time I would definitely seek supervision, and my hunch is that if I had done so I would not have proceeded as I did. I should not have befriended CX so soon after discharge, and if I had not done so then, I may not have befriended him at all, because the opportunity would probably not have arisen later on. I believed at the time I researched all the relevant codes and standards, but if I had sought supervision or even talked to colleagues I would have seen how much this friendship would cut across social norms even if it did not appear to me from my research that a friendship would breach the standards. I should not have befriended him.*

[...]

*If I had been my supervisor, or any good friend for that matter, I would have said 'Where is your judgment? What sort of woman does this? What sort of social worker?' Nobody said that to me; and now I wish they had. But this detracts from my taking responsibility for my own judgment. I should have said that to myself. I didn't...Now I can say that my judgment was poor. But this is about my personal judgment. My husband wisely says that my professional judgment was intact, but my personal judgment overtook it..."*

### **Liability: Submissions of the Complaints Assessment Committee**

39. Counsel for the CAC was invited to address the Tribunal on liability and the inconsistencies in the Statement of Facts and the bundle. The admission of liability by Ms Austin and an agreement reached between the parties prior to the hearing as to a proposed penalty were assumed by the parties to obviate the need for addressing the Tribunal on liability. Notwithstanding an admission by a person facing a disciplinary charge before this Tribunal, we are obliged to reach our own view on liability and expect to be addressed on this issue.
40. The CAC relied on the Agreed Statement of Facts and documentation within the bundle and did not provide statements of evidence or call any witnesses.
41. In response to questions from the Tribunal counsel for the CAC submitted:
- a. The Agreed Statement of Facts resolves “*as far as necessary*” any conflicts within the documents in the bundle;
  - b. That the Tribunal could draw the inferences it chose based on the evidence;
  - c. That the evidence established liability for the charge;
  - d. That Ms Austin was in breach of the Code of Conduct<sup>2</sup> and identified parts of Principle 1.
42. In relation to particulars (a) and (b) of the charge, the CAC submitted that Ms Austin has breached the following principles within the Code:

*“1. To uphold high standards of personal conduct and act with integrity a social worker is expected to:*

- *Refrain from any professional or personal behaviour that puts at risk the individual’s and/or the profession’s reputation and compromises the social worker’s ability to work with the client in a fully professional and caring manner.*
- *Not exploit their relationship with clients for personal or professional gain.”*

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<sup>2</sup> Social Workers Registration Board Code of Conduct for Social Workers V3 January 2014. This has now been replaced by the Code of Conduct, March 2016.

43. In relation to particulars (c ) and (d) of the charge the CAC submitted that Ms Austin had breached the following part of principle 1, that a social worker is expected to:

*“discuss potential or actual conflicts of interest (both personal and professional) with the client and attempt to resolve them expeditiously. The social worker should bring any potential or actual conflicts of interest to their supervisor’s or employer’s attention. Unless a resolution is possible, the relationship with the client should be terminated with an appropriate referral being made.”*

44. Counsel did not make submissions as to the meaning of “*professional misconduct*” other than to refer to Ms Austin’s admission of the charge.

**Liability: Submissions on behalf of Ms Austin**

45. By way of the admission in the Statement of Facts and through counsel’s oral submission, Ms Austin admitted the amended charge of professional misconduct. Ms Austin did not give evidence, and did not call any witnesses.

46. A document entitled “Personal Statement” was included in the bundle. This was unsigned and undated, however the Tribunal was advised that Ms Austin prepared the statement on or about 19 May 2016, at the time the Agreed Statement of Facts and bundle were prepared and/or signed on Ms Austin’s behalf. The Personal Statement was Ms Austin’s most recent explanation of her conduct and reflection on the charge.

47. Counsel submitted that there was sufficient evidence in the Statement of Facts and the bundle to establish the charge. She submitted that the Tribunal was free to determine which version of the facts regarding Ms Austin’s relationship with Client X it preferred. Counsel maintained that Ms Austin did not exploit Client X. No specific submissions were made regarding the legal test for professional misconduct.

**The charge - principles**

48. The burden of proving the charge is on the CAC. The standard of proof is the balance of probabilities. This standard is applied flexibly, depending on the gravity of the matters the subject of the charge. That is, the more serious the allegations, the greater the degree of satisfaction on the balance of probabilities.<sup>3</sup>

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<sup>3</sup> *Z v Complaints Assessment Committee* [2009] 1 NZLR 1

49. Although Ms Austin admits the charge, the Tribunal must determine whether the threshold for disciplinary sanction is met.

50. The disciplinary processes in the Act provide one mechanism by which the purposes of the Act are to be met, in particular the protection of the public and the maintenance of professional standards.

51. Section 82 sets out the grounds on which a registered social worker may be disciplined. The amended charge alleges Ms Austin is guilty of professional misconduct. The relevant parts of section 82 provide:

“(1) *The Tribunal may make an order under section 83 in respect of a registered social worker if, after conducting a hearing on a charge laid against the social worker, it is satisfied that the social worker –*

*(a) Has been guilty of professional misconduct;*

...

*(2) A registered social worker is guilty of professional misconduct if he or she –*

*(a) breaches the code of conduct...”*

52. The test for professional misconduct is an objective one, considering whether the practitioner’s conduct was an acceptable discharge of his or her professional obligations as viewed by competent, ethical and responsible peers. The conduct must be more than mere inadvertence or oversight.<sup>4</sup>

53. The Tribunal must undertake a two-step process, namely:

a. Has there been a departure from acceptable standards;

b. If yes, does that departure warrant disciplinary sanction.

54. The Code of Conduct referred to in section 82(2) is the Code issued and updated from time to time by the Board.<sup>5</sup> It is a guide and is intended to cover the *“minimum professional standards of behaviour, integrity and conduct that apply to registered social workers and that should apply generally in the social work profession.”*<sup>6</sup>

55. The CAC refers to relevant parts of Principle 1, as set out at paragraphs 42 and 43 above. In addition Principle 2b of the Code (under the heading “Professional development”) contains an expectation that social workers will engage in

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<sup>4</sup> *B v Medical Council of New Zealand* (Elias J, HC Auckland HC 11/96); noted at [2005] 3 NZLR 810

<sup>5</sup> Section 105 of the Act

<sup>6</sup> Preamble to the Code of Conduct v3 January 2014

supervision and remain open to constructive and informed collegial comment<sup>7</sup>. Ms Austin did not meet these expectations when she made selective inquiries about a friendship with Client X, or by her response when concerns were raised in January 2015 by CDHB.

56. Client X was a very recent former client of Ms Austin when their personal relationship commenced. A practitioner's professional obligations can and frequently will persist in the period following the ending of a professional relationship. This is the position for other professionals and we see no reason why the same obligations should not apply to social workers.<sup>8</sup> Each case will be considered on its facts.
57. Credibility issues arise from the differing accounts given by and on behalf of Ms Austin. The test for credibility requires consideration of a number of factors, although in the absence of Ms Austin giving evidence to the Tribunal we are limited to a consideration of the consistency of the statements by or on behalf of Ms Austin to CDHB, to the Board, and to the CAC; and where possible (such as with the telephone records), to considering the consistency of Ms Austin's statements with other documentary evidence.<sup>9</sup> There is no dispute that Ms Austin conducted a personal relationship with a vulnerable client commencing a short time after the end of the professional relationship; and that the personal relationship was an intense one.

#### **Findings - Liability**

58. The Tribunal gave an oral indication that the charge of professional misconduct was made out. The reasons for this now follow.
59. Client X had a long term history of mental health issues, a history of criminal offending, and of drug and alcohol abuse. In September 2014 when Client X met Ms Austin in her professional capacity, he was acutely unwell. The evidence of his circumstances since then is limited, but information in the bundle suggests that he was seen by emergency mental health services, had multiple contacts with the Police, and was imprisoned. Ms Austin has described his circumstances during their friendship as "*very stressful*."
60. Ms Austin entered into the friendship without meaningful consultation with her employer, supervisor or peers. She was concerned solely about a so-called stand down period. As an experienced social worker Ms Austin ought to have understood the risks of entering a personal relationship with Client X.

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<sup>7</sup> Principle 2b, Code of Conduct v3 January 2014

<sup>8</sup> *Collie v Nursing Council and Moore v Nursing Council of New Zealand* Wellington High Court AP 100/00, 18 December 2000, Gendall J.

<sup>9</sup> See *Rabih v Professional Conduct Committee* [2015] NZHC 1110

61. The short period of time between the professional relationship formally ending and the "*intense friendship*" commencing makes it likely that Ms Austin discussed (and formed the intention) of continuing a personal relationship before Client X was discharged. Post discharge, Ms Austin initiated contact for the purpose of a relationship for which the foundations had already been laid.
62. Despite her admission of the charge, we are not satisfied that Ms Austin has wholly accepted that her conduct was inappropriate. In every document and record of interview with Ms Austin including her Personal Statement she disputes any breach of professional boundaries. The assertion that she would have acted differently had she been confronted by her colleagues is not borne out by the facts. Ms Austin was confronted: by her colleagues when the facts came to light, by her employer, by the Board, and in the course of the CAC investigation. We find it likely that at the critical time, Ms Austin deliberately withheld information that would have enabled her colleagues to question and advise her.
63. The level of contact between Ms Austin and Client X is significant. Some contact occurred during Ms Austin's working hours. (It was submitted on her behalf that the late hour of some text messages to Client X was not unusual, given she worked both day and night shifts).
64. The nature of contact shows a close and dependent relationship. The Tribunal has no evidence of any financial arrangements between Ms Austin and Client X while they were living together. The CAC has not alleged any sexual impropriety. Irrespective of this, we consider Ms Austin's lapse of judgment to be significant.
65. The Tribunal has no particular evidence of the "*very stressful*" circumstances that Client X faced, or specifically of any services that he accessed. There is passing reference to being seen at an emergency mental health service and an emergency department. There was a real risk that in receiving support from Ms Austin drawing on her social work skills and experience, Client X may not have sought timely professional assistance. This concern is supported by Ms Austin's apparent admission to CDHB on 21 January 2015 that Client X found it difficult to seek help from mental health services because of his relationship with her; her reference to meeting with his Probation Officer, and to "*handling crises*" that Client X experienced.
66. With regard to the actual or potential conflict of interest that the relationship posed, counsel submitted that Ms Austin was aware of this and would have acted appropriately by not assisting Mr X in a professional capacity had he presented to the service. This ignores that a professional interaction may have been unavoidable if Client X presented during the night shift when Ms Austin was on duty. Ms Austin admitted to the CAC it was coincidence he did not do so.

67. In conclusion we are satisfied that Ms Austin has breached the elements of Principle 1 of the Code of Conduct set out above. There has also been a breach of Principle 2b in respect of Ms Austin's selective, or absent, consultation with peers, colleagues and her supervisor.
68. We are satisfied that the particulars of the charge are made out. Ms Austin's actions cumulatively constitute professional misconduct.

### **Penalty**

69. Section 82 sets out the penalties that may be imposed if the Tribunal is satisfied that the disciplinary charge has been proved. The Tribunal received written and oral submissions as to penalty. Prior to the hearing the parties indicated an agreed position on penalty; this position was maintained in oral submissions.
70. We adopt the principles as to penalty in the disciplinary context that have been set out in a number of this Tribunal's recent decisions, in reliance on *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*.<sup>10</sup> These principles are, in summary:
- a. To protect the public, which includes deterring others from offending in a similar way;
  - b. To set professional standards;
  - c. Penalties have a punitive function, both directly (such as a fine) and as a by-product of sanctions imposed;
  - d. Rehabilitation of practitioners, where appropriate;
  - e. To impose penalties that are comparable to those imposed in similar circumstances;
  - f. To reserve the maximum penalties for the worst offending;
  - g. To impose the least restrictive penalty that can reasonably be imposed in the circumstances;
  - h. To assess whether the penalty is a fair, reasonable and proportionate one in all the circumstances.
71. Pursuant to section 83, once a charge is established the Tribunal may make one or more of the following orders:

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<sup>10</sup> High Court Wellington CIV-2012-404-003916 [12 December 2012], Collins J.

- a. Cancellation of registration;
- b. Suspension for a period not exceeding 12 months;
- c. Conditions on practice for a period not exceeding 3 years;
- d. Censure;
- e. Fine;
- f. Costs.

### **Penalty Submissions for the Complaints Assessment Committee**

72. The CAC submitted that the purpose of any penalty is to fulfill the functions of protecting the public and enhancing the professionalism of social workers.

73. The CAC relied on the following aggravating features:

- a. The vulnerability of Client X by reference to his medical history and the short timeframe between discharge from the mental health service and the relationship with Ms Austin commencing;
- b. The intensity of the relationship by reference to the volume of text and phone communications, and the fact Client X resided in Ms Austin's home which was used as his bail address;
- c. That Ms Austin initiated contact and sent "*materially more*" text messages than Client X;
- d. The duration of the relationship, noting that Ms Austin and Client X lived together until June 2015.

74. The CAC submitted the following mitigating features:

- a. Ms Austin's previously unblemished record;
- b. Her admission of the charge of professional misconduct.

75. The CAC referred to *CAC v RSW Y*<sup>11</sup> where the social worker developed a sexual relationship with a teenage client she met professionally while he was in a care and protection residence. The relationship continued through a term of imprisonment and upon the client's release from prison. The social worker

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<sup>11</sup> RSW2/D2/SWDT/2015, 14 August 2015

accessed the client's records after he ceased to be her client. The Tribunal cancelled the social worker's registration.

76. Counsel also referred us to three decisions of the Health Practitioners Disciplinary Tribunal involving relationships between health professionals and current or former clients, namely *Re Schubert*<sup>12</sup>, *Re Shennan*<sup>13</sup> and *Dr K*<sup>14</sup>. We were also referred to a media report on a recent but then unpublished decision involving a nurse who entered into a living arrangement with a man she had cared for while he was a prisoner. That decision (*Ms L*) has since been published, and is the subject of an appeal to the High Court.<sup>15</sup>
77. No sexual impropriety was alleged by the CAC in this case and in that respect this matter is distinguishable from *CAC v RSW Y*, and *Dr K*. The recent decision of the HPDT in *Ms L* has similarities in respect of the proximity between the ending of the professional relationship and commencement of a close personal relationship involving the parties residing together (with no allegations of sexual impropriety). *Ms L* defended the charge and argued that there was no guidance available to nurses regarding her situation. The nurse was found guilty, censured, fined \$5000, ordered to be under supervision for two years, to undertake courses in ethics and professional boundaries, and a costs order was also made.<sup>16</sup>
78. In *Re Schubert*, the practitioner (a psychologist) conducted couples counselling; she was found guilty of professional misconduct in relation to personal email and text communications and social interactions with both clients individually, which included breaches of confidentiality. When the female client laid a complaint, *Ms Schubert* attempted to have the male client persuade her to withdraw it. The Tribunal imposed a censure and 18 month suspension, with conditions on the practitioner's return to practice.
79. In keeping with an agreement reached with *Ms Austin* prior to the hearing, the CAC submitted that the following penalty orders should be imposed, taking into account the period of time *Ms Austin* had not worked as a social worker:
- a. Censure;
  - b. A condition that *Ms Austin* may only practice as a social worker subject to professional supervision for two years with a focus on boundary

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<sup>12</sup> Decn 705/Psy14/288P, 14 May 2015

<sup>13</sup> Decn 426/Nur11/191P, 25 November 2011

<sup>14</sup> Decn 349/Med10/157P, 13 December 2010

<sup>15</sup> *Ms L* 822/Nur/Nur15/324P

<sup>16</sup> The Tribunal imposed costs in the sum of \$20,000 following a three day hearing. The decision is under appeal.

issues, with reporting to the Board every three months. This supervision to be funded by Ms Austin;

- c. Costs in the sum of \$800 to the CAC. (The level of the Tribunal costs to be imposed was not addressed).

80. The CAC submitted that while suspension would otherwise be appropriate it was not sought on this occasion, in reliance on the fact that Ms Austin had not worked as a social worker since late 2014. This was described as a de facto suspension.<sup>17</sup>

### **Penalty Submissions for Ms Austin**

81. Counsel for Ms Austin provided written and oral submissions. An unsigned and unsworn statement of Ms Austin's financial position was attached to counsel's written submissions, as were three references. Of these three references two were unsigned, and only one was addressed to the Tribunal. None of the references contained any indication that the referees were aware of the nature of the charge against Ms Austin. The weight we can give to these accordingly is limited.

82. It was submitted that Ms Austin did not exploit Client X.

83. Counsel referred us to *CAC v Surowiez-Lepper*<sup>18</sup> in which the social worker embarked on a personal relationship with an elderly client she met professionally. She accepted gifts from the former client, and obtained money on the false pretext it was required for other clients. The social worker terminated the relationship abruptly when receipts for the supposed purchases were requested. The practitioner did not discuss the relationship with her employer or supervisor. She was subsequently charged with obtaining by deception. The Tribunal upheld the charge and imposed cancellation and conditions on restoration to the register.

### **Penalty decision**

84. Ms Austin was determined to pursue a relationship with Client X. Until the hearing Ms Austin maintained that she had not breached professional standards and could not understand what was alleged in this regard.

85. In summary, we agree with the CAC that there are several aggravating features and add our own:

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<sup>17</sup> The concept of a de facto suspension, taking into account a period where a professional has been unable to work in their profession as a consequence of the matters the subject of a disciplinary charge has been accepted by the HPDT in a number of cases for example: *McCaig v PCC* [2015] NZHC 3063.

<sup>18</sup> RSW3/D3/SWDT/2015

- a. Ms Austin and Client X met only because he was acutely unwell, including suffering frequent suicidal ideation;
  - b. The sole reason they met was due to Ms Austin's professional role as a social worker employed in a mental health service;
  - c. Ms Austin obtained significant psychiatric and sensitive social information about Client X as a consequence of her professional role as his case manager. This allowed her access to medical records, and provided Ms Austin with information used to influence the course of Client X's care;
  - d. The services Ms Austin provided to Client X were more than fleeting or insignificant. She had a key role in his interactions with a mental health service;
  - e. As Ms Austin acknowledged, there was a power "differential" or imbalance between her and Client X;
  - f. The risk that Client X did not seek professional assistance as a consequence of his close relationship with Ms Austin and her provision of support, with the associated risk that Ms Austin may not have been objective given the closeness of the relationship;
  - g. Ms Austin ignored the clear concerns of her colleagues and employer;
  - h. While Ms Austin maintained that she did not gain from the friendship with Client X, the lives of Ms Austin and Client X became very closely intertwined. She expressed positive attributes about Client X and that she learned from the relationship. Clearly there was a reciprocal personal relationship that grew out of the professional relationship. We do not accept that there was no gain to Ms Austin.
86. In mitigation, we accept that Ms Austin has experienced significant personal upheaval and loss. She has been unable to work as a social worker since January 2015, and no longer holds a current practising certificate. We have no evidence from Ms Austin as to her state of mind at the time of entering into the friendship with Client X, or details of her circumstances (personal, health, financial) other than the unsworn financial statement provided to us. Through counsel, Ms Austin strenuously denied any issues with her wellbeing. There is reference in Ms Austin's Personal Statement to undergoing counselling, but we have no details of this.
87. The Tribunal finds that Ms Austin's conduct meets the threshold for disciplinary sanction. We have considered the penalties available to us. We were not asked

to remove Ms Austin's name from the register, and we do not consider that the threshold for removal from the register is reached. The other penalties that we will impose can adequately meet the purposes of the Act in this case.

88. But for the fact that Ms Austin has already spent a relatively substantial period of time away from social work (17 months at the time of the hearing), and will not be in a position to resume a social work role for some time then we would have imposed a period of suspension.
89. Ms Austin's financial circumstances are such that we do not impose a fine.
90. Ms Austin is censured. This is a serious expression of the disapproval of the Tribunal for the conduct that it has reviewed in considering this charge.
91. The Tribunal considers that an assessment of Ms Austin's fitness to practise prior to her obtaining a practising certificate, and close supervision of Ms Austin is important following her return to practice. We considered a condition requiring Ms Austin to undertake particular education in professional boundaries and ethical issues however such education was not (to the Tribunal's knowledge) readily available as part of the ongoing education and professional development currently accessible to social workers. The following conditions are ordered:
  - a. That the Board undertake an assessment of Ms Austin's fitness to practice that includes an assessment of her mental wellbeing by a suitably qualified health practitioner appointed by the Board;
  - b. That for the period of two years after recommencing practice as a registered social worker, Ms Austin be supervised by a professional peer approved by the Board. This supervision is to occur in addition to supervision provided in the course of Ms Austin's employment. This external supervision is to occur monthly, at Ms Austin's cost, with reporting to the Board every three months or at any time if the supervisor determines this necessary or appropriate;
  - c. The external supervision is to focus on the management of professional boundaries and ethical dilemmas.
92. An order for costs is made. In recognition of the position reached between the parties prior to the hearing the CAC maintained that an order for costs of \$800 to the CAC was appropriate and accordingly that order is made. The costs incurred by the Tribunal were significant however we take into account Ms Austin's admission of the charge and co-operation, and the relatively short duration of the hearing as a consequence of the approach taken by the parties. We also accept that Ms Austin's financial position is constrained, and that she is currently limited in her earning capacity. We also take into account that the

conditions imposed will have financial implications for Ms Austin, both in terms of the delay in her ability to return to practising as a social worker and in terms of her responsibility to meet the costs of supervision over a significant period of time. Accordingly Ms Austin is ordered to pay a contribution of \$1700 towards the Tribunal's costs.

### **Non-publication orders**

93. The interim orders in relation to Ms Austin's husband and daughter and Client X are made permanent.
94. The interim non-publication order of Ms Austin's name is discharged. Ms Austin did not make an application for permanent orders, and neither Ms Austin nor counsel for the CAC submitted that suppression of Ms Austin's name was necessary or desirable in the context of the non-publication orders that have been made.

### **Conclusion**

95. The Tribunal finds the charge of professional misconduct is proved.
96. The Tribunal censures Ms Austin pursuant to section 83(1)(b) of the Act.
97. The Tribunal orders pursuant to s83(1)(a)(ii):
  - a. That for the period of two years after recommencing practice as a registered social worker, Ms Austin be supervised by a professional peer approved by the Board. This supervision is to occur in addition to supervision provided in the course of Ms Austin's employment, and is to be at Ms Austin's cost. This external supervision is to occur monthly with reporting to the Board every three months or at any time if the supervisor determines this necessary or appropriate.
  - b. The external supervision is to focus on the management of professional boundaries and ethical dilemmas.
  - c. That Ms Austin is to undergo an assessment by the Board of her fitness to practice, including an independent assessment of her mental wellbeing by a suitably qualified practitioner appointed by the Board.
98. The Tribunal orders pursuant to section 83(1)(e) that Ms Austin pay costs in the sum of \$2500, to be divided as follows: \$800 towards the costs incurred by the CAC and \$1700 towards the costs incurred by the Tribunal.
99. The Tribunal directs that the Hearings Officer publish a copy of this decision on the Board's website.

**DATED** this 9<sup>th</sup> day of September 2016

A handwritten signature in blue ink that reads "Garvey". The signature is written in a cursive style with a large initial 'G'.

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Catherine Garvey  
Deputy Chairperson  
Social Workers Complaints and Disciplinary Tribunal