

Complaints and Disciplinary Tribunal

DECISION NUMBER: RSW3/D1/SWDT/2016

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

BETWEEN the Complaints Assessment Committee
Complainant

AND Linda-Mae Entwistle
Respondent

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

Present: Catherine Garvey (Chairperson)
Johanna Drayton, Lareen Cooper, Kim Fry and
Bernie Marra (Members)
Fleur Nicholas (Hearing Officer)

Counsel: Kate Feltham (Counsel for the Complaints
Assessment Committee)
Andrew McKenzie (Counsel for Ms Entwistle)

Hearing: (on the papers) 6 May 2016

Introduction

1. By agreement of the parties this matter proceeded by way of a hearing on the papers. The Tribunal considered an Agreed Statement of Facts, a joint memorandum of counsel on behalf of the Complaints Assessment Committee (“CAC”) and counsel on behalf of Ms Entwistle, and an Agreed Bundle of Documents.
2. Ms Entwistle admits a charge of professional misconduct pursuant to section 82(1)(a) of the Social Workers Registration Act 2003 (“the Act”), relating to practising social work without a current practising certificate.

Background

3. Ms Entwistle registered with the Social Worker’s Registration Board (“the Board”) in February 2007, and holds a Diploma in Social Work. Pursuant to section 25 of the Act, as a registered social worker Ms Entwistle is required to hold a current practising certificate if she is employed or engaged in social work.
4. The Agreed Statement of Facts reads as follows:

“Introduction

1. *The Complaints Assessment Committee has laid the following charge:*

Between 20 May 2014 and 1 September 2015 was employed or engaged as a social worker without a current practising certificate;

And this conduct amounts to:

(a) Professional misconduct pursuant to s82(1)(a) of the Act;
or in the alternative

(b) Conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker pursuant to se82(1)(b) of the Act.

Professional background and employment

2. *Linda-Mae Entwistle holds a Diploma in Social Work.*
3. *Ms Entwistle is employed as a Care and Protection Co-ordinator for Child, Youth and Family (“CYF”).*
4. *Ms Entwistle first became a registered social worker on 18 February 2007.*

Previous Social Workers Complaints and Disciplinary Tribunal finding

5. *On 20 May 2013, the Social Workers Complaints and Disciplinary Tribunal (“the Tribunal”) found a disciplinary charge of conduct unbecoming of a social worker proved. Ms Entwistle practised as a social worker without a current practising certificate between 1 July 2012 and 20 May 2013.*
6. *The Tribunal suspended Ms Entwistle’s registration for a period of not more than 12 months, and censured her for conduct unbecoming of a social worker. The Tribunal directed that a copy of the decision be published on the Board’s website. A copy of the decision was posted to Ms Entwistle on 20 May 2013.*
7. *Ms Entwistle’s period of suspension lapsed on 20 May 2014.*
8. *Ms Entwistle remains in the same role at CYF as she was at the time of the Tribunal decision.*

Being employed as a social worker without a current practising certificate

9. *On 24 July 2014, Ms Entwistle’s site manager from her employer, CYF, contacted the Board to confirm that his view was that Ms Entwistle was in a non-practising role. He confirmed that he was committed to discussing the value in Ms Entwistle renewing her Annual Practising Certificate.*
10. *On 14 July 2014, the Board wrote to Ms Entwistle, attaching a copy of the Tribunal decision dated 20 May 2013. This letter set out the Board’s view that Ms Entwistle’s role, as being employed or engaged in the wider social service sector would be seen as using her social work skills, knowledge and expertise, therefore is required to hold a current Annual Practising Certificate. The letter noted that Ms Entwistle would be referred to the Tribunal if she did not respond immediately. Ms Entwistle responded by email on 21 July 2014, and noted that she was waiting to hear back from NUPE (National Union of Public Employees). She also noted that she would be out of the country between 28 July 2014 and 30 August 2014.*

11. *On 23 July 2014, the Board confirmed by email to Ms Entwistle that she was a practising social worker, and was required to renew her competency. Ms Entwistle responded by email 23 July 2014, and acknowledged that this was a requirement and stated that she will follow this up. She noted that she wanted to resolve the issue.*
12. *On 27 November 2014, the Board contacted Ms Entwistle to advise her that their records showed that she had not renewed her competency, which made her APC invalid. The Board requested written evidence as to why the matter should not be referred to the Chairperson of the Tribunal.*
13. *On 24 March 2015, the Board notified Ms Entwistle that her complaint had been forwarded to the Complaints Assessment Committee.*
14. *On 9 July 2015, Ms Entwistle sent a letter to the Board, where she noted her intention to complete her Competency and Annual Practising Certificate. Ms Entwistle further noted that “my manager has indicated that she will support me to resolve this matter once and for all by my completing registration and competency.”*

Current registration status

15. *Ms Entwistle provided her updated competency documentation to the Board on 3 December 2015. As of 8 December 2015, Ms Entwistle had a current APC and her competence certificate is valid to 6 December 2020.”*
5. The joint memorandum filed by counsel advises that *“Ms Entwistle accepts her role requires her to hold an annual practising certificate”* and further that she *“understands that any further disciplinary proceedings for similar misconduct may result in the CAC seeking that she be removed from the register of social workers.”*
 6. Other than the reference to her job title, the Agreed Statement of Facts is silent as to the factual basis on which it is alleged and admitted by Ms Entwistle, that she was employed or engaged as a social worker. However the bundle contained Ms Entwistle’s Job Description for her role as a Care and Protection Co-ordinator. The Tribunal was satisfied from reading that description and in particular the key accountabilities of the role, and the competencies required by Ms Entwistle to perform the

role, that we consider Ms Entwistle was employed or engaged as a social worker, as she has admitted.

Manner of disposal of proceedings

7. A prehearing meeting was held on 27 October 2015. This was attended by Ms Entwistle and by counsel acting on behalf of the CAC, Mr La Hood. A hearing date of 30 November 2015 was scheduled. However, on 5 November counsel instructed by Ms Entwistle sought an adjournment of the hearing. The CAC consented and the adjournment was granted, with a new hearing date of 24 March 2016. This date was vacated due to unavailability of a Tribunal member. Following a further pre-hearing meeting on 8 March 2016 the matter was set down for hearing on 13 June.
8. By joint memorandum dated 26 April 2016 the parties advised the Tribunal that they had reached agreement as to a proposed penalty, and sought a hearing on the papers. The parties properly acknowledged that the matter remained one for the Tribunal to determine.
9. Pursuant to clause 5 of Schedule 2 of the Act, the Tribunal is to observe the rules of natural justice, and otherwise may regulate its own procedure.
10. The Act provides for hearings of the Tribunal to be held in public, with exceptions. For present purposes s79(2) is relevant:

“If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by the person or body prosecuting the charge, the social worker concerned, a complainant, or a witness, or of its own motion) make any 1 or more of the following orders:

(a) An order that the whole or any part of a hearing must be held in private...”

11. Section 119 relates to hearings; it does not stipulate particular requirements for hearings other than the need for hearings to take place at the time and place appointed by the Tribunal or presiding officer and for each member of the Tribunal to be present.
12. We are satisfied that it is desirable and in the interests of justice, including facilitating a just, speedy and cost-efficient outcome to these proceedings to resolve the charge on the papers. The Tribunal’s decision

will be published in the usual way, including the publication of Ms Entwistle's name. The parties have not identified any person(s) with a particular interest in the proceedings other than the parties themselves.

13. In reaching this decision to proceed with a hearing on the papers, and to accept the proposal put forward by the parties, we have taken guidance from the procedures of other tribunals in the disciplinary arena¹ where hearings on the papers of a disciplinary charge occur. We see no impediment under the Act to this Tribunal proceeding in the same way in appropriate circumstances. Each matter must be approached on a case by case basis.
14. Although it was not itself a hearing on the papers we have also taken guidance from the Health Practitioners Disciplinary Tribunal's comments in *Re Tamma*² in which case the practitioner accepted the penalty and costs submissions made by the Director of Proceedings. The Tribunal discussed the role of a decision maker in those circumstances, and the matters to be taken into consideration³:

[51] It is necessary to consider the correct role of a decision maker where there is consensus between the parties as to the appropriate penalty. In Commerce Commission v New Zealand Milk Corporation Ltd (1994) 2 NZLR 740, the Court held that when parties have reached an agreement, the Court is likely to provide its approval if it accepts that the agreed penalty is "proportionate to the evidence available, and the Defendant's conduct." The Court cited an Australian case, Trade Practices Commission v Allied Mills Industries Pty Ltd (No 4) (1981) 37 ALR 256 where Shepherd J at page 259 said:

"It is, of course true that the penalty has been suggested to me by the agreement of the parties. Uninformed of their agreement I may have selected a different figure, but I am satisfied that it would not have been very different from theirs..."

This line of cases has been applied previously in a disciplinary context: Johnston v PCC, a decision of the Appeals Council of the Institute of Chartered Accountants of New Zealand, dated 23 December 2003.

[52] The Tribunal agrees that providing the terms proposed by the parties are proportionate to the evidence and the

¹ Refer s95 Health Practitioners Competence Assurance Act 2003; s405 Education Act 1989

² Decn No 577/Med13/247D

³ In particular at [51] and [52].

Defendants' conduct, it is likely the Tribunal will approve the terms proposed by the parties. But the final decision is for the Tribunal."

15. If the Tribunal had not been prepared to resolve this disciplinary charge in the manner proposed by the parties, we would have proceeded to a hearing on 13 June.

Findings - Liability

16. Ms Entwistle admits a charge of professional misconduct. We did not receive submissions from the parties as to the meaning of professional misconduct. Nor is this term defined in the Act.
17. The Tribunal is satisfied that the evidence establishes that Ms Entwistle was practising as a social worker and that for the period the subject of the charge she did not hold a current practising certificate.
18. The term "professional" simply refers to actions by a social worker as part of the conduct of the social work profession. We consider that meeting statutory obligations relating to competence and a current practising certificate is in this category.
19. "Misconduct" refers to conduct that would reasonably be regarded by members of the profession as not meeting expected standards.
20. We are satisfied that Ms Entwistle's conduct amounts to professional misconduct. In particular, Ms Entwistle persisted in practising without an annual practising certificate (and current competency certification) for an extended period of time in circumstances where the need for that certification was made clear to her by the Board.
21. Further, Ms Entwistle has previously been disciplined for the same conduct. The Tribunal considers that her continued failure to ensure that she met her statutory obligations falls well short of the standards required of a registered social worker. Ms Entwistle's failure to renew her practising certificate was not inadvertent or mere oversight. As such, we are satisfied that this conduct warrants disciplinary sanction.
22. The charge does not rely on section 82(2) which provides that a practitioner is guilty of professional misconduct where a social worker breaches the Code of Conduct⁴, or while employed or engaged as a social

⁴ Section 82(2)(a)

worker claims or holds himself out to be registered while not holding a current practising certificate⁵.

23. We observe also that there is no evidence to suggest that Ms Entwistle's employer held her out as a registered social worker while she did not hold a current practising certificate.

Findings – Penalty

24. As noted above, Ms Entwistle has acknowledged through her counsel that any further disciplinary proceedings for similar misconduct may have more severe consequences. The evidence establishes a concerning history of lack of compliance by Ms Entwistle with her statutory obligations with respect to maintaining not only a current practising certificate but also her competency certification. The current penalty of a censure, fine and costs is one which the parties proposed and which Tribunal in this instance was willing to accept. Inevitably any further disciplinary action would take these matters into account.

25. Having found the charge proved, we are now required to consider which of the penalties under s83 of the Act are appropriate.

26. By way of the joint memorandum, the parties propose the following penalty:

- a. Censure;
- b. A fine in the sum of \$1,000;
- c. Costs in the sum of \$1,000.

27. The Tribunal agrees that this is an appropriate penalty, being proportionate to the evidence that we have received of Ms Entwistle's conduct, and when considered in the context of other charges dealt with by this Tribunal pertaining to registered social workers practising without a current practising certificate. The level of fine reflects that this is Ms Entwistle's second disciplinary charge for the same conduct.

28. Accordingly the Tribunal orders:

- a. Ms Entwistle is censured.

⁵ Section 82(2)(b)

- b. Ms Entwistle is to pay a fine of \$1,000.
- c. Ms Entwistle is to pay costs in the sum of \$1,000, to be paid 70% to the CAC and 30% to the Tribunal (reflecting the level of costs incurred by the Tribunal has been substantially reduced by virtue of the approach taken to resolving this matter).

29. The Tribunal directs that a copy of this decision be published on the Board's website in the usual manner.



DATED this 30th day of June 2016

Catherine Garvey
Chairperson
Social Workers Complaints and Disciplinary Tribunal