

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF RSW3/D1/SWDT/2019

UNDER the Social Workers Registration Act 2003 (“the Act”)

IN THE MATTER of a disciplinary charge laid against a social worker under Part 4 of the Act.

BETWEEN **A COMPLAINTS ASSESSMENT COMMITTEE**
appointed under the Act

Applicant

AND **Mr CHAPMAN HARRISON** of Auckland, registered social worker

Practitioner

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Present: **Ms Catherine Garvey (Chairperson), Ms Lareen Cooper, Ms Sue Jarvis, Mr Peter McGurk, Mr Bernie Marra (Members)**

Ms Gay Fraser (Executive Officer)

Ms Adele Garrick (Counsel for the Professional Conduct Committee)

Mr Duncan McGill and Ms G Jenkin (Counsel for Chapman Harrison)

Hearing: **20 February 2020 in Auckland**

Decision: 12 March 2020

Introduction

1. Chapman Harrison is a registered social worker with over 25 years experience. Mr Harrison gained a Diploma of Social Work in 2004 and registered with the Social Workers Registration Board (the Board) in 2010. From 2010 he held an Annual Practising Certificate (APC) until 30 June 2016 when his APC for the 2015-2016 period expired.
2. Mr Harrison was employed by Child Youth and Family from 2010 until in or about December 2017. In November 2015, while a Youth Justice Worker, he was seconded to the Ngā Waka O Te Tai Tokerau Trust (the Trust), with which he had a long history of involvement. He continued on secondment until 11 November 2016. On that date he was arrested in connection with sexual allegations made against him by a [teenage girl], A. Mr Harrison met A while she was participating in a Waka Wānanga run by the Trust. Criminal charges were laid.
3. Mr Harrison applied to the Board to renew his APC in December 2016. His application was declined on the basis of the criminal proceedings. The Board notified Mr Harrison in February 2017 that it would await the outcome of the criminal proceedings before determining what if any action it would take.
4. In October 2017 Mr Harrison was acquitted of the criminal charges. The Board appointed a Complaints Assessment Committee (known now and referred to in this decision as a Professional Conduct Committee, or PCC) to investigate Mr Harrison's conduct in relation to A and the lapse of his APC.
5. On 8 July 2019 the PCC issued a disciplinary charge against Mr Harrison. The disciplinary charge has a different factual foundation from the matters the subject of the criminal proceedings. The disciplinary charge reads:

“Charge 1

Particulars

1. Between November 2015 and February 2016 Chapman Harrison ran a Waka Ama programme in which a [teenage girl] (A) participated.
2. Mr Harrison and A had a whakapapa connection and were from the same hapu. [].
3. In mid-November 2015 A contacted Mr Harrison about bullying and Mr Harrison assessed her suicide risk as moderate. He thereafter continued to contact A for a period of between one-and-a-half to three weeks and provided social work services to her during this time.
4. In December 2015 Mr Harrison gave A the opportunity to do work experience in helping []. At this time, Mr Harrison gave her a bottle of perfume as a gift, a mobile phone, and gave her money to buy lunches.
5. In January or February 2016 Mr Harrison sent A messages that said “I love you oi” and “I miss you oi”.

6. At no time throughout this period did Mr Harrison receive any professional supervision or seek guidance about the appropriateness of providing social work services to A.
7. Mr Harrison's conduct alleged above was in breach of the Code of Conduct issued by the Social Workers Registration Board pursuant to section 105 of the Act, which provides that social workers are expected:
 - a. To maintain personal and professional boundaries and not form inappropriate relationships with clients or those close to them;
 - b. To actively participate in supervision and critically reflect on practice; and
 - c. To work in a safe way.
8. The conduct alleged above, considered individually and/or cumulatively constitutes:
 - a. Professional misconduct pursuant to section 82(1)(a) of the Act; or in the alternative
 - b. Conduct that is unbecoming of a social worker and reflects adversely on his fitness to practise as a social worker pursuant to section 82(1)(b) of the Act.

Charge 2

9. Between 1 July 2016 and 11 November 2016 Chapman Harrison was employed or engaged as a social worker without a current practising certificate.
 10. This conduct amounts to conduct that is unbecoming a social worker and reflects adversely on his fitness to practise as a social worker pursuant to s82(1)(b) of the Act."
6. The complainant, A has name suppression relating to the criminal proceedings pursuant to section 203 of the Criminal Procedure Act 2011. A was not involved in the PCC investigation or the disciplinary proceedings and the Tribunal does not know her identity. An interim order prohibiting publication of Mr Harrison's name and identifying particulars was made by the Chair of the Tribunal on 22 August 2019, and continued for the duration of the hearing. At the conclusion of the hearing, Mr Harrison did not seek permanent non-publication orders. Neither party expressed any concern that the lifting of the interim order would lead to the identification of A. Mr Harrison's name was not suppressed during the criminal trial. The interim order for Mr Harrison ends on publication of this decision.

The evidence

7. On 8 January 2020 Mr Harrison's counsel filed a memorandum setting out Mr Harrison's admission of the charges. The hearing proceeded on 20 February 2020 by way of an agreed statement of facts and an agreed bundle of documents. The PCC provided a brief of expert evidence of Judith Douglas, registered social worker, in relation to Charge 2. Further evidence was admitted during the hearing as referred to below.
8. The Agreed Bundle contained the entire transcript of Mr Harrison's evidence given in the criminal proceedings (with A's name redacted), and the transcript of his interview with the PCC. It also included a written statement to the Board by Mr Harrison addressing matters directly relevant to the charge, and submissions made to the Board and the PCC by counsel on his behalf. The following narrative of events is taken from these documents and the Agreed Statement of Facts.

Mr Harrison's role in 2015-2016

9. As noted, Mr Harrison was seconded from Child, Youth and Family to work with the Ngā Waka O Te Tai Tokerau Trust in November 2015. The Trust facilitated a Waka Wānanga, enabling 60-80 young people at a time to attend a residential waka ama programme. The Trust provided connection to Māori culture, help to young people including those at risk through drugs, alcohol, violence or other issues, and the teaching of skills for transition to employment.

10. Mr Harrison was a trustee, Project Manager and kaitiaki of the waka ama. In his interview with the PCC, Mr Harrison explained that his primary focus was to get *“young people into some sort of working environment through waka, by getting them involved in waka and channeling them into work and, whatever that might be.”*¹ Mr Harrison explained that his role was made up of many components including:²
 - a. He made sure that the programmes and team had resources;
 - b. To see that the team working under him had learning goals in place;
 - c. To ensure that the team was engaging with young people in schools and youth programmes to encourage them to attend the Trust's courses;
 - d. Managing the budget;
 - e. To engage skilled artists to teach the young people such skills as carving and weaving;
 - f. To engage with work brokers such as Skills New Zealand;
 - g. He was *“... making sure that the programmes were running efficiently and that they were, but I was training the trainers, if you can call it that, on how to engage with the young people”*;
 - h. Supervising the mentors who were working with the young people;
 - i. Carrying out risk assessments and maintaining a Risk Register.

Mr Harrison's early contact with A

11. A attended a Waka Wānanga run by the Trust in November 2015, and she and Mr Harrison met for the first time. Mr Harrison recognised that they had a whakapapa connection, [] He considered there to be whanaunga relationship with A, [].³

¹ ABD p78

² ABD pp80-81

³ ABD p100

12. Sometime in November after A became involved in the Waka Wānanga, A contacted Mr Harrison through the Messenger app because of abusive messages (Mr Harrison described this as bullying) that were posted on her Facebook page. Mr Harrison responded to A in order to provide immediate support. There is evidence from Mr Harrison that this response was a voice call.⁴ Using his training in suicide prevention, gained in the course of his social work practice, Mr Harrison undertook a basic assessment of A's risk of suicide. He assessed this as moderate. The following day he referred A to a female mentor at the Trust because of the conflict he had identified due to his whakapapa relationship with A. The Trust also had a policy that female participants would have female mentors, and male participants would have male mentors.
13. Mr Harrison's evidence was that the mentor then had daily contact with A and they communicated about A during this period. It is the Tribunal's understanding that the mentor was not a social worker or otherwise professionally qualified. Mr Harrison also continued to have contact on Messenger with A for up to three weeks, because he said it was "*my work*" and he wanted to follow through having told A he would stay in touch.⁵ Mr McGill also submitted that this contact continued because of the moderate risk to A that Mr Harrison had identified, and that there was a potential to cause harm if he did not keep in touch.
14. Mr Harrison told the PCC that he took notes regarding A, however these were not produced.⁶ No referral was made to other services. Mr Harrison did not discuss A with the manager at Child, Youth and Family with whom he remained in a reporting type relationship.

Work experience, gifts and text messages

15. In December 2015 A did work experience with the Trust which was arranged by her mentor. A also did work experience at [], also under the oversight of the Trust.
16. Mr Harrison provided money for lunch for A and her mentor on occasions during this work experience.
17. In late December Mr Harrison gave A gifts of perfume and a mobile phone. He said these were given on behalf of the Trust as koha for A's unpaid work experience. A's mentor was aware of the gifts, and Mr Harrison said they discussed the giving of the phone. The perfume was also provided directly by Mr Harrison, from a supply of perfume he stated he kept as gifts for whānau rather than purchased specifically for A.
18. When interviewed by the PCC Mr Harrison did not see the gifts as inappropriate but as part of a wider giving of koha from the Trust's workers to young people in acknowledgement of the work experience done, and because it was Christmas. However Mr Harrison's counsel submitted that having reflected on his actions, and having admitted the charge, Mr Harrison now accepted that the gifts to A were not appropriate. Mr Harrison also accepted that A could have perceived the gifts as being from him personally.

⁴ ABD p55, p104

⁵ ABD p89

⁶ ABD p93

19. In January or February 2016 Mr Harrison sent A text messages saying “I love you, oi” and “I miss you, oi”. The PCC did not interview Mr Harrison about these text messages but Mr Harrison’s evidence to the court in the criminal proceedings did refer to these. He also discussed the messages in a written statement to the Board dated 24 November 2017. In his correspondence with the Board Mr Harrison stated:

“I explained to the court that we used words and showed actions of caring and aroha or love when we worked with young people, most of whom came from single parent families or parentless families and did not often hear those words in their lives. We used words like miss you, love you, but with that we used language that the young person could relate to and those words were Miss you Killa, or lil G or love you eah’ or ‘love you oi’ which all meant the same thing ‘bro’. They were not inappropriate, or sexual, but common terms with young people. That was not inappropriate behaviour for a social worker in Northland.”⁷

20. Mr McGill conceded that the texts were another example of Mr Harrison blurring the lines of his professional obligations and personal responsibilities. He submitted that the texts were part of ongoing checking by Mr Harrison and to ensure that A did not feel “rebuffed.” It was not clear if, at the time the text messages were sent, A was still involved in any activities run by the Trust or if she was having direct contact with Mr Harrison in his professional capacity. Mr Harrison’s evidence in the criminal trial refers to A participating in waka wānanga in 2016, so it is certainly likely that there was some ongoing if intermittent professional contact.

Supervision

21. Mr Harrison did not engage in any formal or informal supervision during the period covered by the disciplinary charge.
22. Mr Harrison provided a 6-monthly report to the site manager at Child, Youth and Family about his work at the Trust. The number, nature and content of these reports is unknown as they were not produced to the Tribunal.

Annual Practising Certificate

23. On 30 June 2016 Mr Harrison’s APC expired. The Board invoiced Child, Youth and Family and payment of Mr Harrison’s practising certificate fee was made on 30 June as part of a bulk payment. This payment was reversed on the same day.
24. In addition to payment of the required fee a social worker must personally complete an on-line Practising Certificate Declaration before an APC can be issued. This declaration cannot be made on behalf of a social worker by their employer or any other person. Mr Harrison did not complete this on-line declaration in 2016.
25. The Tribunal had no evidence of any correspondence between the Board and Child, Youth and Family or the Board and Mr Harrison regarding a renewal of his APC in 2016. The Tribunal is aware from previous cases that it is common practice for the Board to send renewal

⁷ ABD p32

reminders. Whether or not a reminder was sent it appears that there was a conscious choice by Mr Harrison not to pursue his APC, in light of his evidence to the PCC:

“I didn’t think I was actually going to go back to Child Youth and Family and work as a practiced (sic) social worker, I was just going to do project work, working on a project that we were working on in Mangere, the place where I was doing the waka projects, and I didn’t think I was actually going to go back to do social work in that capacity. So I don’t, it wasn’t that I was being lazy and not filling out my APC but I, at that particular time I was kind of in the throes of this project work which was different from what I was doing at Child Youth and Family obviously.”⁸

Mr Harrison’s work 1 July – 11 November 2016

26. During this period when he did not hold an APC Mr Harrison continued to carry out the tasks for the Trust that are set out at paragraph 10. These were a combination of project management, training, supervision of a largely unqualified team and direct contact with young people, including from time to time the completion of risk assessments.

Framework for Findings

27. The primary purpose of the Act is to provide mechanisms for the protection of the public and the maintenance of professional standards by ensuring that social workers are competent and accountable for the way in which they practise. The Act requires registered, practising social workers to hold a current Annual Practising Certificate and to undertake professional development. The disciplinary process provides a mechanism for the protection of the public and for setting and maintaining standards.
28. Ethical guidance is provided in a Code of Conduct issued by the Board pursuant to section 105 of the Act. The Code is a guide to the minimum standards required of registered social workers and extends beyond professional practice to personal conduct and integrity. Two versions of the Code cover the time period relevant to the disciplinary charges. The Code of Conduct for Social Workers version 3 was effective from January 2014 until being replaced by the Social Workers Registration Board Code of Conduct in March 2016.
29. With regard to the charge itself, section 82 of the Act sets out the grounds on which a social worker may be disciplined. The onus of proving the charge rests with the PCC. The burden of proof is whether the charge is proved on the balance of probabilities.
30. Although Mr Harrison admitted the charge, the Tribunal still must be satisfied that on the evidence provided the charge has been proved.
31. The PCC submitted that the particulars of Charge 1 amounted individually or cumulatively to professional misconduct pursuant to section 82(1)(a), relying on alleged breaches of the Code of Conduct by Mr Harrison. Section 82(2) provides that a breach of the Code amounts to professional misconduct. The Tribunal undertakes a two step process to consider firstly

⁸ ABD p80

whether there has been a departure from acceptable standards and secondly, if yes, whether that departure warrants disciplinary sanction.

32. With regard to Charge 2, the PCC submitted that Mr Harrison failed to renew his practising certificate while he was employed or engaged in social work between 1 July and 11 November 2016 and that this amounts to conduct that is unbecoming and reflects adversely on Mr Harrison's fitness to practise as a social worker pursuant to section 82(1)(b).
33. This Tribunal has previously considered the test for "conduct unbecoming" in relation to charges involving practising without an APC. The term is familiar in professional discipline and the decision in *B v Medical Council*⁹ continues to provide the yardstick:

"The classification requires assessment of degree. But it needs to be recognised that conduct which attracts professional discipline, even at the lower end of the scale must be conduct which departs from acceptable professional standards. The departure must be significant enough to attract sanction for the purposes of protecting the public..."

34. Referring to the Medical Practitioners Act 1995, but equally applicable to the regime under the SWRA the decision goes on:

"The structure of the disciplinary processes set up by the Act, which rely in part upon judgment by a practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only usual practice but also patient interests and community expectations, including the expectation that professional standards not be permitted to lag. The disciplinary process in part is one of setting standards."

35. The rider to section 82(1)(b), that the conduct "reflects adversely on the practitioner's fitness to practise" does not require the Tribunal to find that in fact Mr Harrison is not a fit and proper person to practise social work.

Findings - Charge 1

36. At the end of the hearing the Tribunal gave an oral indication of its finding that the particulars of Charge 1 cumulatively amounted to professional misconduct. The reasons for this finding now follow.
37. Mr Harrison's conduct constituted a breach of several aspects of the Code. These breaches were a departure from the conduct that, when viewed objectively, the profession and the public would expect of a reasonable and experienced social worker. The combination of these breaches was sufficiently serious to warrant a disciplinary sanction.

⁹ [2005] 3 NZLR 810

38. Mr Harrison met A for the first time in his professional capacity. He provided oversight as well as having a hands on role in the Waka Wānanga that A attended. He identified a whanaunga relationship which he considered sufficiently close to raise a conflict of interest in terms of providing social work services to her.
39. When A contacted Mr Harrison with concerns of bullying, it was appropriate for him to respond directly to her in the first instance. It was also appropriate for Mr Harrison to refer A to a female mentor at the Trust, and to continue to engage with the mentor in relation to A.
40. The conflict of interest that Mr Harrison recognised in having a social work relationship with A warranted discussion with a supervisor about the nature of any continued contact that he should have with her while she was engaged in activities offered by the Trust. It may also have been appropriate for Mr Harrison to consider further referral of A given his assessment of her suicide risk. This is also a matter that should have been discussed with his supervisor, even on an informal basis. Rule 1 of the 2014 Code of Conduct required a registered social worker to discuss actual and potential conflicts of interests with a supervisor or employer and to attempt to resolve them expeditiously. Under the heading Professional Development, rule 2b of that Code further required a registered social worker to seek and engage in supervision in professional practice on an ongoing and regular basis, and to utilise case-specific supervision whenever necessary.
41. The Tribunal accepts the PCC's submission that Mr Harrison's response to the conflict of interest was "*not appropriately rigorous, transparent or safe*" because A was [a teenager] and vulnerable (at least at the time of her initial contact with Mr Harrison seeking help), because he had a [whakapapa connection] to A, and given his failure to recognise that this warranted discussion.
42. The Tribunal finds that while Mr Harrison's initial actions may not have met the threshold for discipline there was a continuing failure to recognise and act upon appropriate professional boundaries. A's work experience involved tasks organised by her mentor and work arranged by Mr Harrison [] to which he had a familial connection as well as a connection through the Trust. Mr Harrison had an obligation to take care to ensure that these co-existing relationships did not compromise his professional or personal conduct, or have the potential to compromise A.
43. It showed a lack of judgment to give a personal gift such as perfume to A, whether as koha for work experience, or [had a whakapapa connection] while he was maintaining a professional involvement with her. It was not appropriate for Mr Harrison to give A a mobile phone. Whether it was one he no longer had use for, or any other phone is irrelevant in this case. The reasons for this finding are the risk of misperception as to the reasons for the phone, the risk of misuse and the lack of parental knowledge or consent. These findings are not mitigated by any discussion that may have occurred with A's mentor about gifting the phone, or that A may have asked for a phone. Mr Harrison admitted that A could have perceived the gifts as being from him personally.
44. The guidance to Principle 6 of the current Code is clear that gifts should not be given by a social worker to a client "*as they may feel obligated to give something in return or see the gift*

as an indicator of a personal relationship." The Tribunal agrees that this is a sound statement. While it was not so explicitly stated in the 2014 Code, the requirement to ensure safe practice and to maintain appropriate boundaries covers the giving and receiving of gifts in the Tribunal's view.

45. The Tribunal was not satisfied that Mr Harrison's actions in providing money for lunch to A and her mentor was inappropriate. Reference was made to Mr Harrison potentially being reimbursed for such expenses by the Trust, with the intimation that the conduct was above-board. There was no evidence that Mr Harrison took A to lunch alone.
46. With regard to the text messages sent by Mr Harrison to A, these were unprofessional. There are many other more professionally appropriate word choices that could have been made if Mr Harrison had a professional reason to contact A. The messages had significant potential for misinterpretation and for compromising both their sender and recipient.
47. The PCC did not allege a sexual relationship between Mr Harrison and A; the charge did not include any pleadings that alleged this and Mr Harrison was acquitted of the criminal charges which were of a sexual nature. Ms Garrick emphasised that there was an "*emotional blurring of the boundaries*" and that the words "*I love you*" can be inappropriate emotionally even if they are not offered in a sexual context. The inclusion of the term "oi" did not render the messages appropriate or harmless. Mr Harrison's evidence was that his contact with A (by text message or on Messenger) over the course of up to three weeks after she approached him about online bullying was along the lines of "how are you", "hello, how's whānau", "how's school." Similarly he told the PCC this was the type of interaction he had with A when he saw her during her work experience []. There was no explanation given that was acceptable to the Tribunal for Mr Harrison to text a [teenager] current or very recent client that he loved and missed her.
48. With regard to Mr Harrison's failure to engage in supervision during the period covered by the charge, the Tribunal has considered this in two parts. First, his failure to seek informal or formal supervision relating to his conflict of interest with A and his decision making around his contact with her. Secondly and more generally Mr Harrison had a professional responsibility to engage regularly in supervision.
49. When Mr Harrison was seconded to the Trust he did not have other social workers alongside him or supervision on site. Mr Harrison said that the trust was not geared up to understand what was required of him as a registered social worker. We accept that Mr Harrison faced practical difficulties which impacted on his opportunities and motivation to engage in supervision.
50. However, the Tribunal finds that the Act's requirement to maintain professional standards includes the requirement to engage in supervision, critical reflection and professional development. The Codes of Conduct place importance on ongoing professional supervision. The 2014 Code is clear about the importance of discussing potential or actual conflicts with a supervisor or employer. It required social workers to seek and engage in supervision in professional practice on an ongoing and regular basis, and to utilise specific supervision whenever necessary as determined on a case-by-case basis. Principle 4 of the 2016 Code continues to emphasise the requirement for registered social workers to actively participate

in supervision. We accept the PCC's submission that supervision is an important component of safe and accountable social work practice.

51. Mr Harrison had a professional obligation to seek supervision in relation to the conflict of interest he identified with A. He also had a responsibility to engage in supervision during his secondment as he remained practising as a social worker.
52. Counsel referred the Tribunal to several cases involving a breach of professional boundaries in the social work and teaching arenas for guidance in the assessment of the seriousness with which Mr Harrison's conduct should be viewed. This Tribunal has not previously considered a case that is factually similar, and of course there are nuances in every case. Without attempting to draw artificial lines the Tribunal accepts that there is a distinction between the present case and cases of a boundary breach between competent adults; cases where there is a sexual relationship or sexual offending; in cases where there is deception, and in circumstances where a professional has been warned about their conduct but persists or otherwise does not respond professionally to such warning.
53. In the present case the following factors are relevant. Mr Harrison was an experienced social worker of some years standing, he held a leadership role, he had gained A's trust to the extent she was comfortable to contact him about bullying concerns, he could control work experience opportunities for A and he had a whakapapa connection to her family. A was a [teenage girl] with concerns about online bullying and, at least for a period of time, was vulnerable because of that. The Tribunal had little other information about A and her background, but her age and Mr Harrison's early assessment of her moderate suicide risk are in themselves sufficient to warrant a need for caution and a clear delineation of boundaries.
54. The evidence relating to the matters in the charge gave the Tribunal concern for what Mr Harrison considered safe and acceptable practice. The Tribunal considers that in its totality Mr Harrison's conduct represents a moderate departure from what is acceptable conduct.

Charge 2

55. In considering Charge 2 the Tribunal was required to be satisfied that Mr Harrison:
 - a. was registered with the Social Workers Registration Board; and
 - b. did not hold a current practising certificate between 1 July and 11 November 2016; and
 - c. was employed or engaged as a social worker during that period.
56. The evidence relevant to this charge was found primarily in the transcript of Mr Harrison's interview with the PCC and the submissions made on his behalf. Mr Harrison admitted the charge. The PCC adduced a brief of evidence from Mrs Judith Douglas addressing the matter of whether Mr Harrison was employed or engaged as a social worker.
57. The Tribunal did not have details of Mr Harrison's employment contract with Child, Youth and Family, or details of the 6-monthly supervision reports he provided while working at the Trust.

Nor did we have formal documentation of Mr Harrison's secondment such as contractual arrangements or a job description. At the relevant time Mr Harrison remained an employee of Child, Youth and Family. Before his arrest, Mr Harrison saw that employment as likely to end by choice, with his intention to continue to work with the Trust.

58. The PCC's expert, Mrs Judith Douglas, is currently a Lecturer in social work in the School of Health and Social Sciences at Whitireia Polytechnic. She has 20 years experience in social work, including holding teaching and advisory roles. Mrs Douglas' evidence was admitted by consent and the Tribunal did not require her to attend the hearing for examination. Mrs Douglas concluded that for the period of time that he did not hold a current APC Mr Harrison was:

"[P]ractising as a social worker as he, as part of his work, was engaged in tasks that required him to make casework decisions and that these tasks and roles are entirely consistent with social work tasks and roles."

59. Mrs Douglas stated that activities such as overseeing the goal setting for Mr Harrison's team, engagement with providers and direct contact with the young people in terms of discussing their concerns and conducting risk assessment suggested a level and type of knowledge that was consistent with a social work role. Mrs Douglas placed particular reliance on Mr Harrison's evidence that his tasks were to "train the trainers" and oversee mentors. She stated:

"This role, a senior or supervisory one, presupposes a level of knowledge and skills around working with young people that would be consistent with the practice of social work. It is consistent with senior social work roles in supervision and training and would have involved the taking of caseswork decisions alongside staff."

60. The Tribunal understood that there was a lack of certainty in Mr Harrison's mind but it was his responsibility to ensure he met the professional obligations that attach to his registration. In the case of uncertainty he ought to have contacted the Board to clarify whether they considered his role with the Trust amounted to social work. It also would have been sensible to speak to his supervisor or another senior colleague at Child, Youth and Family.

61. On the basis of the evidence provided by Mr Harrison to the PCC describing his role, Mr Harrison's admission of the charge and the expert evidence, the Tribunal is satisfied that Charge 2 is made out. Mr Harrison was both strictly employed as a social worker as he remained at all relevant times an employee of Child, Youth and Family, and, more significantly he was engaged in social work and therefore was required to hold a current APC.

Penalty

62. Having found the charge proved, the penalties available to the Tribunal are set out in section 83 of the Act. The PCC submitted that as the penalty provisions of the Act have been amended by the Social Workers Registration Legislation Act 2019, it is appropriate to consider those penalties that were available at the time of the offending. We agree.
63. The Tribunal heard penalty submissions from both parties. Mr Harrison produced an affidavit of his current circumstances and matters relevant to mitigation of any penalties that the Tribunal might impose. Mr McGill also introduced extracts from transcripts of the evidence

given in the criminal proceedings by A's mentor, and from a niece of Mr Harrison. These extracts were limited to discussing the giving of gifts by Mr Harrison. An assurance was provided by counsel that they constituted the whole of the evidence on those issues given by those witnesses. The Tribunal declined to admit extracts of evidence given in the criminal proceedings by A discussing the gifts given to her. The whole of A's evidence was not available to either counsel and therefore no assurance could be given as to the extracts constituting all of what A had to say about the gifts.

64. Ms Garrick submitted that Mr Harrison has shown little insight into his offending, and emphasised that A was young and vulnerable. With regard to the supplementary evidence Ms Garrick submitted that the fact Mr Harrison might treat others in a similar way in terms of giving gifts does not mitigate his actions in relation to A.
65. The PCC proposed that a period of suspension was available to the Tribunal given the gravity of the charge and notwithstanding the length of time Mr Harrison has been out of practice; as well as censure, educational requirements and conditions on his practice. Counsel noted that a fine and censure was a common outcome of cases involving a social worker practising without a current APC, but did not urge any particular quantum of fine. With regard to costs, the PCC also did not urge any particular level of cost award.
66. Mr McGill denied that Mr Harrison lacks insight. He downplayed the significance of A's age and vulnerability, and said that Mr Harrison had taken a careful and supportive approach. He submitted that Mr Harrison's admission of the charge shows insight. Mr McGill submitted that the offending by Mr Harrison was at most a moderate departure from acceptable standards and that the appropriate penalties are censure, education and conditions. Mr McGill referred to Mr Harrison's financial circumstances as described in his affidavit, stating that Mr Harrison is not in a position to pay any level of fine or costs.
67. Mr McGill submitted the following are mitigating factors:
 - a. Mr Harrison accepts he acted in breach of his professional obligations but that this was due to a misunderstanding rather than a wilful breach;
 - b. That there was no allegation of a sexual relationship;
 - c. That A's mentor was involved at all times, avoiding an element of covertness or deception by Mr Harrison;
 - d. That Mr Harrison did not exploit A for personal gain;
 - e. Mr Harrison's co-operation with the PCC investigation and the Tribunal proceedings, including his admission of the disciplinary charge and the Agreed Summary of Facts;
 - f. Mr Harrison had a previously unblemished record, and was highly regarded and competent.
68. That Mr Harrison did not pursue permanent suppression of his name is also a matter considered by the Tribunal.

69. Mr Harrison did not provide references or cultural evidence relevant to his explanation of the unique circumstances he described as attaching to social work practice in Northland, both of which may have assisted the Tribunal. It is not difficult to accept that Mr Harrison has had a significant fall from grace and loss of mana relating to the criminal charges, the loss of his role with the Trust, the consequential loss by the Trust of funding and the ending of his employment with Child, Youth and Family. Mr McGill described this series of events as devastating for Mr Harrison.
70. The imposition of penalty must be consistent with the purposes of the Act. The Tribunal considered which of the penalties available to it will best protect the public, help maintain the standards of the profession and assist Mr Harrison to rehabilitate in light of his desire to return to social work. This reflects in part the principles set out in *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*¹⁰ namely:
- a. The protection of the public, including deterring others from acting in the same way;
 - b. To set professional standards;
 - c. That penalties may have a punitive function through the imposition of a censure or fine;
 - d. Rehabilitation of the practitioner, 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 in the circumstances;
 - h. To assess whether the penalty is a fair, reasonable and proportionate one in all the circumstances.
71. The most serious penalties of cancellation and suspension of registration must be reserved for the most serious cases and where those steps are necessary for the protection of the public. We do not consider that suspension is warranted in this case. Taking into account all of the submissions made and the evidence, the Tribunal determined that penalties of censure, and the imposition of a requirement that Mr Harrison undertake training and professional development including supervision are appropriate.
72. In relation to Mr Harrison practising without a practising certificate, previous cases indicate that censure and a fine are appropriate. The length of time over which Mr Harrison did not hold an APC was relatively short, and unlike other cases the Tribunal has considered, there was no evidence of any reminders sent to Mr Harrison from the Board. We could not therefore draw any conclusion that Mr Harrison had deliberately ignored an opportunity to engage with the Board. We would have imposed a fine, but for Mr Harrison's financial circumstances.
73. The conditions that the Tribunal will impose are intended to address our concerns regarding Mr Harrison's conduct and to enable the public to be assured that he will receive supervision and appropriate training or retraining to help him meet and maintain appropriate professional standards. Mr Harrison does not currently hold a practising certificate. When he seeks employment as a social worker this will need to be one in which he is able to meet the conditions imposed by the Tribunal.

¹⁰ High Court Wellington CIV 2012-404-003916, 12 December 2012

74. The Tribunal directs as follows:

- a. Mr Harrison be censured;
- b. On or before the resumption of social work practice Mr Harrison is to undertake a course of education or training approved by the Social Workers Registration Board in areas including professional boundaries, cultural competence and communication;
- c. For a period of two years Mr Harrison must only practise as a social worker under professional supervision from a supervisor approved by the Social Workers Registration Board with three monthly reporting to the Board. This supervision to be funded by Mr Harrison.

75. With regard to costs, this was a difficult deliberation for the Tribunal. The disciplinary process has a necessary and important function in meeting the purposes of the Act. The procedural requirements of the Act, the need to ensure a fair process, the involvement of multiple personnel and practical requirements throughout an investigation and disciplinary hearing inevitably mean that there are significant costs involved. Those costs are largely being borne by the profession. Mr Harrison is not alone in appearing before the Tribunal while in fairly dire financial circumstances which make it impractical if not unethical for the Tribunal to impose significant fines or costs awards. It is this that the Tribunal has struggled with, because as with other professional disciplinary domains, there is an expectation that a professional who is found guilty of a disciplinary charge will bear a proportion of the costs relating to the hearing of that charge.

76. Mr Harrison's affidavit described extremely limited means, indicating that he does not regularly make sufficient income each week to meet his outgoings, with a deficit of up to \$200 per week. It was submitted on his behalf that any financial order, whether punitive or costs, would aggravate an already precarious financial situation. The Tribunal expects also that attaining a suitable social work position will be difficult, and there will be ongoing costs to Mr Harrison in meeting the conditions that the Tribunal has imposed.

77. Mr McGill referred us to the decision of *Pearson*¹¹ which was determined under the Health Practitioners Competence Assurance Act 2003. In that case, the Health Practitioners Disciplinary Tribunal found that the defendant's financial circumstances appeared to be dire and said:

"It is highly unlikely that any order for costs would be able to be effectively enforced. For these reasons the Tribunal has opted not to impose any order for costs against Mr Pearson."

78. This Tribunal has also inclined towards costs at the lower end of the scale, or none at all, not because of any statutory or philosophical opposition to costs but because of the financial circumstances of the defendants that have appeared before it. The Tribunal does not have jurisdiction to, for example, make an order for a deferred or incremental payment. Such

¹¹ HPDT Decn No 39/Nur05/23P

matters are in the hands of the Board and the Tribunal cannot assume any particular course of action will be taken.

79. In this case, the Tribunal orders that Mr Harrison pay \$500 in costs to be shared between the PCC and Tribunal.

80. This decision will be published in full and available on the Board's website.

Dated: 12 March 2020

Signed:

A handwritten signature in blue ink that reads "C Garvey". The signature is written in a cursive style with a large, looped 'G' and 'y'.

Catherine Garvey
Chairperson | Social Workers Complaints and Disciplinary Tribunal