

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF **RSW7/D1/SWDT/2020**

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

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

BETWEEN **A PROFESSIONAL CONDUCT COMMITTEE**
appointed by the SOCIAL WORKERS REGISTRATION
BOARD

AND **MS S** of Auckland, provisionally registered social
worker
Practitioner

HEARING held by audio-visual link on Wednesday, 14 October 2020

MEMBERS Ms J C Hughson (Chairperson)
Ms L Cooper, Mr P McGurk and Ms S Jarvis (registered social
workers)
Mr B Marra (layperson)

Ms G Fraser (Hearing Officer)

APPEARANCES Ms E Fitzherbert for the Professional Conduct Committee

(No appearance by or for the practitioner)

Introduction

1. The practitioner is a provisionally registered social worker who was registered with the Social Workers Registration Board on [] 2018, having completed a Bachelor of Social Practice in Social Work at Unitec in 2017.¹ At the time of the conduct the Tribunal has reviewed the practitioner was employed by Oranga Tamariki as a social worker.
2. On 4 October 2019 the practitioner was convicted of six criminal charges in the District Court at Auckland – I Te Kōti-ā-Rohe Ki Tāmaki Makaurau².
3. These were charges of offences against sections 117(e), 124A, 131B(1) and 134(3) and of the Crimes Act 1961, and section 6(1)(d) of the Misuse of Drugs Act 1975. On the charges the practitioner was sentenced to home detention for ten months (with conditions) and in respect of the conviction for an offence against section 134(3) of the Crimes Act 1961 she received a first warning, Stage 1 pursuant to section 86B(1)(b) of the Sentencing Act 2002. Post-detention conditions were also imposed, for a period of six months.
4. The background to the convictions concerned the practitioner's engagement with a 15-year old male client in an unlawful manner (sexual conduct with a person under 16 and exposing a young person to indecent material) and her supply of cannabis to him and to another 14-year old boy who was living with the 15-year old and their Oranga Tamariki-approved caregiver. There was also offending in the nature of attempting to pervert the course of justice arising from this conduct. The conduct occurred prior to the practitioner's registration as a social worker and carried forward into the period when she was registered.
5. The Social Workers Registration Board (the Board) received notice of the practitioner's convictions on 30 October 2019. The matter of the convictions was then referred to a Professional Conduct Committee (PCC) of the Board. The PCC investigated the matter and laid the Charge before the Tribunal under section 82(1)(c) of the Social Workers Registration Act 2003 (the SWR Act) (referral of convictions). In the alternative the Charge was laid under section 82(1)(a) of the Act (professional misconduct).

¹ Register entry, Social Workers Registration Board. Affidavit of David Murray Queded sworn on 17 August 2020.

² CRI-2018-090-004884 [2019] NZDC 22661

Charge

6. The particulars of the Charge read:

(i) She was convicted and sentenced on 4 October 2019 in the Auckland District Court to ten months' home detention for the following charges:

- a. Attempting to pervert the course of justice (s 117(e) Crimes Act 1961, maximum penalty 7 years' imprisonment);*
- b. Exposing a young person under the age of 16 to indecent material (s 124A(1) Crimes Act 1961, maximum penalty 3 years' imprisonment) (representative charge);*
- c. Two counts of supplying a class C drug to a person under the age of 18 (s 6(1)(d) Misuse of Drugs Act 1975, maximum penalty 8 years' imprisonment) (one charge is a representative charge);*
- d. Doing an indecent act on a young person (s 134(3) Crimes Act 1961, maximum penalty 7 years' imprisonment) (representative charge);*
- e. Meeting a young person to commit an offence following communication (s 131B(1) Crimes Act 1961, maximum penalty 7 years' imprisonment).*

(ii) The nature and extent of her offending reflects adversely on her fitness to practise.

(iii) She breached the Code of Conduct issued by the Social Workers Registration Board pursuant to s 105 of the Act, in that she failed to act with integrity and honesty, protect the rights and promote the interests of clients, strive to establish and maintain the trust and confidence of clients, and failed to maintain public trust and confidence in the social work profession, and in doing so, she committed acts that are likely to bring discredit to the social worker profession".

Hearing

7. The Charge was heard by audio-visual link (AVL). The PCC was represented by Counsel. There was no appearance by or for the practitioner. Although the practitioner was formally notified of the hearing mode and date on 9 September 2020, on 11 August

2020 the practitioner had advised the Tribunal that she wished to “withdraw” from the Tribunal process and “no longer wished to proceed”. For that reason, the PCC proceeded by way of formal proof of the Charge.

8. There was produced to the Tribunal an Affidavit sworn by the Presiding Member of the PCC, David Murray Quested sworn on 17 August 2020 (Mr Quested’s affidavit). Annexed to the affidavit was a Certified Copy or Extract of the Permanent Court Record (as proof of the convictions)³, the Crown Summary of Facts, Department of Corrections Advice regarding sentencing, a Cultural Report⁴ and a Psychological Risk Assessment Report⁵ in relation to the practitioner prepared for the criminal proceedings, the Notes of Judge CJ Field on Sentencing, Rulings as to permanent name suppression for the practitioner⁶, and Department of Corrections Offender Notes relating to the practitioner’s compliance with her sentence (dated 6 December 2019).
9. One of the documents annexed to Mr Quested’s affidavit and referred to, was a document entitled “Draft brief of evidence provided by [the practitioner] on 3 February 2020”. Mr Quested deposed that this document “was prepared by [the practitioner’s] criminal defence lawyer in preparation for her criminal trial”. The document was a draft, unsigned and unsworn document that purports to be a brief of evidence from the practitioner. The Tribunal understood the document was not finalised or filed in the criminal proceedings as the practitioner pleaded guilty to all the charges she faced.
10. The Tribunal indicated at the hearing that it would disregard that document. The Tribunal was concerned that reliance was sought to be placed on it by the PCC given its form. Further, if the practitioner had wanted the information in that document to be taken into account by the Tribunal, she could have sworn an affidavit or made arrangements to attend the hearing, held as it was by AVL. No attempt had been made by the practitioner to swear the document and she did not attend the hearing. For those reasons, the Tribunal had significant concerns about the process by which the

³ Section 47 of the Evidence Act 2006.

⁴ Section 27 of the Sentencing Act 2002. Report prepared by Specialist Reports Limited dated 26 September 2019.

⁵ Report prepared by Jim van Rensburg, Registered Clinical Psychologist, dated 14 September 2019.

⁶ Ruling of Judge CJ Field [on Name Suppression Application] dated 4 October 2019 and Judgment of Woolford J in *A v R* [2019] NZHC 3412.

document was sought to be placed before the Tribunal, its reliability, and what, if any weight could be placed on its contents.

11. The Tribunal is statutorily obliged to conduct a hearing into the Charge that observes the rules of natural justice⁷. The Tribunal was mindful that the Evidence Act 2006 applies as if the Tribunal were a court within the meaning of that Act (subject to the Tribunal's discretion in Clause 6(1) of Schedule 2 to the SWR Act to receive in evidence any statement, document, information or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not it would be admissible in a court of law)⁸.
12. As to the applicability of the Evidence Act 2005 the grounds for accepting hearsay evidence are not met for the document to be accepted. Further, the Tribunal formed the view that the document would not in any way assist it to deal effectively with the matters before it and therefore the exemption in Clause 6(1) of Schedule 2 would not apply.
13. For those reasons, the Tribunal disregarded the draft brief of evidence of the practitioner. The Tribunal reached its decision in this case based on the other material in Mr Quested's affidavit. In this regard some weight was placed on the practitioner's confirmed transcript of her interview with the PCC⁹ notwithstanding that too is hearsay.
14. Counsel for the PCC made submissions in relation to the Board's Code of Conduct and the Board's Fit and Proper Person Policy. These documents were not included in the Agreed Bundle of Documents. During the hearing, the Tribunal asked Counsel to provide copies of these documents to the Tribunal and these were then produced to the Tribunal. As was indicated in *PCC v RSW Lumsden*¹⁰ if a party seeks to rely on documents of this nature, it will assist the Tribunal (and the practitioner) if copies are produced for the hearing.

⁷ Clause 5(1), Schedule 2, SWR Act.

⁸ Clause 6, Schedule 2, SWR Act. See *PCC of the Nursing Council v HPDT and W* [2020] NZCA 435.

⁹ Exhibits K and L, Mr Quested's affidavit.

¹⁰ RSW8/SWDT/2020.

Background and Facts

15. The factual background considered by the Tribunal (taken from the Crown Summary of Facts and the Sentencing Notes of Judge Field in the District Court at Auckland) was:
16. The practitioner was at the relevant time 34-years' old and employed by Oranga Tamariki as a social worker. She was assigned to the [] Oranga Tamariki site.
17. The practitioner's role at Oranga Tamariki was to liaise with children, young persons and their families allocated to her and assess their care and protection needs. She was then responsible for following up with appropriate intervention.
18. On or about [] 2018 the practitioner was allocated a case involving a 15-year old boy (first complainant). She was to manage his care and protection needs and placement with approved Oranga Tamariki caregivers.
19. At the time, the 15-year old boy was living with his caregiver and another 14-year old boy in the care of Oranga Tamariki (the second complainant).
20. The practitioner and the first complainant first met at a child-focussed interview for the complainant which took place at the [] Oranga Tamariki office on [] 2018.
21. By late [] 2018 the practitioner began to engage in contact with the first complainant outside of her role as a social worker.
22. An inappropriate relationship between the two developed and this was witnessed by the complainant's concerned caregiver.
23. The family (of the caregiver) reported lengthy after-hours visits by the practitioner to the first complainant's home address (the caregiver's address). Some visits extended to four hours in duration during business hours and in the evenings.
24. On several occasions the first complainant's caregiver found his bedroom door shut. When she investigated by opening his bedroom door, she found the practitioner lying on top of the first complainant on his bed.
25. On [] 2018, the practitioner contacted the complainants' caregiver under the guise of wanting to take the complainants from the same address to the movies in [].
26. The practitioner and a friend uplifted both boys and instead drove them to [] and supplied both boys with cannabis.
27. While at the [] the practitioner hugged the first complainant and started kissing him. The practitioner and the first complainant then went for a walk along [] beach and continued to kiss one another.

28. The practitioner's friend later drove the complainants, home.
29. Throughout the relationship between the practitioner and the first complainant, the pair communicated by way of Facebook Messenger using the profile names 'Helena Hudini', 'Brent Shawson' and 'D[suppressed], D [suppressed], D [suppressed] by the first complainant.
30. The practitioner also communicated with the first complainant's personal Facebook Messenger profile under his real name, and by text message.
31. Police obtained copies of those messages by consent from the first complainant. There are dozens of messages between the pair which refer to meeting up, various sexual acts, and the sending of explicit photographs to each other. These included the practitioner sending nude pictures of herself in the shower and the first complainant sending nude pictures of himself. At one point the practitioner requested a picture of the first complainant's penis in the following terms:
"I need more pics of [penis]"
And:
You didn't measure either you need a pic with your [penis] against your hand from your thumb to the tip of your second finger"
And:
"I want to taste [your penis] now"
32. Following these communications, the practitioner and the first complainant arranged to and did meet outside the practitioner's role as a social worker and away from the first complainant's home address, usually in the practitioner's car. On a number of occasions, they kissed.
33. When interviewed by Police, the first complainant spoke further about the practitioner supplying him with cannabis. The practitioner supplied cannabis for the complainant on at least four occasions.
34. The practitioner was suspended from her employment at Oranga Tamariki on [] 2018.
35. The practitioner continued to communicate with the first complainant asking to meet him, expressing her love for him and asking that he lie to Police about their relationship to stop her from going to jail.
36. In particular, one message read:
"PLEASE READ THIS, PLEASE THIS IS SERIOUS!!!!"

I got a visit from the POLICE this morning, your grandfather has gone to the Police and made a statement against me saying that we are in a sexual relationship...THEY WILL INTERVIEW YOU and if u tell them that nothing ever happened then I should be fine, BUT if ur don't I'm going ro [sic] jail!!!

PLEASE if you have anything in ur heart for me PLEASE Delete EVERY photo, message EVERYTHING the Police will sweep our phones...FUCK I'm so scared WTF"

37. On [] 2018, Police executed a search warrant at the practitioner's home address. Upon searching the property, approximately one gram of cannabis in a snap lock bag and a cannabis smoking bong were located in the garage underneath the house.
38. When questioned at the search warrant, the practitioner admitted that the cannabis and the bong belonged to her. She declined to make any comment about her relationship with the first complainant.
39. The practitioner had previously appeared before the Court. This was for a minor breath alcohol conviction in 2013.¹¹
40. The practitioner was charged by Police. She pleaded guilty. She was convicted of the seven charges on 4 October 2019 and sentenced in the District Court at Auckland to ten months' home detention with special conditions. The special conditions included that the practitioner attend an assessment for SAFE programme as directed by a probation officer, and attend and complete any counselling, treatment or programme as recommended by the assessment, as directed by, and to the satisfaction of a probation officer. She was also directed to attend an assessment for an alcohol and drug programme, and attend and complete any counselling, treatment or programme as recommended to the satisfaction of the probation officer. Further, she would undertake any other assessment, counselling or treatment if directed by the officer.
41. Further the practitioner was ordered not to associate with or contact the victim of her offending without prior written approval and she was not to communicate in any way or associate with any person 16 years of age or younger, except [two children], without the prior written approval of the probation officer. She was not to possess, consume or use any alcohol or drugs not prescribed to her and she was ordered not to engage in or commence training, employment or other work without the prior written approval of

¹¹ Sentencing Notes at [30].

the probation officer. Post detention conditions of the same nature as those conditions were also made, to endure for six months. The Judge recognised that the sentence itself was a “significant one”. No other conditions were imposed.

42. The practitioner received a first strike warning of the consequences of another serious violence conviction, given her conviction for sexual conduct with a young person under the age of 16 years. The Judge declined to make an order placing her on the Child Sex Offender (CSO) Register because he regarded that offence as a “one off offence” and registration was not necessarily in the interests of protection of the community.

Practitioner’s personal circumstances

43. Relevant more to penalty as discussed below, when the practitioner was sentenced the District Court Judge considered that at the time of her offending, she was under a significant amount of stress including her child’s admission to hospital, unresolved grief and loss including that which was associated with her upbringing¹², and relationship issues. Further, at the time of the offending the practitioner was suffering from work pressure and stress associated with having a very high caseload between [] 2018 (42 cases), and no supervisor, due to staff changes. The Judge described this as “burnout in the worst sense”¹³. The Judge also noted that the offending was isolated, and he did not consider the practitioner to have a high risk of reoffending against a child. The Judge commented also that this was “not the case of usual predatory behaviour seen in Court”.
44. In her interview with the PCC the practitioner accepted full responsibility for her offending and the convictions. She acknowledged the effect of her actions on her victim and the other victims her offending created such as her own family.

The Charge -discussion

45. It was submitted for the PCC that:

¹² Gang associations, cultural disconnectedness, whanau disconnectedness, alcohol and drugs that she was exposed to as a result of family violence, and an education ending abruptly as a result of her pregnancy as a teenager (as referred to in the cultural report provided pursuant to section 27 of the Sentencing Act 2002.

¹³ Sentencing Notes at [22],

- The six convictions were committed in circumstances that reflect adversely on the practitioner’s fitness to practise as a social worker and so constitute a disciplinary offence under section 82(1)(c) of the SWR Act, they being convictions to which that subsection refers (offences which are punishable by imprisonment for a term of three months or more). The offences in this case were each punishable by terms of imprisonment of three months or longer, in some cases up to a maximum of eight years’ imprisonment.
- There are no directly comparable cases relating to charges for similar convictions brought under section 82(1)(c).¹⁴ Guidance may be sought from two professional misconduct cases brought under section 82(1)(a) where the Tribunal has previously considered conduct of the kind reviewed here.¹⁵
- “Fitness to practise” is not defined in the SWR Act however section 47 (2)(c) provides some guidance about circumstances where the Board might find someone is not fit to practise. Fitness is inherently linked to the functions of the Act being protection of the public and enhancement of the profession.
- For the profession to be enhanced social workers must embody qualities of integrity, sound judgement and respect for their clients, qualities and values outlined in the Board’s Code of Conduct. As the Tribunal held in *CAC v Curson* at [45] the Code is a helpful indicator of proper practice and ethical standards required of a social worker.
- As such an inquiry into fitness to practise is not restricted to consideration of a practitioner’s physical or mental fitness, but can relate to whether the

¹⁴ The SWR Act was amended in February 2019. Convictions were previously considered in the context of charges brought under section 82(1)(b) (conduct unbecoming) which requires the Tribunal to find that the conduct reflects adversely on a social worker’s fitness to practise as a social worker¹⁴.

¹⁵ *CAC v RSW Y RSW2/D2/SWCDT/2015*, 23 June 2015 where the practitioner had entered into a sexual relationship with a former client and continued to access records relating to the client after he ceased to be her client. The Tribunal found the practitioner’s conduct was gross or severe misconduct. The other case is *CAC v RSW Austin RSW2/D2/SWCDT*, 9 September 2016 in which the practitioner had entered into an “intense personal relationship” with a client whom she knew was vulnerable, and had failed to discuss this with a supervisor. While there was no alleged sexual conduct, the level of contact was found to be significant and showed a close and dependent relationship. The PCC also referred to two cases in the Teachers Disciplinary Tribunal (involving a teacher forming an inappropriate relationship with a 10-year old student and the other, where the teacher began messaging a student she had taught which culminated in her sending nude photographs of herself to the student over Snapchat.

conduct or conviction impacts on wider standards of professional conduct and public and professional confidence in the particular area of practice.

- With reference to the Tribunal’s dicta in *CAC v RSW Going*, adopting the approach of the Medical Practitioner’s Disciplinary Tribunal in *Dr Zauka*¹⁶ it is not necessary that the proven conduct should conclusively demonstrate that the practitioner is unfit to practise. The conduct will need to be of a kind that is inconsistent with what might be expected from a practitioner who acts in compliance with the standards normally observed by those who are fit to practise social work. Not every divergence from recognised standards will reflect adversely on a practitioner’s fitness to practise. It is a matter of degree. [The Tribunal notes that in *Dr Zauka* the Tribunal went on to state:

“ . What conduct will satisfy the requirements of the rider cannot be decided solely by analysing the words of this subsection. It is, rather, a matter that calls for the exercise of judgment...”]

- The Board’s Fit and Proper Person Policy also provides guidance. This Policy is designed to give guidance about the circumstances where the Board might find someone is not fit to practise.¹⁷This Policy notes that fit and proper people are those in whom the public can have trust and confidence, and who can practise social work safely and effectively. The Tribunal notes that with respect to convictions, the Policy provides that offences towards children or other dependents are types of convictions which would likely lead a reasonable person to conclude that a person is not fit to practise social work.
- The offences were committed in circumstances that reflected adversely on the practitioner’s fitness to practise as a social worker. The entering into an inappropriate relationship with a young and vulnerable client falls well below the standard expected of a social worker. The practitioner’s conduct and decision-making reflect that she did not possess the values and qualities

¹⁶ MPDT 236/03/103C, 17 July 2003

¹⁷ As the PCC identified, the reference to ‘fitness to practise’ in section 47(2) is applicable in that setting. The words in section 82(1)(c) are the same.

expected of a member of the social work profession and amounted to a significant divergence from the expected standard. The practitioner entered an inappropriate relationship with a vulnerable client who was assigned to her for care and protection purposes. The relationship was prolonged and only came to an end because it was interrupted by a disclosure. The relationship was characterised by an emotional dependence, sexually explicit material, and the provision of an illicit substance (cannabis). These factors are aggravated by the fact that the victim was a young and vulnerable person and the practitioner, as a social worker, was in a privileged position of trust.

- The practitioner demonstrated a lack of judgement and good decision-making for a period of months over the course of the relationship. This included engaging in meeting with the victim outside her social work duties, continuing the communications over Messenger, using dishonesty to the first complainant's caregiver in order to create opportunities to see him, and sharing cannabis with both victims. This conduct demonstrates that the practitioner offended in circumstances that reflect adversely on her fitness to practise as a social worker.
- The conviction for attempting to pervert the course of justice involved the practitioner encouraging a young vulnerable client to act in a dishonest way (to lie about their relationship) when dealing with authorities (Police) in an attempt by her to avoid detection or punishment. While this may have been out of panic and fear rather than deliberate maliciousness (as the Judge found), the conduct raises questions about the practitioner's judgement and integrity and was conduct that fell short of the standards expected of members of the social work profession.
- The facts establish that the convictions and the circumstances of the offending reflect adversely on the practitioner's fitness to practise as a social worker and a disciplinary response is warranted.
- In the alternative, the conduct amounted to professional misconduct for the purposes of section 82(1)(a) because it involved breaches of principles 1, 5,

6 and 9 of the Code of Conduct (and was serious given the age of the victim and the practitioner's trust over him) and was conduct that put the social work profession at risk¹⁸, was not ethical and professional¹⁹ and risked bringing the profession into disrepute²⁰. Reasonable members of the public informed and with the knowledge of all the factual circumstances, could reasonably conclude that the reputation and good-standing of the social work profession was lowered by the behaviour of the practitioner.²¹ The conduct met the second (threshold) step of the two stage test for professional misconduct in that the practitioner's acts require a disciplinary sanction for the purposes of protecting the safety of the public and/or enhancing the professionalism of social workers.²²

46. The Tribunal accepted those submissions from the PCC.
47. Section 82(1)(c) of the SWR Act refers generically to convictions for an offence punishable by imprisonment for a term of 3 months or longer. No specific offences against specified statutes are referred to in this section of the Act (unlike in the equivalent section in the Health Practitioners Competence Assurance Act 2003). The onus is on the PCC to establish that the convictions were committed in circumstances that reflect adversely on fitness to practise, on the balance of probabilities²³.
48. The Tribunal was satisfied there can be no doubt that this was very serious offending by the practitioner. Extracts from the District Court Judge's Sentencing Notes demonstrate the gravity of the conduct and the convictions and include:

"[12]I do not have a victim impact statement, but one can well imagine the effect that this would have had on a boy who was then 15 years of age, and I see no reason to think that he would suffer any less than a female in that situation.

....

¹⁸ Principle 1 of the 2014 Code.

¹⁹ Principle 1.1 of the 2016 Code.

²⁰ Principle 9.1 of the 2016 Code.

²¹ *Collie v Nursing Council of New Zealand* [2000] NZAR 74 (HC) at [28].

²² The two-step approach to the Tribunal's assessment of professional misconduct has been adopted by the Tribunal in many previous cases including most recently in *CAC v Harrison* RSW3/D1/SWCDT/2019.

²³ *Z v Dental Council Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.

[15]...[this] is a case involving the sexual exploitation of a child...

[16] Aggravating features, clearly, are the abuse of trust and the vulnerability of the victim. There was an age difference of 19 years, but of course, you were the victim's social worker, and you were responsible for his welfare and progress. You abused the trust placed in you and exploited his vulnerability. That is a seriously aggravating feature.

[17] Duration of the offending was ongoing and endured for over a month. ...Attempts at concealment...and the impact on and the extent of the harm to the victim....I think would be obvious.

[18] A starting point of a term of imprisonment is always in the mind of the Court when dealing with cases such as this...

...

[36] You will, of course, have lost your position as a worker with Oranga Tamariki.

....."

49. The Tribunal is of the view that when it is considered objectively, the practitioner's conduct reflects adversely on her ability to discharge the ethical and professional obligations towards clients in her professional capacity as a social worker.
50. As was said by the Tribunal in *RSW Lumsden* a social worker works with people, many of whom are vulnerable and carry significant health and social issues. They often work in unsupervised settings. There is a significant trust placed by clients in the social worker that they will be properly cared for and their interests promoted to the extent necessary for their current needs. They trust the social worker to do what is right for them and they follow the advice given to them or recommendations made in respect of them. That means that the social worker must show self-restraint in his or her own life, and in how they interact with and treat people, especially clients. That also means that they must show self-restraint in how they deal with illegal drugs like cannabis. That is especially so because people with whom they may be working (clients) may themselves be struggling with addictions and/or issues relating to their exposure to drugs like cannabis, and alcohol, in their personal and/or family lives. A social worker must always

also demonstrate that they act in accordance with the law which includes being honest and assisting authorities with the investigation of suspected or alleged offending, as and when appropriate.

51. The Tribunal considers that the practitioner's conduct which resulted in the convictions that have been entered against her, when the convictions are considered individually and then together, is at the most serious end of the spectrum in terms of misconduct which reflects adversely on her fitness to practise as a social worker.
52. For those reasons, the Tribunal had no difficulty in finding the Charge established as it was brought under section 82(1)(c).
53. As above, the conduct was also alleged to amount to professional misconduct under section 81(1)(a). The Tribunal needs only to say that it was satisfied that when the practitioner's acts are considered objectively against the expected standards correctly identified by the PCC, the conduct was a marked departure from those standards and without doubt brings discredit to the social work profession²⁴. The conduct is most certainly sufficiently serious to warrant disciplinary sanction for the purposes of protecting the safety of the public and maintaining the standards of the social work profession.
54. The Tribunal notes that at the hearing the Chairperson raised with Counsel for the PCC the issue of whether the Tribunal had jurisdiction to make a finding of professional misconduct against the practitioner in respect of the conduct that occurred prior to her registration, which was on 16 August 2018. Counsel submitted that the Tribunal had jurisdiction. The essence of her submission was that it would be difficult to separate out the conduct that occurred prior to the practitioner's registration from the conduct that carried forward from that period into the period when she was registered.
55. The Tribunal has reflected further on that matter. The Tribunal is satisfied that in cases where the conduct charged is alleged to have occurred prior to registration and carried forward from that period when he or she was not registered into the period when he or she was registered that conduct is within reach of the Tribunal's jurisdiction. This is one such case, in that there has been an inappropriate relationship between a social

²⁴ Section 82(1)(a) and section 32 (2)(d) of the definition of professional misconduct, SWR Act.

worker and a client that commenced prior to the practitioner's registration and continued into the period when she was registered.

56. Whether conduct that is alleged to have occurred entirely and exclusively prior to the practitioner's registration can be the subject of a finding of professional misconduct (or 'conduct unbecoming'²⁵), is a question for another day.

Penalty

57. Satisfied that the Charge was established, the Tribunal was able to make penalty orders specified in section 83(1) of the SWR Act. The orders the Tribunal was able to make in this case were:

- An order that:
 - i. The practitioner's registration be cancelled, or her registration or practising certificate be suspended for a period of not more than 3 years; and
 - ii. For a period of not more than 3 years, she may practise as a social worker only in accordance with stated conditions (as to employment, supervision, or otherwise); and
- An order that the practitioner be censured; and
- An order that the practitioner undergo stated additional training, professional development or both; and
- An order that the practitioner pay part or all of the costs and expenses of and incidental to:
 - i. Any inquiry made by the PCC in relation to the subject matter of the charge; and
 - ii. The prosecution of the charge by the PCC; and
 - iii. The hearing (by the Tribunal).

²⁵ Section 82(1)(b), SWR Act – conduct that is unbecoming of a social worker and reflects adversely on the social worker's fitness to practise as a social worker.

58. In dealing with a matter that constitutes an offence for which the social worker has been convicted by a court, as the practitioner has, the Tribunal must not impose a fine (section 83(3)).
59. Section 83(1)(ca) provides that the Tribunal may order that the social worker “apologise to the complainant”. There was no “complainant” in this case as the matter was the result of convictions notified to the Board, rather than arising from a complaint.
60. Section 83(2) provides that the Tribunal must not make an order cancelling a social worker’s registration unless it has first considered suspension or the imposition of conditions on the person’s registration or practising certificate.
61. In its submissions the PCC referred to the need for any penalty to be imposed to fulfil the functions of protecting the public and enhancing the professionalism of social workers (section 3(a) and (d) of the SWR Act). The imposition of disciplinary penalties have a purpose in the maintenance (and/or setting) of professional standards and there is also a punitive element (although that is much less of a feature in cases where the Tribunal has considered conduct that has already been considered in a criminal court).
62. In addition, the PCC referred to the relevant penalty principles identified by His Honour Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*²⁶, which this Tribunal has adopted as relevant to the sentencing exercise here:
- What penalty most appropriately protects the public.
 - The important role the Tribunal plays in setting professional standards.
 - The penalties imposed may have a punitive function but protection of the public and the maintenance of professional standards are the most important factors.
 - Where appropriate, the rehabilitation of the social worker involved.
 - That any penalty imposed is comparable to other penalties imposed on social workers in similar circumstances.
 - Assessing the social worker’s behaviour against the spectrum of sentencing options available and trying to ensure that the maximum penalties are reserved for the worst offenders.

²⁶ [2012] NZHC 3354, at [44]-[55].

- An endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
 - Whether the penalty proposed is fair, reasonable, and proportionate in the circumstances presented.
63. The PCC's submissions referred to previous Tribunal decisions in which professional misconduct was found in circumstances where there had been boundary breaches and inappropriate relationships between social workers and clients or former clients.²⁷ Those cases refer to the trust and confidence that is paramount in the special relationship between a social worker and a client and the critical need for a social worker to respect professional boundaries. The development and/or maintenance of an inappropriate relationship is a gross abuse of that trust and confidence, particularly where the client is young, vulnerable, and inexperienced. Such conduct attracts the more severe penalties available to the Tribunal including cancellation or suspension with conditions, and censure. Two decisions of the Teachers Disciplinary Tribunal were also referred to. In one²⁸ that Tribunal commented that in cases involving inappropriate relationships even without a physical sexual element, cancellation of registration is seldom avoided.
64. The PCC submitted that the aggravating features of the offending were:
- *The age and vulnerability of the victim*; the victim was 15 years' old and the practitioner knew he was vulnerable: he was a care and protection client and she had met him in her professional context. She had an extremely intimate knowledge of his personal circumstances.
 - *The abuse of trust*: as the victim's social worker she was in a position of trust and it was her responsibility to ensure that the victim was provided with appropriate and objective support. The practitioner further abused this trust by asking him to lie about their relationship when the Police investigation began.
 - *The potential for harm*: the potential for harm to the victim was significant both through the development of a relationship and the provision of

²⁷ RSW Harrison, RSW Austin and RSW Y (all above)

²⁸ CAC v Teacher NZTDT 2016/55, 2 November 2016.

cannabis (on four occasions). The practitioner also provided cannabis to another, younger (14 years' old), vulnerable person.

- *Length of time*: the practitioner met the victim in [] 2018 and the relationship was established over several months. It was interrupted only after a disclosure was made.
- *Nature of relationship*: the PCC accepted that the practitioner did not have “a physical sexual relationship” (in that there was no evidence that sexual intercourse had occurred) with the victim. There was, however, physical contact in the form of hugging and kissing, sexualised communications, and the exchange of nude photographs. While the Judge deemed the practitioner’s conduct to be “non-predatory” it would be wrong to characterise the relationship as ‘non-sexual’.

65. The Tribunal accepts those are aggravating features. It considers that additional aggravating features are the fact that the conduct involved the misuse of power by a social worker for personal gratification. In relation to the supply of cannabis the practitioner was the adult responsible and a person who had a decade-long dependence on cannabis. She must have known the dangers for teenagers inherent in the drug and its addiction potential. Further, when it became apparent to the practitioner that her offending was under investigation by Police, she placed her victim in a situation whereby she was asking him to be dishonest (lie) to assist her to avoid detection. That conduct was hardly conduct one would expect from a professional social worker responsible for the care and protection needs of vulnerable youth in State Care.

66. The PCC advanced several mitigating factors, with reference to the Sentencing Notes, the probation report, cultural report and the practitioner’s interview with the PCC.

67. The mitigating factors referred to by the PCC were:

- At the time of the offending the practitioner was a junior social worker with a caseload the PCC considered was “unacceptably high” for a provisionally registered social worker. She did not have the benefit of a supervisor for a period. She was working in a demanding role and was receiving what the PCC considered was “woefully inadequate” support from her employer

which did not meet the Board's expectations.²⁹ The PCC accepted that this work pressure exposed the practitioner to a risk of burnout.

- Also, the practitioner was suffering from personal and family stressors. The Judge described her as “drowning” and suffering from burnout. The PCC accepted those circumstances would have clouded her judgement.
- The Judge assessed the practitioner as a low risk of re-offending (against children), evidenced by the Judge's decision not to register her as a child sex offender.
- The practitioner pleaded guilty to the criminal charges and cooperated and engaged fully with the PCC process.
- She accepted her offending and has taken responsibility for it. She has demonstrated insight and remorse into her offending.
- Post the offending the practitioner attended counselling and completed her home detention sentence. She has “ended a decade long reliance on cannabis, commenced further education, and has engaged with SAFE”.

68. It was submitted for the PCC that this was a case where the Tribunal would be justified in imposing the most serious outcome. Even taking into account the mitigating factors and the work the practitioner has done since the offending, it was submitted that the level of inappropriate relations, the age difference between the practitioner and her victim, the provision of illegal drugs to two young people, the vulnerability of the victim and the abuse of trust “justifies an outcome at the upper end of the scale”.

69. Counsel for the PCC submitted that this case can be distinguished from the previous Tribunal cases where inappropriate relationships and boundary breaches have been reviewed. This case involved sexual offending from a criminal perspective and certainly a “romantic element”. Unlike *RSW Harrison* the practitioner was new to the social work profession however it was submitted that engaging in a relationship with a client and supplying drugs to a young person is an obvious and clear breach and the practitioner

²⁹ Supervision Expectations for Registered Social Workers, Policy Statement, SWRB. A copy of this Policy Statement was not produced to the Tribunal.

would have known even as an inexperienced social worker that such conduct was inappropriate for a social worker. The Tribunal agreed with those submissions.

70. It was submitted that conduct of the type that led to the convictions the Tribunal has considered in this case warrants “a serious response” in order to fulfil the dual purposes of protecting the safety of the public and enhancement of the professionalism of social workers. For those reasons, an order cancelling the practitioner’s registration was sought.

Discussion

71. All of the conduct was carried out in the context of the practitioner’s role as a social worker including the sexual grooming, the inappropriate relationship, the sexualised messaging, the supply of cannabis and the attempt to pervert the course of justice. As identified, a feature of the offending has been a significant misuse of power for personal gratification.
72. Taking all factors into account the Tribunal considered that the convictions it has reviewed in this case and the circumstances of the offending are at the most serious end of the spectrum in terms of conduct on the part of a registered social worker that requires disciplinary sanction.
73. The Tribunal has carefully considered whether there are any alternatives to cancellation of registration which would achieve the objectives of protecting the public and maintaining the standards of the social work profession. The Tribunal has concluded that there are no alternatives to cancellation of registration. Under no circumstances can conduct of the nature the practitioner has engaged in and been convicted for, be tolerated in the social work profession. The public requires protection from the practitioner and a strong message must be sent to other social workers that engaging in an inappropriate relationship with a young person who is in the care and protection of the State, combined with supplying an illegal drug like cannabis to such persons, will not be countenanced. Nor will conduct that involves an attempt to pervert the course of justice by inviting a vulnerable young person to lie for him for her to avoid detection and punishment. The combination of such conduct was disgraceful and eroded the mana of the social work profession. The Tribunal had little difficulty concluding that it was conduct that is deserving of the most serious disciplinary sanction.

74. Accordingly, the Tribunal orders cancellation of the practitioner's registration.
75. The Tribunal was statutorily required to first consider suspension or the imposition of conditions on the person's registration or practising certificate before it decided to make an order cancelling the practitioner's registration and it did so. The Tribunal accepts that cancellation of registration should not be ordered if an alternative penalty can achieve the objectives sought. Rehabilitation of the social worker is a factor requiring careful consideration. Ultimately, the Tribunal must balance the nature and gravity of the offences and the offending and their bearing on the social worker's fitness to practise against the need for removal and its consequences to the individual. As was said by the Privy Council in *Dad v General Dental Council*³⁰ at [1543]:

"Such consequences [cancellation] can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual?"

76. In terms of rehabilitation the Tribunal considered the Department of Corrections Offender Notes which show that when she served her sentence the practitioner underwent CADS (Community Alcohol and Drugs) one on one alcohol and drug counselling for a period of eight weeks. Since August 2020 the practitioner has been in the probationary period of her sentence. She told the PCC when she was interviewed on 29 May 2020 that she is required to have random drug and alcohol tests, which is also a post detention condition. The practitioner also informed the PCC that she had entered SAFE counselling and had had her first face to face session with her counsellor on 28 May 2020. There was no material (before the Tribunal at the hearing) from SAFE to verify that the practitioner had engaged or was continuing to engage with that entity or what her attendance involved.

³⁰ Referred to in *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02, 8 October 2002, Randerson J) at [31]

77. While the PCC had submitted the practitioner has been free from reliance on cannabis for a year (since her sentence was imposed) the Tribunal did not consider it was able to be satisfied sufficiently as to her drug-free status.
78. In any event, the Tribunal did not consider it was in a position to be able to assess what may have been appropriate conditions to impose on practice were the Tribunal to reach a view that a suspension and conditions on practice would be an appropriate penalty response.
79. In addition to an order cancelling the practitioner's registration the Tribunal also makes an order censuring her as a permanent record of the Tribunal's disapproval of the conduct which led to the convictions, and the seriousness of those convictions.
80. Should the practitioner ever intend to seek a return to the social work profession then she will be able to make an application for registration to the Board. Any such application would have to take account of the censure and cancellation orders which the Tribunal is ordering in these proceedings, the six convictions that were entered against the practitioner and the factual circumstances of the offending. Further, there would also be a need to take account of matters the practitioner may advance to the Board, as the registration authority, that there is no possibility she will reoffend, that the public is adequately protected from her and that she will maintain the standards of social work profession.

Costs

81. The PCC sought an order of costs, having referred to relevant principles³¹ including that
 - The full cost of investigating and prosecuting a social worker should not fall on the social work profession (as a whole).
 - Members of the profession who appear on disciplinary charges should make a proper contribution towards the costs of the investigation, prosecution, and the hearing.
 - Costs are not punitive.
 - A social worker's means, if known, are to be considered.

³¹ *Cooray v Preliminary Proceedings Committee* AP23/94, 14 September 1995, Doogue J; *Vatsyayann v PCC* [2012] NZHC 1138, Priestley J at [34].

- A social worker has a right to defend himself or herself and should not be deterred by the risk of a costs order; and
 - In a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.
82. The PCC indicated that the reasonable costs and expenses incurred for its investigation and prosecution of the Charge totalled \$2,760.00 (excluding GST). The Tribunal accepted those were modest costs. The costs and expenses for the Tribunal were estimated to be \$6,563.00 (excluding GST).
83. The PCC submitted that its costs in this case are “relatively modest” partly due to the practitioner’s cooperation with the investigation. It was also submitted that having served a sentence of home detention the practitioner has been unable to work for the past ten months. It was submitted that the Tribunal should take account of those matters when considering a costs order.
84. As the practitioner did not attend the hearing, having “withdrawn” from participating in the proceedings in August 2020, following the hearing the Tribunal invited the practitioner to provide any information she wished the Tribunal to consider as to her current financial means. The practitioner did not respond to that invitation, despite being given an extension of time in which to do so.
85. All matters considered, the Tribunal is of the view that the practitioner should be ordered to pay a contribution towards the costs and expenses that have been incurred both by the PCC and the Tribunal. The Tribunal considered that she should be ordered to pay 30% of the PCC’s total reasonable costs and expenses and 30% of the Tribunal’s costs and expenses. Accordingly, the Tribunal orders the practitioner to pay the sum of \$828.00 towards the PCC’s costs and \$1,969.00 towards the Tribunal’s costs. If the practitioner wishes to approach the Board to negotiate a payment arrangement then she may do so, but that is not a matter for the Tribunal.

Non-publication orders

86. There is a permanent suppression order in place in the criminal proceedings in respect of the names of the two victims pursuant to section 204 of the Criminal Procedure Act 2011.³²
87. The Tribunal is satisfied that it is desirable to make a permanent order in respect of the names, addresses, and identifying particulars of the two victims. Having regard to the privacy interests of the victims there is no public interest in their names being published in connection with these proceedings. There is also the Court-ordered name suppression. Accordingly, there will be a permanent order to that effect pursuant to section 79(2)(d) of the SWR Act. This order will not extend to the age of the victims, which may be published.
88. The practitioner's name, address and identifying particulars is also permanently suppressed, pursuant to section 200 of the Criminal Procedure Act 2011³³. So as not to undermine the integrity of the Court order, the Tribunal is satisfied it is desirable to make a permanent order suppressing those details pursuant to section 79(2)(d) of the Act. This order will extend to the location of the Oranga Tamariki site where the practitioner worked at the time of the offending [].

Result and Orders

89. The Charge against the practitioner is made out under section 82(1)(c) and section 82(1)(a) of the SWR Act.
90. The practitioner's registration as a social worker is cancelled (section 83(1)(a)(i)).
91. The practitioner is censured (section 83(1)(b)).
92. The practitioner is to pay the sum of \$828.00 towards the costs and expenses of the PCC (section 83(1)(e)(ii) and (iii)).
93. The practitioner is to pay the sum of \$1,969.00 toward the Tribunal's costs and expenses (section 83(1)(e)(iv)).

³² As advised by Counsel for the PCC. See also *A v R* [2019] NZHC 3412, per Woolford J.

³³ Above, *A v R*.

94. There is to be a permanent order for the non-publication of the names, addresses and identifying particulars (other than age at the time of the offending) of the practitioner's victims (section 79((2) (d))).
95. There is to be an order permanently suppressing from publication the name, address and identifying particulars of the practitioner (section 79(2)(d)). Identifying particulars to include the location of the Oranga Tamariki site where the practitioner worked at the time of the offending.
96. The Tribunal directs the Hearing Officer to request the Board Registrar to publish this decision on the Board's website and to publish a summary of the Tribunal's decision in its professional publication to members of the social work profession.

DATED at Wellington this 13th day of November 2020



Jo Hughson
Chairperson
Social Workers Complaints and Disciplinary Tribunal