

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF RSW13/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 **KATHLEEN NOBLE** of Palmerston North, registered
social worker
Practitioner

HEARING Held at Palmerston North on 25 and 26 March 2021

MEMBERS Ms J C Hughson (Chairperson)
Ms S Hunt, Ms A McKenzie, and Ms F Wilson (registered social
workers)
Mr W McCarthy (layperson)

Ms G J Fraser (Hearing Officer)

Ms J Kennedy (Stenographer)

APPEARANCES Ms K Kensington and Ms J Schreiber for the Professional Conduct
Committee
No appearance by or for the practitioner

Introduction

1. Kathleen Noble (Ms Noble) obtained registration as a social worker on 15 August 2014. Ms Noble began working as a social worker at Te Kōtuku Hauora Limited (Te Kōtuku) based in Marton, in January 2018. She worked for Te Kōtuku until her resignation was received on 1 October 2018¹. Her last annual practising certificate expired on 30 June 2019.²
2. Te Kōtuku is an iwi health and social services provider for the communities living within the Southern Rangitīkei. The services offered include Whānau Ora health promotion and prevention, Well Child Tamariki Ora and Kaupapa Māori mental health.³ Te Kōtuku has contracts with Oranga Tamariki (Care and Protection and Youth Justice). At the relevant time, most of the social work referrals came from Oranga Tamariki. Ms Noble worked as a community-based social worker under the community social services contract that Te Kōtuku held. She had a large caseload of approximately 37 whānau.⁴
3. A Professional Conduct Committee (PCC) appointed by the Social Workers Registration Board (the Board) laid a disciplinary charge⁵ against Ms Noble. The charge was comprised of five particulars which were said either individually or cumulatively to amount to professional misconduct under section 82(1) (a) and 82(2)(a) or (d) of the Social Workers Registration Act 2003 (the Act) or alternatively, conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker ('conduct unbecoming') under section 82(1)(b) of the Act.
4. Particulars 1, 2, 3 and 4 of the charge were that:
 - a. on or about 27 September 2018, Ms Noble accepted an offer of a loan of \$1000 from her client, Ms [X] [name permanently suppressed], which was made after Ms Noble disclosed to [X] that she needed money so she could visit her sick child in Auckland.
 - b. on or about 27 September 2018 Ms Noble drove [X] to [X]'s bank in [] for [X] to withdraw the \$1000 to give to Ms Noble.

¹ Brief of Evidence of Grant Huwlyer, at [9].

² Registration record of Kathleen Noble, Document 6.

³ Brief of Evidence of Grant Huwlyer, [3] and [4].

⁴ Evidence of Lydia Matenga, Transcript, page 33 L4-10 and L 27-34.

⁵ Charge dated 9 November 2020.

- c. Ms Noble did not make any arrangements with [X] in order to repay her the \$1000.
 - d. Ms Noble did not repay the \$1000 until it was deducted by her employer from her pay.
5. A further particular alleged that Ms Noble's conduct breached Principles 1, 4, 5, 6, and 9 of the Code of Conduct applying to social workers.⁶

Legal Principles

6. The onus of proof of the Charge rested throughout on the PCC.
7. As to the standard of proof, the appropriate standard is the civil standard; that is, proof to the reasonable satisfaction of the Tribunal on the balance of probabilities (rather than the criminal standard). This is a static standard. However, as the seriousness of an allegation rises, so does the cogency of the evidence required to satisfy the balance of probabilities standard⁷.
8. Section 82 of the Act defines the grounds on which a registered social worker may be disciplined. Section 82 (1) provides that the Tribunal can impose certain disciplinary sanctions set out in section 83 if, relevantly, the Tribunal is satisfied the social worker has been guilty of professional misconduct (section 82(1)(a)) or if the social worker has been guilty of conduct that is unbecoming of a social worker and reflects adversely on the social worker's fitness to practise as a social worker (section 82(1)(b)).
9. Section 82(2) of the Act provides that a social worker is guilty of professional misconduct if he or she, relevantly, breaches the Code of Conduct (section 82(2)(a)) or commits an act or omission that, in the opinion of the Tribunal, has brought or is likely to bring discredit to the social work profession (section 82(2)(d)).
10. In previous decisions the Tribunal has adopted a two-step approach to assessing professional misconduct:
- a. The first step requires an objective analysis of whether the social worker's acts or omissions can reasonably be regarded by the Tribunal as constituting a breach of the Code or was an act or omission that could reasonably be regarded by the

⁶ Issued by the Social Workers Registration Board pursuant to section 105 of the Act. March 2016 version.

⁷ *A v A Professional Conduct Committee of the Medical Council of New Zealand* [2018] NZHC 1623 at paras [11] – [16] and as confirmed in *Z v Dental Council Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) endorsing the comments of Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

- Tribunal as constituting a departure from acceptable professional standards that brings or would likely bring discredit to the profession.
- b. If the Tribunal is so satisfied, the second step requires the Tribunal to form an opinion as to whether those acts or omissions warrant discipline for the purposes of protecting the public and/or enhancing the professionalism of social workers. This step is commonly referred to as the “threshold”.
11. In assessing conduct against the standard of avoiding conduct that puts the reputation of the social work profession at risk, or brings the profession into disrepute, “bringing discredit” on the nursing profession was considered in *Collie v Nursing Council of New Zealand*⁸ where at paragraph [28] Gendall J considered a definition of this:
- “To discredit is to bring harm to the repute of the profession. The standard must be an objective standard for the question to be asked by the Council being whether 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 nursing profession was lowered by the behaviour of the nurse concerned.”
12. The Tribunal accepted the submission for the PCC that if the Tribunal forms the view that the conduct would be considered by members of the social work profession and the public to be unacceptable, then it is conduct which brings or would likely bring discredit to the profession.
13. As to the threshold step, the Court of Appeal in *F v Medical Practitioners Disciplinary Tribunal*⁹ expressed the issue as being that in cases of both professional misconduct and ‘conduct unbecoming’ “it will be necessary to decide if there has been a departure from accepted standards and then whether the departure is significant enough to warrant sanction.”¹⁰ The Court endorsed the earlier statement of Elias J (as she was then) in *B v Medical Council*¹¹ that “the threshold is inevitably one of degree”.
14. The two-stage test for professional misconduct is an objective one and does not allow the Tribunal to consider matters personal to the practitioner in any significant way when objectively assessing whether there has been professional misconduct (or ‘conduct

⁸ High Court, Wellington Registry, AP300/99, 5 September 2000.

⁹ [2005] 3 NZLR 774 (CA)

¹⁰ Above fn. 14 at [80].

¹¹ [2005] 2 NZLR 810.

unbecoming’).¹² Personal factors may be given full consideration at the penalty stage if a charge is found to have been established.

15. As to the charge laid in the alternative under section 82(1)(b), the Tribunal has in previous decisions adopted a similar two-step approach to the assessment it is required to make of whether established conduct amounts to ‘conduct unbecoming’:
 - a. The first step involves an objective analysis of whether the social worker’s acts or omissions can reasonably be regarded by the Tribunal as constituting conduct unbecoming of a social worker.
 - b. The second step (threshold) requires the Tribunal to be satisfied that the social worker’s acts or omissions reflect adversely on the social worker’s fitness to practise as a social worker, and therefore require sanction for the purposes of protecting the safety of the public and/or enhancing the professionalism of social workers.
16. As to the ‘reflects adversely on fitness to practise’ rider, as has been said in previous decisions of this Tribunal, it is not necessary that the proven conduct conclusively demonstrates that the social worker is unfit to practise; that is, the Tribunal is not required to find that in fact the social worker is not a fit and proper person to practise as a social worker. The conduct will need to be of a kind that is inconsistent with what might be expected from a social worker 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 social worker’s fitness to practise. It is a matter of degree.¹³
17. These approaches to the Tribunal’s assessment of professional misconduct and ‘conduct unbecoming’ recognise that it cannot be that every departure from accepted professional standards or every unwise or immoral act by a social worker in his or her professional or personal life should amount to professional misconduct for the purposes of section 82(1)(a), or ‘conduct unbecoming’ for the purposes of section 82(1)(b).

¹² *Cole v Professional Conduct Committee of the Nursing Council* [2017] NZHC 1178, at [126]-[130]. *Martin v Director of Proceedings* [2010] NZAR 333.

¹³ This was the approach adopted by the Tribunal in *CAC v Going* RSW8/D1/SWDT/2016, 20 December 2016, at [31] and in terms of the rider, adopting the Medical Practitioners Disciplinary Tribunal’s approach in *Dr Zauka* MPDT, 236/03/103C, 17 July 2003.

18. As to the standards to be applied, in *B v Medical Council*¹⁴, Elias J stated:

“The structure of the disciplinary processes set up by the Act, which rely in part upon judgement 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, having taken into account all the circumstances including not only usual professional 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.”

19. In *Moore v Nursing Council of New Zealand*¹⁵ the High Court stated:

“Whilst the views of the members of the profession may assist the Tribunal in reaching a decision as to whether the behaviour falls into the category of deserving of disciplinary sanction are relevant, in the end the Tribunal must itself act in a representative capacity and endeavour to formulate the standards which are themselves representative. As was said by Gallen J in *Faris v Medical Practitioners Disciplinary Committee* (supra) at 71-72:”

“...the disciplinary committee is to be regarded as a representative body. It would be impracticable and undesirable to endeavour to set standards by some kind of referendum. Those standards must be fixed by the members of the committee themselves, but in doing so they must bear in mind they act in a representative capacity and must endeavour to formulate standards which are themselves seen as representative, rather than expression of their own personal views. The standards are professional in nature and need to be seen in that light. No doubt there are certain difficulties theoretically in arriving at and expressing such standards. However, this is the way in which professional bodies have always acted and in practical terms I think there would be little difficulty in determining those standards in an acceptable way. That view is in accordance with comments in *Ongley v Medical Council of New Zealand*.”

20. The primary purpose of the Social Workers Registration Act 2003 is to provide mechanisms for the protection of the safety of members of the public by ensuring that social workers are competent and accountable for the way in which they practise.¹⁶ A

¹⁴ Noted at [2005] 3 NZLR 810.

¹⁵ High Court, Wellington, AP100/00, 18 December 2000, Gendall J; also *CAC v Dr Casey* Judicial Committee, 8 July 2013 and *CAC v Dr A* Judicial Committee 8 May 2014

¹⁶ SWR Act, section 3(a).

further purpose is to “enhance the professionalism of social workers”.¹⁷ The disciplinary regime in Part 4 of the Act is one of the principal mechanisms by which the purposes of the Act are fulfilled. As to the purpose of disciplinary powers in *A v A Professional Conduct Committee*¹⁸ it was said at [87]-[82]:

“The purpose of such sanctions as these, this Court said in *Brake v PCC of the Medical Council*...was captured in *Dentice v Valuers Board*... Eichelbaum CJ:

Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question: to protect both the public and the profession itself, against persons unfit to practice; and to enable the profession or calling as a body, to ensure that the conduct of its members confirm to the standards generally expected of them...Obviously and distinctly, it is in the public interest that...a high standard of conduct should be maintained.”

21. The Tribunal accepted and had regard to the above principles for the purposes of the charge in this case.

The evidence in support of the charge:

22. The PCC called evidence in respect of the charge as follows. As discussed below, the Tribunal was satisfied the evidence given by the witnesses and the contemporaneous records that were produced to the Tribunal (encounter notes entered in Te Kōtuku’s ORA database) established the particulars of the charge.
23. **Laura Harris:** Ms Harris is a registered social worker who worked for Te Kōtuku at the relevant time. Her evidence was that when Ms Noble was employed to work at Te Kōtuku in early 2018 she was able to transfer some of the families that she had been working with under the community social work contract held by her employer, to Ms Noble. One of the families she transferred to Ms Noble was [X] and her four grandchildren. Ms Harris told the Tribunal that she was assisting [X] with her eldest grandchild (who had behavioural issues) in terms of getting him to school and with her parenting of him¹⁹. Ms Harris stated she had known [X] for a number of years, as she

¹⁷ SWR Act, section 3(d).

¹⁸ [2008] NZHC 1387; also *CAC v Dr Casey* Judicial Committee of the Veterinary Council, 8 July 2013 and *CAC v Dr A* Judicial Committee of the Veterinary Council, 8 May 2014 and *CAC v Dr Baird* Judicial Committee of the Veterinary Council, 22 August 2018.

¹⁹ Transcript, page 54 L8-22.

had worked with her when [X] was under her “intensive [social work] contract” for a couple of years (when [X] was involved with and had been referred by Oranga Tamariki in ()).²⁰ Ms Harris’ evidence was that [X]’s grandchildren were regarded as the clients (and were registered on Te Kōtuku’s contract) as Te Kōtuku works from a Whānau Ora model.

24. Ms Harris explained that around September 2018 she had a meeting with Lydia Matenga (Ms Matenga) who was at that time the supervisor team leader of the Whānau Ora team and for the Kaupapa Māori mental health team. Ms Matenga was also responsible for internal supervision and when the Clinical Supervisor, Ms Grace Taiaroa became unwell, Ms Matenga looked after the social workers. As a result, Ms Matenga worked closely with Ms Noble. At Ms Harris’ meeting with Ms Matenga, Ms Matenga told Ms Harris that Ms Noble was on leave and she asked Ms Harris to look through Ms Noble’s client list and contact any she knew and ask if they would be happy for her to work with them again, until the situation with Ms Noble’s leave was sorted out. Because Ms Harris knew [X] and her grandchildren, she went to visit [X] at her home, and she spoke to her about becoming her social worker again.
25. Ms Harris’ evidence was that she went to visit [X] on 8 October 2018. She stated that the first thing [X] said to her was something like “*oh, has she left?*” which Ms Harris understood to be a reference to Ms Noble, although she did not understand what [X] was meaning. Ms Harris stated that she told [X] that Ms Noble was on leave for a period, and she asked her if she would consent to her being her social worker again. [X] agreed to this. Ms Harris stated that when she and [X] went into the house, [X] asked her if Ms Noble had resigned at which point Ms Harris asked [X] to enlighten her as to why she might think that. Ms Harris stated that [X] told her she did not want to get Ms Noble into trouble, and Ms Harris assured her she would not. At that point [X] told Ms Harris that she had loaned Ms Noble \$1000.
26. Ms Harris’ evidence was that [X] told her that Ms Noble had visited her earlier that week and told her about her son being unwell and that he was suicidal, that he lived in [Northland] and she did not have the funds to travel up there. Ms Harris stated that [X

²⁰ Transcript, page 65, L32-34. Ms Harris explained that all of her clients on her intensive contract were referred from Oranga Tamariki (OT) and that once OT discharges the client, she also discharges the client. If the client needs further support then Ms Harris would transfer them over to a community social worker.

] told her Ms Noble had said that her employer would not give her time off work, and that Ms Matenga had told her if she wanted to go north, she would have to resign because she did not have any leave. Ms Harris stated she felt concerned that Ms Noble had put her problems on [X], who she knew had a very kind nature, and could possibly relate to some of the things Ms Noble was saying. Ms Harris told the Tribunal she considered this made [X] vulnerable.

27. As to [X]'s vulnerability, Ms Harris expanded on this by explaining that [X] had the guardianship of her daughter's children as her daughter had had a significant amount of trauma in her teenage years including with drugs and a sexual assault. Ms Harris stated she felt that as a mother [X] would be able to relate to Ms Noble (in terms of her account of her son's suicidality) and that [X] would possibly take some of that on and want to help Ms Noble. Ms Harris expressed concern about Ms Noble talking to [X] about her (Ms Noble's) personal issues to a person who was already having a lot to deal with herself.²¹
28. Ms Harris described [X] as a very proud woman. She gave a detailed description of the state of [X]'s home and her financial stressors, as well her continual hard efforts to save money to repair her house (for example, to have a working bathroom in the house). Ms Harris stated *"she's had it tough...she's always saving. She's very good with her money but she's always saving...so it's hard for her, it's very hard for her. She doesn't have a lot [of things]...she didn't have a lot of money...there were things that we could offer from Oranga Tamariki. She wouldn't take it. She would save for it herself."*²²
29. Ms Harris stated that [X] was very worried that she would be getting Ms Noble into trouble by telling her about the \$1000 and insisted she (Ms Harris) not say anything to Ms Matenga or anyone at work. Ms Harris said she told [X] she would think about it overnight. She then left the visit after 6pm, drove part way home, and then pulled up to write up notes in her diary. Ms Harris stated that when she arrived home, she went onto the Board website and consulted the "Code of Ethics". She stated the next morning she went back to [X]'s home and explained that she would not be in any trouble at all, but she (Ms Harris) was obliged to tell her employer what had happened. She stated she gave [X] printed copies of the principles in the Code that she felt were important.

²¹ Transcript, page 66.

²² Transcript, pages 67 and 68.

Ms Harris told the Tribunal that when she got to work, she wrote up her case notes and completed Te Kōtuku's Incident Form. She then explained the situation to Ms Matenga and gave her the case notes and Incident Form. A copy of the detailed encounter note Ms Harris made in Te Kōtuku's ORA database²³ recording these matters, was produced to the Tribunal.²⁴

30. Ms Harris' evidence was that she went to visit [X] at home again on 23 October 2018. She stated she discussed with [X] whether she would be willing to meet with Te Kōtuku management about the issue of her "loaning" Ms Noble money. [X] agreed to attend the meeting. Ms Harris stated that [X] then offered further details about what had occurred with Ms Noble. [X] told her the incident had occurred on 28 September 2018 in the morning, and that Ms Noble had driven her to the bank in [] to make the withdrawal. Ms Harris said [X] told her that she went into the bank whilst Ms Noble stayed in the car; that she withdrew \$200 from the bank teller and then \$800 from the ATM outside, because she did not know how much she was able to withdraw from the ATM machine. A copy of an encounter note that Ms Harris made in the ORA database following her visit to [X] on 23 October 2018 recording what [X] told her, was produced to the Tribunal.²⁵
31. Ms Harris stated that she, Ms Matenga and Mr Grant Huwyler (who was the Chief Executive Officer of Te Rūnanga o Ngā Wairiki Ngāti Apa and Director of Te Kōtuku) met with [X] on 26 October 2018 at a café in []. At the meeting Mr Huwyler and Ms Matenga apologised to [X] for the service she had received, and they made arrangements to repay [X] the \$1000 she had loaned Ms Noble on 28 September 2018. Ms Harris' encounter note of the meeting entered in the ORA database, was produced to the Tribunal.²⁶
32. **Ms Lydia Matenga:** Ms Matenga has worked for Te Kōtuku for 20 years and at the time of the hearing she was the Manager. As above, at the time of the relevant events in relation to Ms Noble, Ms Matenga supported the social workers as the Supervisor, Ms Taiaroa was unwell. As a result, she worked closely with Ms Noble. Ms Matenga's

²³ Transcript, page 76. L15-19.

²⁴ Bundle of Briefs of Evidence (including exhibits), page 6-8.

²⁵ Bundle of Briefs of Evidence (including exhibits), page 9.

²⁶ Bundle of Briefs of Evidence (including exhibits), page 10.

evidence was that Ms Noble (and the other social workers) were well supported, including receiving once-monthly supervision with a colleague and external supervision with a supervisor of the social worker's choice. Ms Matenga stated that Ms Noble never expressed concern to her about feeling unsupported.²⁷

33. Ms Matenga's evidence was that on 26 September 2018 Ms Noble went to see her for advice regarding a "personal matter", at which time Ms Noble asked if she should resign. The personal matter was, Ms Matenga said, in relation to Ms Noble's older son who needed help and support as he was not well and suspected to be suicidal. Ms Matenga stated that Ms Noble told her she needed to go to her son. Ms Matenga said she told Ms Noble she could not tell her to resign as that was a decision for her, but she informed Ms Noble that because Te Kōtuku was in the middle of preparing for an audit and as she (Ms Noble) had a large client base that she needed to complete work for, she could not let her have time off at that time. Ms Matenga stated that Ms Noble said she understood. Her evidence was that she and Ms Noble spoke again about work matters the following day, 27 September 2018 at which time Ms Matenga stated she asked Ms Noble if she had come to any decision about her son. Ms Matenga's evidence was that Ms Noble said all she wanted was a week off to sort things out. She stated that because of the urgency of Ms Noble's query the previous day and the fact her initial query had been about resigning rather than asking to take leave, when she (Ms Matenga) went to leave the room, she turned back and told Ms Noble that if it were her son, she would have been gone straight away and not be sitting there talking to her. Ms Matenga clarified what she meant by that comment stating "*...that's when I thought that she was "playing me"*" as Ms Noble had gone from asking about resigning to just wanting leave.²⁸ Ms Matenga explained that the School Holidays were about to start, Ms Noble's partner and son lived in Auckland and she understood the other siblings had wanted to go for a holiday with their Dad. She stated this caused her to question the situation "*because her story didn't in my mind, match*"²⁹ That is, Ms Matenga questioned whether Ms Noble's account about her son was true. Contemporaneous

²⁷ Ms Matenga explained that when she met with the PCC during its investigation, she was told that Ms Noble had told the Committee she felt unsupported by her employer. Transcript page 44, L 34.

²⁸ Transcript, page 37 L 4-16.

²⁹ Ms Matenga, Transcript page 37 L 11-31.

notes of Ms Matenga's conversations with Ms Noble at the time, were produced to the Tribunal.³⁰

34. Ms Matenga confirmed that Ms Noble resigned on 1 October 2018. She gave her account of events when Ms Harris spoke to her after her visit to [X] on 8 October 2018, which corroborated Ms Harris' account.
35. Ms Matenga also gave an account of her and Mr Huwyler's meeting with [X] on 26 October 2018, which Ms Harris also attended (and noted³¹). She stated that prior to the meeting she had gone to see [X] at her home at which time *"she was, you know, still feeling sorry for [Ms Noble]"* and *"she didn't want to make a fuss"*.³² She stated that in that meeting [X] confirmed what Ms Harris had told her about loaning Ms Noble money and Ms Noble having driven her to [] to her bank. Ms Matenga said that at the time of the meeting with [X] on 26 October 2018, Ms Noble had not repaid the \$1000 or made any contact with [X] to arrange repayment. She stated that she and Mr Huwyler apologised to [X] on behalf of Te Kōtuku and arranged to repay the money to her. Ms Matenga confirmed that she received bank statements from [X] which confirmed that she had withdrawn the money she had given Ms Noble, on 28 September 2018.
36. **Ms [X]:** The accounts of Ms Harris, Ms Matenga and Mr Huwyler as to what [X] told them about the circumstances in which she gave \$1000 to Ms Noble on the various occasions outlined, was hearsay evidence. The Tribunal did not receive a written brief of evidence from [X], and the indication given prior to the hearing was that [X] did not wish to give evidence. Counsel for the PCC accepted that did not meet the test for unavailability under the Evidence Act 2006³³. The Chairperson issued a Minute in which Counsel were encouraged to explore [X]'s availability to give evidence remotely if she could not be present at the hearing venue³⁴. In the end [X] gave evidence remotely, by telephone and she answered questions from Counsel and from the Tribunal members. The Tribunal records that it was grateful to [X] for making herself available by

³⁰ Brief of evidence of Ms Matenga, exhibit LM-A.

³¹ Encounter note made (and produced) by Ms Harris as above.

³² Ms Matenga, Transcript page 38 L 13-24.

³³ To be unavailable as a witness the person must be dead, or beyond New Zealand in circumstances in which it is not reasonably practicable to be a witness, or unfit because of age or physical or mental condition, or not locatable (with reasonable diligence), or not compellable to give evidence. Section 16(2) of the Evidence Act 2006.

³⁴ Minute of the Chairperson regarding evidence, dated 17 March 2021.

telephone and for giving evidence under affirmation in what she acknowledged were stressful circumstances for her.

37. [X] stated that at the relevant time Ms Noble had been assisting her with facilitating things with her grandchildren's school and with a programme for one of the grandchildren. She stated that Ms Noble had been her social worker for "a while" and she had gotten to know her reasonably well. Her evidence was that Ms Noble had told her "things about her life" including that she was a single mother with five children, had a long-term relationship and had moved down to the region.³⁵
38. [X]'s description of the circumstances around her offering Ms Noble money was as follows³⁶:

"What happened is she came and she was really upset. I think we sort of had, - maybe there was a bit before that....I knew that she wanted to go and drop her daughter off. Maybe a few weeks before that she said she couldn't get the school holidays off. And then the second to last time I saw her, she came and she was really really upset. I asked her what was wrong and she said that her son was up north, he was in a relationship with someone, they'd broken up and she was really really worried about him because it was a volatile relationship and he was really down and she was worried about him committing suicide. I don't know, we just talked about it and that. And she didn't know what she was going to do....we kept talking.

*I said to her....you know, if it was me I would go there, you know....you wouldn't want your child to kill themselves. And she said that she couldn't [financially³⁷]and I said to her that I could lend her the money to go there. I said lend her, you know, I basically said to her, like I wasn't, you know, I wasn't worried about it, you know, I could replace it [the money], but you know, she couldn't replace her son, and I said to her if it was me I would want someone to do that for me, particularly how it was.
...and anyway,.....it was arranged that she would go with me the next day to transfer it from one account to the other and that I would give it to her [the money] and that's basically what happened."*

39. [X] stated that Ms Noble told her she knew that if she went to Auckland, she was going to have to leave her job at Te Kōtuku "because at that time they didn't want her to have any time off because they had an audit happening."³⁸ [X] confirmed it was her understanding that once she had given the money to Ms Noble, she would be leaving to go to Auckland to see her son.

³⁵ Ms [X], Transcript, page 50, L 2-9.

³⁶ Ms [X], Transcript, page 51, L 1-25.

³⁷ Ms [X] Transcript, page 51, L 26-29.

³⁸ Transcript, page 53, L 26-29.

40. [X] told the Tribunal that the money was in her savings account and to transfer the money from her savings account to her cheque account (so she could access it) she needed to go to her bank in []³⁹. [X] stated that Ms Noble arranged to drive her to [] the following day *“because she knew I had no vehicle”*⁴⁰. She stated Ms Noble said she would *“come and pick me up in the morning after the kids had gone to school [kohanga]”*⁴¹. She said they went to [] in Ms Noble’s *“work car”* and she was dropped home in [] after they had been to []. [X]’s evidence was that when she was dropped home after being to [] and when she and Ms Noble were sitting in the car talking *“for a while”*⁴² *“all I can remember after that was that she [Ms Noble] had her work phone and she took the SIM card out of the work phone”* at which point [X] asked her if she was going to tell her employer that she was leaving (her job).⁴³ In an answer to a question from Tribunal Member Ms McKenzie, [X] stated that at the time when Ms Noble removed the SIM card from her work phone she called *“a guy she worked with and said to him, hey, if they wanted the car they could come and pick it up from her house, so I took it to mean that she was going...there and then.”*⁴⁴
41. [X] stated that Ms Noble told her she did not know when she would be able to pay back the money and *“I wasn’t pressing her about it”*, but *“she said she would pay it back if she could”*.⁴⁵ [X] said that Ms Noble had her contact phone number on her work phone but she did not know Ms Noble’s number as *“I wasn’t like a friend or anything, she was my social worker.”*⁴⁶ [X] told the Tribunal that on the day when she had given Ms Noble the money, Ms Noble had told her not to tell anyone (her employer) about the money.⁴⁷
42. [X] then told the Tribunal about her subsequent visit from Ms Harris who she confirmed had been her social worker *“for years”*. She stated this was the first time she had told anyone at Te Kōtuku about having given money to Ms Noble. [X] confirmed that in a

³⁹ Ms [X] confirmed that there was no other appointment she needed to go to in [] that day and that she and Ms Noble went to [] *“purely”* to get the money. Transcript, page 59, L 24-32. Although Ms [X] said *“maybe”* she was also going to pick up her glasses in Specsavers (Transcript, page 60 L 1-6).

⁴⁰ Ms [X], Transcript, page 59 L 24-32.

⁴¹ Ms [X], Transcript, page 62 L 9-11.

⁴² Transcript, page 62 L 20-29.

⁴³ Transcript, page 53, L 1-17.

⁴⁴ Ms [X], Transcript, page 60 L 28-34.

⁴⁵ Transcript, page 54, L 19-30.

⁴⁶ Transcript, page 55, L 5-11.

⁴⁷ Transcript, page 56, L 18-31.

subsequent visit Ms Harris told her she had “*told her boss*”, and there followed a meeting she [[X]] attended with Te Kōtuku management. [X] stated “*I felt really bad... I did not want to get her [Ms Noble] into any trouble or anything*”.⁴⁸ [X] stated that Ms Harris told her that social workers have a Code and “*you cannot behave like [Ms Noble had]*”. She confirmed that she gave her bank details to management and later, Te Kōtuku paid her back \$1000.

43. [X] confirmed she has never had any contact from Ms Noble since the day she gave her the money, 28 September 2018.⁴⁹
44. **Grant Denys Pahia Huwyler**⁵⁰: Mr Huwyler confirmed he is the Group Chief Executive at Te Rūnanga o Ngā Wairiki Ngātu Apa and Director of Te Kōtuku and has been so for the past ten years. He explained that the iwi administration office where he is based is in Bulls, whereas Ms Noble was based at Te Kōtuku in Marton. He stated that he was told by Te Kōtuku Manager Ms Taiaroa in October 2018 that Ms Noble was alleged to have “*borrowed money from a client*”. He stated that when he heard this, he was concerned for the client who he stated is always the “*primary focus*”. However, he said he “*got involved because [he] was concerned about the reputation of our service and our rūnanga*” if word got out in the community about Ms Noble’s conduct that he considered was “*unethical*”. Mr Huwyler produced a copy of a letter sent to Ms Noble outlining employment concerns about her allegedly having borrowed money from a client to which Mr Huwyler stated no response was received.⁵¹
45. Mr Huwyler then gave an account of his meeting with Ms [X] at a café on 26 October 2018. His account of this meeting essentially corroborated the accounts given by Ms Matenga and Ms Harris as outlined above. Mr Huwyler stated that he “*distinctly remember[s] [[X]] saying it was her that had offered Ms Noble money, as a result of Ms Noble disclosinginformation [about her sick son], and that Ms Noble had not actually asked for it.*”⁵² His evidence was that “*it appeared to me that [[X]] was of the opinion that Ms Noble was not going to contact her to repay the money, and had just taken the*

⁴⁸ Transcript. Page 57 L 20-27.

⁴⁹ Ms [X], Transcript, page 58 L 7-11.

⁵⁰ Bundle of Briefs of Evidence (including exhibits), Tab 4.

⁵¹ Brief of Evidence at [10]-[12].

⁵² Brief of Evidence at [17] and [18].

money [[X]] had given her.”⁵³ Mr Huwyler was unable to confirm whether \$1000 was deducted from Ms Noble’s pay to reimburse Te Kōtuku for the payment the organisation had made to [X].

46. **Mary Miles:** The Tribunal received a brief of evidence from Ms Miles who was the presiding member of the PCC. Ms Noble’s engagement with the PCC was outlined and a transcript of relevant parts of Ms Noble’s interview with the PCC held in Palmerston North on 18 June 2020 was produced, as were several documents that Ms Noble provided to the PCC at her interview.⁵⁴ These included an email Ms Noble had sent to Ms Tairaoa on 28 October 2018 which included a response to the allegation she had “borrowed money from a client”, as well as correspondence regarding settlement of the associated employment issues. The Tribunal noted that Ms Noble had not confirmed the transcript as an accurate record of her interview. Although the Tribunal has a broad power to admit evidence that would not be admissible in a court (Schedule 2), the Tribunal wishes to signal that it is unlikely to accept an unsworn or unsigned and unconfirmed transcript of ‘evidence’ at a substantive hearing of a disciplinary charge, without justification⁵⁵. In this case, the transcript had been filed as an annexure to Ms Miles’ affidavit and although it was received, only minimal weight was placed on its contents, given it was hearsay evidence. The Tribunal had regard to the transcript for the limited purpose of confirming that Ms Noble had admitted the conduct to the PCC.

No evidence called by practitioner:

47. Ms Noble did not participate in the proceedings. She did not attend the hearing or give any evidence, either as to liability or penalty. For the record, the email Ms Noble had sent to Ms Tairaoa on 28 October 2018 and the interview transcript record that Ms Noble did not deny that she had received \$1000 from [X] or that she had discussed her current family circumstances with her client at the time, or that she had complained about her workplace (“venting”) and intended to resign from her job. Ms Noble’s explanation was that [X] offered her the money and she and [X] had then gone to [] the following day at which time they went to [X]’s bank and the funds were withdrawn

⁵³ Brief of Evidence at [20].

⁵⁴ Bundle of Briefs of Evidence, Tab 3.

⁵⁵ Minute of Chairperson dated 17 March 2021.

and handed over to her. Ms Noble admitted she did not tell anyone at Te Kōtuku that she had borrowed money from [X] or that she would square it up with her final pay. Ms Noble told the PCC that Te Kōtuku paid the money back to [X] and had taken it out of her “final pay”. However, as above, Mr Huwylar was unable to confirm that the money that Te Kōtuku paid to [X] was taken out of Ms Noble’s final pay.

Tribunal’s consideration of the charge:

Relevant standards

Code of Conduct

48. It is well established that ethical documents established by the Board as the professional body are relevant to determining the standards reasonably expected of a social worker, and therefore in considering whether his or her acts or omissions amount to misconduct.
49. The standards which should apply in situations such as the present are evident from the Code of Conduct issued by the Board pursuant to section 105 of the Act. The March 2016 version of the Code of Conduct applied in relation to the conduct the Tribunal reviewed in this case as it was alleged to have occurred between September and October 2018.
50. However, the Code of Conduct should be regarded only as a guide to the minimum standards expected of social workers, or as one of the factors to be taken into account by the Tribunal in exercising its independent judgement as to whether in the particular circumstances there was a professional breach.⁵⁶
51. The Code of Conduct extends beyond professional practice to personal conduct and integrity.⁵⁷ It does not prescribe, in detail, every behaviour expected of a social worker.
52. The Code of Conduct also serves as a means by which clients and the public can know the standards of conduct that they can reasonably expect from social workers.
53. Relevantly, the Code of Conduct (2016) provides:
 - a. **Principle 1 (Act with integrity and honesty)** requires social workers to act honestly and ethically in all personal and professional behaviour, be responsible for their

⁵⁶ *Staitte v Psychologists Board* High Court, Christchurch AP52/98, 18 December 1998, Young J.

⁵⁷ The Preamble to the Code notes that “[b]ecause they are in positions of trust and confidence [registered social workers] must also have high standards in their personal lives”.

own actions and decisions, be reliable, dependent and trustworthy, communicate in an appropriate, open, accurate and straightforward way, and not work in a situation where there is a conflict of interest.⁵⁸ In relation to not working in a situation where there is a conflict of interest the Code requires social workers to discuss potential or actual conflicts of interest (both professional and personal) with the client and take all reasonable steps to protect the client's interests as much as possible. Further, social workers are required to tell a supervisor or employer about any potential or actual conflicts of interest and if they cannot be resolved then end the relationship and refer the client appropriately.

- b. **Principle 4 (Be competent and responsible for your professional development)** requires social workers to work in a safe way, to provide good-quality, effective client service, and be accountable for the quality of their work.⁵⁹
- c. **Principle 5 (Protect the rights and promote the interests of clients)** requires social workers to maintain personal and professional boundaries, recognise and use responsibly the power that comes from any social work role, keeping the dignity of the client front of mind; and to never abuse, neglect, harm or exploit clients in any way.⁶⁰
- d. **Principle 6 (Strive to maintain the trust and confidence of clients)** requires social workers to treat clients with respect and dignity, behave in a professional manner, to never abuse the client's trust, and to never encourage or ask clients or former clients to give, lend, or bequeath money or gifts that will benefit them (the social worker) or those close to them.⁶¹
- e. **Principle 9 (Maintain public trust and confidence in the social work profession)** requires social workers to maintain a high standard of professional and personal behaviour and to avoid activities, work or non-work, that may in any way bring the social work profession into disrepute.⁶² Principle 9.2 requires social workers to refrain from acting in ways that can be interpreted as, or actually result in them (or those close to them) gaining personal benefit from their social work position.

⁵⁸ Code of Conduct at [1.1]- [1.3], [1.4], [1.5] and [1.7].

⁵⁹ Code of Conduct at [4.3], [4.4] and [4.5].

⁶⁰ Code of Conduct at [5.4], and [5.7].

⁶¹ Code of Conduct at [6.1], [6.2], [6.3], and [6.4].

⁶² Code of Conduct [1.1], Bundle at p 67.

54. The Tribunal accepted the submission for the PCC that these Principles of the Code are relevant to the conduct which the Tribunal reviewed in this case, and they were the Principles alleged to have been breached by Ms Noble.

Previous cases

55. It is necessary also to consider previous decisions when considering the relevant standards.
56. The PCC referred to the only comparable case involving a social worker. That was *CAC v Surowiez-Lepper*⁶³ where the social worker had been a Mrs G's social worker. Two days after the social work file was closed, Ms Surowiez-Lepper took Mrs G for lunch and told Mrs G they could be friends as she was no longer her social worker. Over the following year, the friendship continued and during that period, Mrs G gave Ms Surowiez-Lepper a number of gifts. This included \$500 for her personal car repairs. On one occasion, Ms Surowiez-Lepper drove Mrs G to her bank, during work hours and in a work car, and Mrs G withdrew \$700. Mrs G gave \$400 to Ms Surowiez-Lepper, on the basis that she thought this was to help two of Ms Surowiez-Lepper's current clients (but these clients did not exist). The Tribunal held that the conduct breached Principle 1 of the 2008 version of the Code of Conduct and that Ms Surowiez-Lepper failed to uphold the standards of personal conduct required, and to act with integrity, as a social worker. Further, the Tribunal held that the obligations on Ms Surowiez-Lepper were ongoing in respect of a very recent, vulnerable client and one whom might well require further social work services. Ms Surowiez-Lepper was held to have exploited the relationship with Mrs G for personal gain (to obtain items of property and cash), she did not discuss potential or actual conflicts of interest, did not attempt to resolve them expeditiously, and did not bring any potential or actual conflicts of interest to her supervisor or employer's attention. The Tribunal concluded the breaches of the Code were serious enough to warrant discipline and the conduct was gross or severe misconduct.
57. The Tribunal also considered helpful and representative of common-sense, the following extract from *Collie v Nursing Council of New Zealand*⁶⁴:

“[36]...there was a clear fiduciary relationship as between a nurse and both patients of the medical centre. Because of that relationship the patients were vulnerable. They were also vulnerable by

⁶³ RSW3/D3/SWDT/2015.

⁶⁴ [2001] 1 NZAR 74.

reason of their respective medical conditions and ages. Substantial gifts were received on two occasions during the time that they were patients at the medical centre, whilst the Appellant was a nurse there. While hindsight is a dangerous thing, nevertheless the prudent, careful responsible nurse would or should have discussed the proposed gifts with the medical practitioner at the centre who was the doctor of Mr S , and probably also the doctor who attended upon Mrs S. Had that been done, and full inquiries made as to the modest financial position of the couple, the outcome would surely have been different...

[37]...the point is, however, that by reason of the fiduciary relationship that originally existed, it was encumbered upon the Appellant to take all steps that she could to ensure that her fiduciary duty to the couple was not only discharged but seen to be discharged....

...

[39]...any professional person, whether lawyer, nurse, doctor, dentist or accountant may find situations as arose here difficult to deal with *but there is an absolute obligation upon a professional person who has a fiduciary relationship with patient or client to ensure that the person in possession of vulnerability is not acting foolishly and fondly, and is well able to undertake that which they intend to, is carefully and independently advised, and is not acting so as to put himself in a position of detriment..*" [emphasis added].

58. The Tribunal considered that in this case there was a power imbalance catalysed by the vulnerabilities of [X] and her whānau which Ms Noble was well aware of and was responsible for addressing in her work as [X]'s social worker. The Tribunal was in no doubt that [X]'s financial vulnerabilities were evident to Ms Noble at the material time (she described the state of [X]'s house in her interview with the PCC: the tenor of what she stated was in line with the evidence Ms Harris gave about this).
59. In the Tribunal's view a social worker has significant responsibilities if a financial transaction is proposed by a client. Social workers must not allow and participate in the blurring of professional boundaries with all the risks this entails, both to the social worker's own reputation and practice and to the safety of his or her client, including potential emotional and psychological harm and a risk of exploitation, actual or perceived.
60. In summary, the primary reference point when considering the particulars of the charge was the guidance obtained from the Code of Conduct and previous case law. The Committee considered that if it formed the view that a registered social worker's professional or personal behaviour would be considered by members of the profession and the public as unacceptable, or inappropriate, or in breach of the Code, then it was

conduct which puts at risk the practitioner's professional integrity and the public's trust and confidence in the social work profession.

The Charge:

Discussion

61. The PCC submitted⁶⁵ that Ms Noble's conduct as particularised in the charge had been established on the evidence outlined above. The Tribunal accepted that submission and therefore, that the conduct alleged in the Charge was proved⁶⁶:
62. The Tribunal was satisfied on the balance of probabilities that:
- a. On 27 September 2018 Ms Noble accepted an offer of \$1000 from her client, [X], after Ms Noble had disclosed personal details about the circumstances regarding her son:
 - b. Ms Noble drove [X] from [] to [] the following morning, 28 September 2018 in order for [X] to withdraw the \$1000 from her bank to give to Ms Noble. The money was withdrawn from [X]'s bank account and handed over to Ms Noble. Ms Noble then drove [X] home.
 - c. Ms Noble failed to make arrangements with [X] to repay the \$1000; and
 - d. Ms Noble failed to repay the \$1000 to [X]. The money was repaid to [X] by Ms Noble's employer, Te Kōtuku.
63. As to the first particular of the charge, [X] told the Tribunal that Ms Noble had come to her and spoken to her about the issues with her son, the need to visit him, and the fact that her employer was not being supportive. [X] said that Ms Noble told her that she could not afford to go and visit her son and [X] stated she offered Ms Noble the \$1000 as a loan because of that information. She felt sorry for her and felt that if it were her in that position, she would have wanted to go. Therefore, she wanted to help Ms Noble to get there. Ms Noble accepted that offer from [X], who was Ms Noble's client. In that regard the Tribunal accepted Ms Harris' evidence of her relationship with [X] prior to Ms Noble taking her over. Te Kōtuku had a Whānau Ora approach and Ms Harris' evidence was that she worked closely with [X] around her parenting styles. [X] told

⁶⁵ Submissions for the PCC.

⁶⁶ Bundle of Documents, page 3.

the Tribunal about how Ms Noble interacted with her and the services that she was provided with.

64. As to the second particular, [X] was clear that Ms Noble drove her to her bank in [] in order for her to withdraw the \$1000 that she then gave to Ms Noble. [X] also stated that they went to Specsavers for [X]'s purposes while in [] and that was how she could remember which day the transaction occurred.
65. In respect of the third particular of the charge [X] said that Ms Noble did not make any arrangements to repay her the \$1000. She stated that Ms Noble said she would repay her if she could but that she ([X]) did not really expect her to. As above, her evidence was that Ms Noble had her number in her work phone but also then that she removed the SIM card. [X] stated that she never gave Ms Noble her number in any other way. The Tribunal accepted [X]'s evidence that no specific arrangements were made for the repayment of the money and no repayment was made to her by Ms Noble.
66. Ms Harris corroborated [X]'s account before the Tribunal and [X] had made similar statements to Ms Harris back in October 2018 when she went to visit [X], contemporaneous notes of which Ms Harris made of those statements (which were produced to the Tribunal). Ms Matenga's evidence was also accepted that Ms Noble had raised with her the fact that her son was unwell and spoke of resigning or taking leave to go and see him. Ms Matenga also corroborated what [X] stated about going to [] to get the money. Her evidence was that [X] told her this during the meeting that took place between her, Mr Huwylar and Ms Harris in late October 2018.
67. In relation to particular 4 relating to Ms Noble's failure to repay [X] at all until it came out of her final pay, all four witnesses spoke about the meeting when Te Kōtuku management made arrangements to repay the money. Mr Huwylar's evidence was that as part of that meeting, he wanted to confirm for himself that [X] had not been repaid by Ms Noble, and [X] said the same thing. Ms Matenga confirmed that she saw the bank statements of the transactions before the money was paid out. None of the witnesses stated they had been involved in the employment process and the evidence was unclear whether the settlement agreement⁶⁷ (which documented the intention to deduct \$1000 from Ms Noble's pay) was ever signed. In any event, the Tribunal

⁶⁷ Bundle of Briefs of Evidence (including exhibits), exhibit MM-R, page 48.

accepted the PCC's submission that the key point was that Ms Noble failed to repay [X] and that it was Te Kōtuku who did so on her behalf.

68. It was for those reasons, the Tribunal was satisfied on the balance of probabilities that the particulars of the charge were established on the evidence before it and that Ms Noble engaged in the conduct as charged. [X] was clear in her evidence about what happened and the evidence she gave was largely consistent with what she told Ms Harris in 2018 and what Ms Harris had recorded in the notes she made. All the witnesses were consistent on the matters central to the charge. Nothing that Ms Noble told the PCC, as recorded in the interview transcript, undermined the particulars and the Tribunal took account of the fact that Ms Noble admitted the conduct that [X] had disclosed and described, at the time.
69. It was submitted⁶⁸ for the PCC that the conduct as a whole was a breach of principles 1, 4, 5, 6 and 9 of the Code of Conduct and requires disciplinary sanction for the purposes of protecting the safety of the public and/or enhancing the professionalism of social workers. In the alternative, it was submitted the conduct was unbecoming of a social worker and reflects adversely on Ms Noble's fitness to practise as a social worker therefore requiring disciplinary sanction.
70. The Tribunal accepted that submission and was satisfied that Ms Noble's conduct was a serious departure from the professional standards which the public and the profession expect of registered social workers, breached the above principles of Code of Conduct, brought discredit to the social work profession and was sufficiently serious to warrant discipline. As such the conduct constituted professional misconduct for the purposes of both section 82(1)(a) and section 82(2)(a) and (c) of the Act.
71. In the Tribunal's opinion, the conduct taken cumulatively and viewed objectively, was conduct that reflects adversely on Ms Noble's reputation and the reputation of the social work profession in breach of the relevant principles of the Code of Conduct. It was conduct that the Tribunal considered endangered the reputation of the social work profession because the essence of the profession is that it works to protect and enhance clients who are in vulnerable social and economic positions, as was [X].

⁶⁸ Transcript, Oral Closing Submissions on Liability, pages 87-95

72. Social workers are expected not to put themselves in a position where they may act to the detriment of those clients. Viewed objectively, the Tribunal considered that a reasonable member of the public would consider the conduct unacceptable for a social worker in a position of trust and working closely with a vulnerable member of the community. For that reason, the Tribunal accepted the submission for the PCC that the conduct represented a significant departure from standards reasonably to be expected of a social worker.
73. Ms Noble created the situation of a conflict of interest by sharing personal information with a client about her situation and that information was the cause of [X] providing money to her. Ms Noble exploited the relationship with [X] and took advantage of someone who was vulnerable. She took active steps to obtain the money and did so in a work vehicle. She did so for her personal benefit (to obtain cash that she needed). Although the Tribunal considered that this may have been for an important personal reason⁶⁹, that did not detract from the fact that the conduct was a significant departure from acceptable standards for a registered social worker and Ms Noble did not alert anyone to the conflict of interest. Nor did she take steps to rectify the situation in the interests of her client.
74. In the Tribunal's opinion, Ms Noble had plenty of time following her conversation with [X] on 27 September 2018 to reflect on her circumstances and [X]'s offer to give her \$1000. There was an opportunity overnight to consider carefully whether it was prudent to proceed given all the circumstances, particularly [X]'s vulnerability. The Tribunal found that the standards contained in the Code of Conduct and relevant case law reinforce the proposition that there was a clear ethical issue which required Ms Noble to refuse to facilitate the transaction and/or accept the money [X] had offered her. At the very least Ms Noble needed first to obtain advice from a colleague or supervisor. Given the vulnerability of [X], and the amount of money involved (when considered in the context of the apparent dire financial circumstances of [X] at the time), there is no question that there was a departure from appropriate standards.

⁶⁹ The Tribunal did not have the benefit of hearing from Ms Noble and so was unable to determine whether Ms Noble's various explanations were credible.

75. The Tribunal considers that given the implicit power imbalance in a social worker-client relationship, and the breach of trust that is involved where there is a breach of professional boundaries, this will likely adversely impact the client involved. As the Tribunal observed in *PCC v Moeke*⁷⁰ maintaining appropriate professional boundaries is a fundamental skill, obligation, and professional discipline for all social workers. Social workers who lack the ability to maintain appropriate professional boundaries complicate relationships with clients in a way that is likely to be damaging to the client. This is not an acceptable discharge of a social worker's professional and ethical obligations.
76. The fact that Ms Noble made no records about her receipt of \$1000 from [X] in any records held about her by Te Kōtuku, and indeed told [X] not to tell anyone at Te Kōtuku about the money, troubled the Tribunal. The Tribunal considered that behaviour indicated an intention by Ms Noble to conceal what she knew was conduct that was inappropriate for a social worker and that it significantly aggravated the offending. Had [X] not disclosed the transaction to Ms Harris the conduct may never have come to the light.

Conclusions:

77. The Tribunal considered that the established particulars relate to a single transaction, and therefore considered them cumulatively.
78. Considered together, the four established particulars amounted to breaches of Principles 1, 4, 5, 6, and 9 of the Code of Code and were acts or omissions that brought or would likely bring discredit to the social work profession.
79. Turning to threshold, the Tribunal had regard to a range of factors including the amount of money involved in the context of [X]'s financial vulnerability, the lack of openness during and after the transaction, the fact that Ms Noble should have declined [X]'s offer of money, and the immediate reaction of others including Ms Harris, and Ms Matenga when they learned of the circumstances. Accordingly, disciplinary sanction is required for the purposes of maintaining professional standards and protecting public

⁷⁰ SWCDT RSW 11=D2-SWDT-2020.

safety. The charge of professional misconduct was established, and this conclusion was announced at the hearing.

80. Having made that finding the Tribunal was not required to go on and consider the Charge as it was laid in the alternative, and it did not do so.

Penalty

81. Where the Tribunal makes an adverse finding of professional misconduct under section 82(1) of the Act it may make any one or all the penalty orders specified in section 83(1) of the SWR Act.
82. The penalty which is imposed must fulfil the functions connected to the purpose of the Act which is to protect the public and maintain (and/or set) professional standards to enhance the professionalism of social workers. There is also a punitive element.
83. In previous decisions of the Tribunal, the Tribunal has adopted the sentencing principles which apply in the Health Practitioners Disciplinary Tribunal, which were identified by Collins J in *Roberts v Professional Conduct Committee*⁷¹:
 - a. What penalty most appropriately protects the public.
 - b. The important role the Tribunal plays in setting professional standards.
 - c. The penalties imposed may have a punitive function but protection of the public and setting professional standards are the most important factors.
 - d. Where appropriate, the rehabilitation of the social worker involved.
 - e. That any penalty imposed is comparable to other penalties imposed on social workers in similar circumstances.
 - f. 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.
 - g. An endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
 - h. Whether the penalty proposed is fair, reasonable, and proportionate in the circumstances presented.

⁷¹ [2012] NZHC 3354, at [44]-[55],

84. The Court in *Roberts v Professional Conduct Committee* referred to the penalty imposition as involving a “finely balanced judgement” and it not being “a formulaic exercise”.
85. In *Singh v Director of Proceedings*⁷² at [62] Ellis J concluded:
- “In terms of the general approach to be taken and principles to be applied, it also seems clear to me that care must be taken not to analogise too far with the criminal sentencing process. As the Supreme Court noted in *Z* the relevant societal interests in each case are different...”

Cases

86. Counsel for the PCC referred to the only case bearing similar facts to this case, *CAC v Surowiez-Lepper*. In that case this Tribunal ordered censure and cancellation of registration for what was found to have been “gross misconduct”.⁷³
87. The aggravating features of that case were that Mrs G was elderly and had been specifically referred to the Wellington City Mission because she lived alone and needed support. The practitioner blurred the boundaries of the personal and professional relationship, and Mrs G was vulnerable to Ms Surowiez-Lepper’s deception. The behaviour was ceased only when Mrs G questioned her conduct. The only mitigating factor was that Ms Surowiez-Lepper did not defend the proceedings and accepted her actions were wrong, although the Tribunal found that she lacked any significant insight into her harm.
88. Reference was also made to three cases involving health practitioners (a registered nurse and two registered enrolled nurses) before the Health Practitioners Disciplinary Tribunal where money had been borrowed from a patient.⁷⁴ The penalties imposed were either cancellation of registration or suspension, and censure. Of course, this case involved a social worker who had breached professional boundaries by accepting money from a vulnerable client, not a health practitioner. Further, the penalties available to this Tribunal differ from those available to the Health Practitioners

⁷² [2014] NZHC 2848.

⁷³ Prior to the Act being amended in February 2019, in order to make a cancellation order the Tribunal had to have first found that the conduct in question was “gross misconduct”,

⁷⁴ *Re Pim* HPDT 722/Nur14/293P, 10 August 2015; *Professional Conduct Committee v Lal* HPDT 1129/Nur202/478P, 9 December 2020 and *Professional Conduct Committee v Harrison* HPDT, 867/Nur16/364P, 16 December 2016.

89. Disciplinary Tribunal.⁷⁵ In any event, the Tribunal had regard to those cases and noted that in other professions conduct of the nature that has been reviewed here has resulted in the most serious penalty outcomes.
90. It was submitted for the PCC that given the seriousness of the conduct, it would be open to order cancellation of Ms Noble's registration, and censure. It was submitted, that if the Tribunal were to cancel Ms Noble's registration, it would be appropriate to impose a condition under section 84(1)(b) of the Act that she must engage in a programme of education around professional boundaries and ethics prior to applying for registration.

Seriousness of conduct and aggravating and mitigating factors:

91. The Tribunal considered that the conduct it has reviewed in this case and the circumstances of the offending are at the serious end of the spectrum in terms of conduct on the part of a registered social worker that requires disciplinary sanction.
92. The Tribunal accepted the submission for the PCC that the following features of Ms Noble's conduct added to its gravity:
- Personal gain and conflict of interest: Ms Noble obtained money for herself so she could go and visit her son. Although the money was offered to her by [X], this was because she had told [X] about her personal problems at work and with her son. Ms Noble created the situation in which she had a conflict of interest.
 - Breach of trust: Ms Noble breached [X]'s trust both by accepting the offer of \$1000 and in failing to make arrangements to repay her. Ms Noble told [X] she would repay her if she could, although [X] did not necessarily believe that. Ms Noble said she assumed it would be taken out of her final pay at Te Kōtuku, but she did not tell anyone at Te Kōtuku about this and/or request this repayment be made. It was [X] who brought it to Te Kōtuku's attention.
 - Vulnerability of [X]: as a social work client of Te Kōtuku, [X] was inherently vulnerable. She was also actually vulnerable. Ms Harris considered that [X]'s experiences meant she may be able to relate to what Ms Noble might have told

⁷⁵ An example being that the maximum fine that can be imposed by the HPDT is \$30,000 whereas the Tribunal here may impose a maximum fine of \$10,000.

her, and said that although she was a good saver, [X] was clearly in a tough financial position. As [X]'s social worker, Ms Noble would have been aware of this.

- Impact on [X]: As Ms Noble did not pay back the money to [X], [X] was without the \$1000 she provided Ms Noble until she spoke with Ms Harris and Te Kōtuku arranged repayment. As discussed, the evidence was that [X] was not someone who had money to spare.
- Limited acceptance of responsibility: Ms Noble admitted taking the money [X] offered to her, during an employment process and to the PCC. However, she did not tell anyone about this at the time she was given the money. As above, the offending only came to the light when [X] made a disclosure to another social worker (Ms Harris) who worked at Te Kōtuku. Nor did [X] make any arrangements to repay [X] the money. She assumed it would be taken from her pay, but she did not take any steps to make sure that occurred. It was apparent from the transcript that Ms Noble showed little remorse or insight in her interview with the PCC, and she did not attend the hearing.

93. The PCC did not suggest there were any mitigating features, and the Tribunal did not consider there were any.

94. The Tribunal took into account the aggravating factors and it also assessed the sentencing principles, the previous case in this Tribunal (which the Tribunal considered involved conduct more serious than the conduct reviewed in this case) and (to a lesser extent) in the nursing profession as referred to above, as well as the seriousness of the established conduct. The Tribunal's focus was on the protection of the public and on maintaining professional standards in the context of the disciplinary regime under the Social Workers Registration Act 2003.

Penalty - findings

95. The Tribunal was statutorily required first to consider suspension or the imposition of conditions on the person's registration or practising certificate before it decided whether to make an order cancelling the practitioner's registration⁷⁶. It did so.

⁷⁶ Section 83(2), SWR Act

96. 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. The Tribunal must balance protection of the public and the maintenance of professional standards with the need to express its disapproval about the conduct in question and deter the social worker and other social workers from engaging in similar conduct.
97. As was said by the Privy Council in *Dad v General Dental Council*⁷⁷ 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.
98. The Tribunal 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 concluded that a penalty short of cancellation of registration would meet the purposes of the imposition of a disciplinary penalty and would be a proportionate response.
99. The Tribunal considered that the public requires protection from Ms Noble until it can be assured that she understands her professional and ethical obligations. There is also a need to maintain public confidence in the profession. A strong message needs to be sent to Ms Noble and other social workers that engaging in behaviour of the nature the Tribunal has reviewed is unacceptable in the profession and indicates that a social worker may be unfit to practise. The conduct was a significant departure from acceptable professional standards and eroded the mana of the social work profession.
100. The Tribunal therefore concluded that in all the circumstances, the proportionate penalty overall and the least restrictive penalty that could reasonably be imposed to fulfil the purposes of the Act was as follows:
- a. A censure to denote the seriousness of the breaches of standards, to mark the Tribunal's disapproval of the conduct it has reviewed in this case, and for standards maintenance. The public and members of the social work profession may learn

⁷⁷ Referred to in *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02, 8 October 2002, Randerson J) at [31]

from reading this decision that the practitioner was censured and further penalised for what was regarded as a serious falling short of professional standards.

- b. For the purposes of protecting the public, an order suspending Ms Noble's registration for a period of six months.
 - c. In addition, Ms Noble is ordered to attend and complete a professional development programme (at her own expense) on the Code of Conduct and ethical practice, as approved by the Board. Any such programme must have an emphasis on professional boundaries. The Tribunal's view is that unless and until such a course has been completed, there will remain a question about whether Ms Noble is a fit and proper person to practise as a social worker and there is a risk of reoffending of a similar nature. The Board, as the registration authority, will be well placed to assess whether any conditions should be imposed should Ms Noble seek to be issued with a practising certificate should she apply for one following her period of suspension.
 - d. Ms Noble to pay 35% of the costs and expenses of the PCC in respect of its investigation and prosecution and she is to pay 50% of the costs and expenses incidental to the Tribunal's hearing.
101. The Tribunal also considered whether the imposition of a fine was appropriate and decided a fine would not be imposed. It considered that having a censure on Ms Noble's disciplinary record would have a sufficient deterrent (and punitive effect) effect, when combined with the period of suspension of registration. In addition, the Tribunal took account that Ms Noble will bear the burden of costs to be paid in this proceeding (as discussed below) and the costs of the professional development imposed.
102. Ms Noble did not seek name suppression. In itself that will have some penal consequences for her and any adverse publicity that that attracts. This was factored into the Tribunal's consideration of the penalties.

Costs

103. The PCC sought an order of costs. The general principles which need to be taken into account when considering costs orders⁷⁸ are well settled and have been referred to in previous decisions of the Tribunal.

⁷⁸*Vatsyayann v PCC* [2012] NZHC 1138.

104. In essence the issue for the Tribunal is determining what proportion of the total costs should be borne by the social work profession as a whole and what proportion should be borne by the practitioner who has been responsible for those costs being incurred in the first place.
105. The general principles include 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 hearing⁷⁹.
 - Costs are not to punish⁸⁰.
 - A social worker's means, if known, are to be taken into account⁸¹.
 - A social worker has a right to defend himself or herself and should not be deterred by the risk of a costs order⁸²; 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 downwards⁸³.
106. The normal approach for the Tribunal based on the authorities⁸⁴ is to start with a 50% contribution. Other factors may be taken into account to reduce or mitigate that proportion, or to increase that proportion. The balance of the investigation, prosecution and the hearing after the order for costs must be met by Ms Noble's colleagues (other members of the social work profession), through the Social Workers Registration Board.
107. The PCC indicated that the legal costs and expenses incurred for its investigation and prosecution of the Charge totalled \$28,507.85 (excluding GST). In addition, the PCC's own costs (members' fees and disbursements) totalled \$11,508.89. The costs for the Tribunal were estimated to be \$17,552.00 (excluding GST) which reflects that the costs associated with a public hearing are not insubstantial.

⁷⁹ *G v New Zealand Psychologists Board* *gendall J*, 5 April 2004, HC Wellington, CIV-2003-485-217; *Vasan v Medical Council of New Zealand* 18 December 1991, AP43/91 at page 15.

⁸⁰ *Gurusinghe v Medical Council of New Zealand* [1989] 1 NZLR 139 at 195.

⁸¹ *Kaye v Auckland District Law Society* [1988] 1 NZLR 151.

⁸² *Vasan* above fn. 77 and *Gurusinghe* above fn. 78.

⁸³ *Cooray v Preliminary Proceedings Committee* Unreported, High Court Wellington Registry, AP/23/94, 14 September 1995, Doogue J, at page 9.

⁸⁴ *Cooray v Preliminary Proceedings* above fn. 83.

108. When the Tribunal gave an oral indication of the penalty orders it intended to make under section 83 of the Act (at the conclusion of the hearing), the Tribunal directed the Hearing Officer to give Ms Noble the opportunity to make submissions and provide any evidence of her current financial position before the Tribunal made costs orders. Ms Noble did not respond to this invitation and no submissions or evidence of any sort (for example, a declaration of financial means) was received. Because her means were not known, they could not be taken into account.
109. The Tribunal proceeded on the basis of the figures indicated by Counsel for the PCC and by the Hearing Officer and accepted that the total reasonable costs of the investigation, the prosecution and the hearing were in the vicinity of \$57,568.00.
110. All matters considered, the Tribunal was of the view that Ms Noble should be ordered to pay a contribution toward the costs that have been incurred by the PCC and the Tribunal. The social work profession should not be expected to meet all the costs of the disciplinary process which has been initiated because of Ms Noble's own actions and increased because of her failure to engage with the Tribunal's process.
111. The Tribunal considered that Ms Noble should be ordered to pay a contribution of 35% of the PCC's total reasonable costs and expenses of and incidental to its investigation and prosecution, being payment of the sum of \$14,005.00. This order reflects a deduction from the starting point to allow for any saving from Ms Noble's participation and cooperation with the PCC's investigation.
112. Further, there will be an order that Ms Noble is to pay a 50% contribution towards the costs and expenses of and incidental to the Tribunal hearing, which she did not attend, being payment of the sum of \$8,776.00.
113. This means the orders of the Tribunal are that Ms Noble is to pay \$22,781.00 for costs.
114. It is noted that section 87 of the Act provides that all costs and expenses ordered to be paid under section 83(1) are recoverable by the Board as a debt due to the Board. If Ms Noble wishes to enter into a payment arrangement in relation to the costs and expenses she is being ordered to pay, then it will be for her to take that up with the Board.

Non-publication order

115. The Tribunal is satisfied that it is desirable to make permanent the interim order that has been in place in respect of the name of the client involved, Ms [X] and her

identifying details. Having regard to her privacy interests there is no public interest in her name and any identifying features being published in connection with these proceedings. Accordingly, as was announced orally at the commencement of the hearing there will be a permanent order to that effect pursuant to section 79(2)(d) of the Act. The Tribunal directs that [X] is to be referred to as “X” in the published version of this decision.

116. Ms Noble did not seek an order prohibiting publication of her name. It is in the public interest and therefore desirable that her name can be published in connection with these disciplinary proceedings.

Result and Orders

117. The Charge against Ms Noble is made out under section 82(1)(a) of the SWR Act. Ms Noble’s conduct was professional misconduct.
118. Ms Noble is censured (section 83(1)(b)).
119. Ms Noble’s registration as a social worker is suspended for six months (section 83(1)(a)(i)).
120. Ms Noble is ordered to undergo a professional development programme on the Code of Conduct and ethical practice in the social work profession, at her own expense. Any such programme must be approved by the Board and must have an emphasis on professional boundaries (section 83(1)(d)).
121. Ms Noble is to pay \$14,005.00 by way of a contribution towards the total costs and expenses of and incidental to the PCC inquiry and the prosecution of the Charge (section 83(1)(e) (ii) and (iii))
122. Ms Noble is to pay \$8,776.00 by way of a contribution towards the total costs and expenses of and incidental to the Tribunal’s hearing (section 83(1)(e)(iv)).
123. There is to be a permanent order for non-publication of the name and identifying features of the client involved ([X]) pursuant to section 79((2) (d)). [X] is to be referred to in the published version of this decision as “X”.

124. 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 the Board's professional publication to members of the social work profession.

DATED at Wellington this 21st day of May 2021.



Jo Hughson
Chairperson
Social Workers Complaints and Disciplinary Tribunal