

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF **RSW15/D2/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 **MRS FIONA MARY PEARCE** of Christchurch,
provisionally registered social worker
Practitioner

HEARING held by audio visual link on Thursday, 6 May 2021

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

Ms G J Fraser (Hearing Officer)

APPEARANCES Ms E Mok for the Professional Conduct Committee
Ms Pearce in person (support person – Rev. Kirsten McDonald)

Introduction

1. Mrs Pearce is a provisionally registered social worker who registered with the Social Workers Registration Board (the Board) on 2 December 2016.¹ At the time of the hearing Mrs Pearce did not hold a current annual practising certificate and was not working.
2. Between 2012 and 2019 Mrs Pearce worked at the Salvation Army Addington Supportive Accommodation in Christchurch (Centre). The Centre provides short-term accommodation for men, including former prisoners and temporarily displaced persons (its clients). Mrs Pearce told the Tribunal that at the relevant times in 2018, the Centre housed up to 70 men, many of whom had mental health issues and/or “nowhere to go”.² Initially Mrs Pearce was employed as a support worker at the Centre. After she gained her social work qualification, Mrs Pearce moved to the role of case worker (shift lead). In this role, Mrs Pearce worked in a dual capacity as both a case worker and shift lead and was the most senior person in charge and leading the relevant shift.
3. As part of her role, Mrs Pearce was responsible for providing medication to clients residing at the Centre, and she was required to demonstrate competence in providing medication. She was trained to dispense medication (as prescribed by a qualified health care professional) to the Centre’s clients. The Centre required staff to undertake and regularly renew their internal medication competency, generally annually.³
4. The Professional Conduct Committee (PCC) charged⁴ that:
...
(c) In or around March 2018, Mrs Pearce failed to follow proper processes with respect to a client’s medication (Client A), in that she:
 - (i) Personally purchased melatonin supplements and provided these to Client A without prior medical advice or direction; and/or*
 - (ii) Initially failed to store the supplements at work, instead bringing the supplements from home and supplying these to Client A herself; and/or*

¹ Agreed Summary of Facts (ASF) at [1] and public register entry, Social Workers Registration Board.

² Information provided by Mrs Pearce orally at the hearing on 6 May 2021.

³ ASF at [4].

⁴ Amended Notice of Disciplinary Charge dated 22 March 2021 signed by Dr Amanda Smith, Presiding Member on behalf of the PCC. The charge as it was brought originally was dated 11 December 2020.

(iii) *Failed to properly document and/or record that she was providing Client A with melatonin supplements, and/or the decision-making process around this:*

(d) *In or around December 2018, Mrs Pearce failed to follow proper processes with respect to a client's medication (Client B), in that she:*

(i) *Failed to check Client B's medication chart to determine the correct dose of the controlled drug, Sevredol, to be provided, and then provided excess medication to Client B; and/or*

(ii) *Agreed with another staff member's decision to alter Client B's medication charts to falsely record that the drug had been provided at an earlier time and date; and/or*

(iii) *Failed to take proper follow-up action after recognising that excess medication had been administered to Client B, in particular by not notifying the on-call staff member of the incident; and/or*

(iv) *Failed to properly document and/or record the incident; and/or*

(v) *Improperly pressured Client B not to disclose the error*

5. This conduct was alleged to amount to professional misconduct pursuant to section 82(1)(a) of the Social Workers Registration Act 2003 (the SWR Act/the Act) in that Mrs Pearce breached any or all of Principles 1, 4, 5, 6, 9 of the Code of Conduct issued by the Board pursuant to section 105 of the Act, and in doing so, she engaged in conduct that has brought, or is likely to bring, discredit to the social work profession. Alternatively, it was alleged the conduct was unbecoming of a social worker and reflects adversely on Mrs Pearce's fitness to practise pursuant to section 82(1)(b) of the Act.
6. Counsel for the PCC acknowledged that the provision of medication is not one of the core competencies required of social workers⁵ and nor is this expressly referred to in the General Scope of Practice for social workers issued by the Board.⁶ The PCC submitted that Mrs Pearce's conduct occurred when she was acting in a professional capacity, in a role that involved her providing services to clients residing at the Centre.⁷ She was also working in the role of a case worker (shift lead) which was a role she commenced after obtaining her social work qualification. The Tribunal accepted the submission for the PCC that as such, Mrs Pearce was required to comply with the Code

⁵ The SWRB's Ten Core Competence Standards, Hearing Bundle, pages 59-60.

⁶ Issued in accordance with section 5A of the SWR Act.

⁷ Section 4 of the SWR Act defines social worker services as a service provided for the purpose of assessing, supporting, improving or protecting the wellbeing of individuals, families, groups, or communities.

of Conduct when carrying out her role at the Centre, including when providing clients with medication. Further, as discussed below, the particulars of the Charge concern conduct that was not tied to Mrs Pearce's competence in providing medication to clients. Rather, the conduct related to her failures to follow applicable processes, her decision-making, and her conduct with respect to clients at the Centre. In that regard the Charge raised issues about the adequacy of Mrs Pearce's responses during the two incidents, misjudgements and inappropriate reporting (of medication matters).

Hearing

7. The Charge was heard by audio visual link (AVL). The PCC was represented by Counsel. Mrs Pearce attended the hearing supported by Reverend Kirsten McDonald. Mrs Pearce had signed an Agreed Summary of Facts on 19 March 2021. She also filed documentation relevant to her current financial situation, and a letter from her counsellor written in February 2020.
8. Prior to the hearing the Chairperson requested Counsel for the PCC to produce to the Tribunal the relevant Medicines Policy from the Salvation Army Centre that was in effect over the period when Mrs Pearce worked at the Centre. Despite that the Charge alleged failures to follow proper processes with respect to medication, documents evidencing what those proper processes were, had not been produced. Under the cover of a Memorandum of Counsel⁸ the day before the hearing, the relevant policies were provided, with the consent of Mrs Pearce for them to be admitted by consent.⁹ The Salvation Army Supportive Accommodation Services Policy Manual – Medication issued in September 2006 applied at the time of the incident in March 2018. The Salvation Army Addiction, Supportive Accommodation & Reintegration Services (ASARS) Policy – Medication Management issued in September 2018 applied in relation to the second incident. Counsel advised that she had confirmed with the Salvation Army that apart

⁸ Memorandum of Counsel for the PCC dated 5 May 2021

⁹ Above fn 2. Tab 1 The Salvation Army Supportive Accommodation Supportive Accommodation Services Policy Manual (Issue date September 2006) - Medication and Tab 2 The Salvation Army Addiction, Supportive Accommodation & Reintegration Services (ASARS) Policy – Medication Management (September 2018).

from the two versions of the relevant Policy produced these were no other versions of the Policy between 2006 and when the 2018 version of the Policy came into force¹⁰.

Legal Principles

Onus and standard of proof

9. The onus of proof of the Charge rested on the PCC.
10. As to the standard of proof, the appropriate standard was 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 standard¹¹.

Purposes of disciplinary proceedings

11. The primary purpose of the SWR Act is to provide mechanisms for the protection of the safety of member of the public and the maintenance of professional standards by ensuring that social workers are competent and accountable for the way in which they practise.¹² A further purpose is to “enhance the professionalism of social workers”.¹³ The disciplinary regime in Part 4 of the Act is one of the mechanisms designed to achieve these purposes.
12. It is well established that the purposes of professional disciplinary proceedings are 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 practise, and to enable the profession, as a body, to ensure that the conduct of its members conforms to the standards generally expected of them.¹⁴

¹⁰ Counsel advised that the versions of the Policy produced to the Tribunal are not current and have since been superseded by another policy implemented in 2020.

¹¹ *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.

¹² SWR Act, section 3(a).

¹³ SWR Act, section 3(d).

¹⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 at 724.

Grounds for discipline under the SWR Act

13. Section 82 sets out the grounds on which the Tribunal may make an order under section 83. Two of those grounds are where the Tribunal is satisfied the social worker has been guilty of professional misconduct (section 82(1)(a)) or 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)).

Professional misconduct

14. Section 82(2) provides, relevantly, that a social worker is guilty of professional misconduct if he or she 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)).¹⁵
15. The test for whether a social worker's act or omission has brought or is likely to bring discredit to the profession is whether reasonable members of the public, informed and with the knowledge of the facts, could reasonably conclude that the reputation of the social work profession was lowered by the practitioner's conduct if members of the profession were to condone such conduct.¹⁶
16. 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 accepted or acceptable professional standards).
 - b. The second step requires the Tribunal to be satisfied that the social worker's acts or omissions require disciplinary sanction for the purposes of protecting the public and/or enhancing the professionalism of social workers. This step is commonly referred to as the "threshold".
17. As to the threshold step the Court of Appeal in *F v Medical Practitioners Disciplinary Tribunal*¹⁷ expressed the issue being that in cases of both professional misconduct and

¹⁵ Further, a social worker is guilty of professional misconduct if while practising as a social worker he or she claims or holds himself or herself out to be registered while not holding a current practising certificate; or fails to report to the Board as required by section 51(1A) of the Act.

¹⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]. This test has been adopted and applied by the Tribunal in previous decisions on charges of professional misconduct.

¹⁷ [2005] 3 NZLR 774 (CA)

‘conduct unbecoming’ “it will be necessary to decide if there has been a departure from acceptable standards and then to decide whether the departure is significant enough to warrant sanction.”¹⁸ . The Court endorsed the earlier statement of Elias J (as she was then) in *B v Medical Council* ¹⁹ that “the threshold is inevitably one of degree”. In that decision Elias J held that the relevant conduct must be measured against the standards of “competent, ethical and responsible practitioners”. This Tribunal has affirmed these matters in previous cases.

18. 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.²⁰ Personal factors may be given full consideration at the penalty stage.

‘Conduct unbecoming’

19. 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’ for the purposes of section 82(1)(b):
 - 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 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.
20. As to the ‘reflects adversely on fitness to practise’ rider, 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

¹⁸ Above fn. 14 at [80].

¹⁹ [2005] 2 NZLR 810.

²⁰ *Cole v Professional Conduct Committee of the Nursing Council* [2017] NZHC 1178, at [126]-[130].

work. Not every divergence from recognised standards will reflect adversely on a social worker's fitness to practise. It is a matter of degree.²¹

21. 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).

Relevant standards and the Code of Conduct

22. Guidance as to the relevant standards that apply to the conduct of social workers can be found in 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.²² The Code is a guide to the minimum standards expected of social workers and extends beyond professional practice to personal conduct and integrity.²³ The Code 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. In short, the Code is a helpful indicator of proper practice and ethical standards expected of social workers.
23. Relevantly:
 - a. **Principle 1 (Act with integrity and honesty)** requires social workers to act honestly and ethically in all personal and professional behaviour, comply with all legal, profession and ethical obligations and any other relevant standards, be responsible for their own actions and decisions and be reliable, dependable, and trustworthy, and not work in a situation where there is a conflict of interest (both professional and personal)²⁴
 - b. **Principle 4 (Be competent and responsible for your professional development)** requires social workers to meet relevant standards of practice, work in

²¹ 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.

²² Bundle of Documents, pages 42-75.

²³ The Preamble to the Code notes that "[because they are in positions of trust and confidence [registered social workers] must also have high standards in their personal lives".

²⁴ Code of Conduct at [1.1] - [1.4].

accordance with the law, work in a safe way, be accountable for the quality of their work, provide the client with details of the extent and nature of the services to be provided by them and their agency, maintain and improve their knowledge and skills, know and work within the limits of their own practice and seek supervision and guidance where necessary, use a recognised ethical code or framework to assist in ethical decision-making (for example, the ANZASW Code of Ethics), be responsible for, and engage in, continuing professional development, and take responsibility for their own emotional, mental and physical health and practise appropriate self-care (seeking help if their performance, practice or judgement is affected by health concerns).²⁵

- c. **Principle 5 (Protect the rights and promote the interests of clients)** requires social workers to protect the rights and promote the interests of clients including not engaging in coercion of clients. Social workers are also required to maintain personal and professional boundaries.²⁶
- d. **Principle 6 (Strive to establish and maintain the trust and confidence of clients)** requires social workers to treat clients with respect and dignity, behave in a professional manner, and never abuse a client's trust.²⁷ The guidance notes to Principle 6 expressly state that social workers *"should not give gifts to clients as they may feel obligated to give something in return or see the gift as an indicator of a personal relationship."*²⁸
- 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, to protect other people from unnecessary risk, and to avoid activities that may in any way bring the social work profession into disrepute.²⁹
- f. **Principle 10 (Keep accurate records and use technology safely and effectively)** requires social workers to keep clear and accurate records, and for those records

²⁵ Code of Conduct at [4.1]- [4.9] and [4.11]-[4.12]. Further, the Code states that a competent social worker should be able to meet the Board's ten core competence standards (available at www.swrb.govt.nz). These include demonstrating competence in applying critical thinking to inform and communicate professional judgements, competence to practice within legal and ethical boundaries of the social work profession, and representing the social work profession with integrity and professionalism.

²⁶ Code of Conduct at page 14.

²⁷ Code of Conduct at [6.1] – [6.3]

²⁸ Code of Conduct, page 18.

²⁹ Code of Conduct, page 25.

to be made contemporaneously (at the same time the events being recorded or as soon as possible afterwards and clearly attribute the records to himself or herself).³⁰ The guidance notes to Principle 10 note that maintaining and managing “*accurate and objective records*” of interactions with clients is a “*fundamental part of good social work practice*”.³¹

Code of Health and Disability Services Consumers’ Rights Regulations 1996

24. Further guidance as to the relevant professional standards that apply in a case such as this can be sought from the Code of Health and Disability Services Consumers’ Rights Regulations 1996 under the Health and Disability Commissioner Act 1994³² (the Code of Health Consumers’ Rights). This Code establishes the rights of health and disability consumers, and the obligations and duties of providers to comply with the Code.
25. The Code of Health Consumers’ Rights applies in situations where a health or disability service has been provided. However, as is recognised expressly in the Code of Conduct, the principles of that Code are equally applicable to much of the work undertaken by social workers and should be followed.³³ This is relevant particularly to a social worker’s responsibility to ensure that his or her clients understand that they have the right to make informed choices and to provide consent during the provision of social work services or treatments – as part of the overall expectation that social workers will strive to establish and maintain the trust and confidence of clients.
26. Rights 6 and 7 of the Code of Health Consumers’ Rights cover the issue of informed consent. These rights provides that every consumer has the right to be fully informed and before making a choice or giving consent, has the right to the information that a reasonable consumer, in that consumer’s circumstances, needs to make an informed choice or give informed consent. Services may only be provided if a consumer makes an informed choice and gives consent.

³⁰ Code of Conduct, page 27.

³¹ Code of Conduct, page 28.

³² Hearing Bundle, pages 61-66.

³³ Code of Conduct, page 18.

Facts

27. The Tribunal was satisfied the following facts were established on the evidence before it (which included the Agreed Facts and the relevant versions of the Salvation Army Supportive Accommodation policy about medication and medication management) and therefore, that the conduct alleged in each of the particulars of the Charge was proved³⁴:

March 2018 incident

28. A client of the Centre, Client A, had Attention Deficit Hyperactivity Disorder (ADHD), In or around March 2018, Client A disclosed to Mrs Pearce that he was using synthetic cannabis to help himself get to sleep, as he was having trouble sleeping due to his ADHD. At the relevant time, Client A was also taking prescription medication.
29. In early March 2018, Mrs Pearce asked the Centre Operations Manager, Pip Mills, whether the Centre could purchase melatonin for a client. Melatonin is typically only available with a prescription in New Zealand. Client A did not have a prescription for melatonin. Ms Mills told Mrs Pearce that melatonin could be purchased by the Centre, but that approval was needed from Centre nurses and the client's doctor before the client could be provided melatonin. In this regard the relevant medication policy³⁵ provided at [4.2] *"over the counter medications³⁶ (which may be recommended by the doctor, pharmacist, nurse or the patients themselves) may be ordered in order to be available for use as required by the patients. There must be an up-to-date list of O.T.C/s kept at the centre which is suitable for use in the centre without prescription. This list should be reviewed regularly by the nurse, doctor and pharmacist as to their continuing suitability"*.
30. Later that month, another case worker at the Centre reported an incident to management where she had observed Mrs Pearce taking a small white labelled bottle from her handbag and giving it to Client A. She observed Client A to take a pill from the bottle and swallow it with water. She saw Mrs Pearce then place the bottle back inside

³⁴ ASF signed on 19 March by Mrs Pearce and Counsel on behalf of the PCC, and Centre medication policies as discussed above.

³⁵ Policy Manual – Medication (September 2006).

³⁶ Defined in the Glossary as "medication which can be purchased directly from a retailer without a doctor's prescription"

her bag. Client medication was meant to be stored in the Centre's medication cabinet³⁷. The relevant medication policy provided at [8.4] *"over the counter medications should be kept in the medication cupboard and be included in the inventory."* Further, at [9.8] *"OTC medications are to be given only if: prescribed in the resident's medical notes or authorised by the nurse/delegated person or duty manager"*. At [9.9] the policy stated: *"as stated above, it is important to ensure there is no negative interaction between OTCs and prescribed medication, so the advice of the pharmacist should be sought by the nurse/delegated person prior to administration."*

31. Following an investigation of this incident (during which Mrs Pearce was placed on special leave), the Centre discovered that the pill bottle referred to, contained melatonin. The bottle label noted it contained 130 tablets of melatonin. There were 83 tablets left at the time the Centre's investigation was carried out.
32. Mrs Pearce attempted contacting the Centre Nurses for approval for the Centre to provide Client A with melatonin, however, they did not get back to her. Mrs Pearce then personally purchased an over-the-counter melatonin supplement at a health food store. She brought the melatonin from home and gave Client A melatonin daily for approximately two weeks. She then moved the melatonin bottle to the Centre's medication cabinet. Mrs Pearce did not document or record that she was providing Client A with melatonin, or the reasons for providing it, as per the Centre's process³⁸. The relevant medication policy provided at [3.7] that in relation to non-prescribed medications and remedies *"when there is an awareness a resident is self-administering vitamins, over the counter medications, and/or other non-prescribed items, these are to be recorded in the resident's personal medical file and brought to the attention of the doctor. The nurse/delegated person should also discuss these with the pharmacist to check for any possible interactions with the resident's prescribed medication."*
33. On 31 May 2018, the Centre advised Mrs Pearce of the outcome of its investigation. Mrs Pearce was given a final warning for serious misconduct, which was to apply for a nine-month period upon her return to work. In addition, Mrs Pearce was required to attend a "Getting Got" Department of Corrections training and to repeat a two-day Corrections training around client and staff safety. She was also required to attend

³⁷ Policy Manual (September 2006)- Medication at [1.9] and [1.10].

³⁸ Above fn. 36 at 3. Medication Records, pages 3 and 4.

regular external supervision on a fortnightly basis for three months (with particular emphasis on dealing with boundary issues and difficult clients), to undergo internal supervision with the Centre Manager and Centre Director, and to renew her internal medication competency. Mrs Pearce subsequently completed these requirements, including renewing her internal medication competency in June 2018. Mrs Pearce was also to complete external medication training, but the employer was not able to find an appropriate course that is available to social workers.

December 2018 incident

34. Another client at the Centre, Client B, had been in and out of hospital regularly, and had returned from hospital to the Centre on 6 December 2018 due to physical health issues. Mrs Pearce had picked up Client B from the hospital that day and was thus aware of his health issues.
35. Client B was prescribed Sevredol, a restricted pain medication and a controlled drug. Client B was permitted a prescribed number of doses of Sevredol over a 24-hour period at two-to-three-hour intervals, on request.
36. The Centre's policy for dispensing restricted medication and controlled drugs requires two staff members to be present when the medication is provided to a client. Both staff members are required to sign off that the medication has been correctly given to the client.³⁹
37. On or about 7 December 2018, Mrs Pearce was working as a shift lead on the afternoon shift at the Centre. She was the most senior member working that shift. The afternoon shift was about to finish, with changeover scheduled to occur at around 11.45pm. Changeover includes a handover of information from one shift to another.
38. At about 11.45pm, a short time before the changeover in shift, Mrs Pearce and another staff member (an overseas registered nurse, working as a support worker (E)) were providing Sevredol to Client B. E was going through the process to give the medication to Client B.
39. E got the Sevredol from the cabinet and handed it to Mrs Pearce. Without first checking Client B's medication chart to determine the correct dose of the drug to be

³⁹ ASARS Policy – Medication Management (September 2018).

administered⁴⁰, Mrs Pearce provided a dose of Sevredol to Client B. E noted the date and time on the medication chart when the drug had been provided to Client B.

40. After Mrs Pearce gave Client B the medication, Client B took the medication. At this stage, Mrs Pearce realised that Client B had already received his maximum dose of Sevredol in that 24-hour period, and that she and E had provided excess medication to Client B. Mrs Pearce commented to both E and Client B that she could not lose her job as a result of the error. Client B was asked to leave the room while Mrs Pearce and E decided what to do.
41. E suggested amending the medication chart by 15 minutes to record that Client B had been given his medication past midnight, in order to make it look as if he had been given medication in the next 24-hour-period, which Mrs Pearce agreed to. E amended the time and date on the chart. Both Mrs Pearce and E signed off the new date and time on the medication chart with their initials.
42. Mrs Pearce did not notify the on-call staff member (a social worker) of the error in providing Client B with excess medication, as per process⁴¹. The on-call staff member had access to the contact details for an enrolled nurse and the Centre's Operations Manager if required (for example, should any complex medical questions arise).
43. When the shift changed over, Mrs Pearce informed the staff starting the nightshift that Client B had already had his medication, that he received excess medication, and that he did not need any more medication until 4am.
44. Mrs Pearce did not make any proper record of the incident. In particular, she did not make any notes in SAMIS (the Salvation Army's information system) or submit an adverse event report about the incident.⁴²
45. On or about 8 December 2018, Mrs Pearce spoke to Client B and reiterated that she could lose her job as a result of the incident. She asked Client B that if another staff member at the Centre, L, asked about the incident, Client B should tell L that he had taken his medication after midnight. Client B disclosed the incident to other staff members.

⁴⁰ Above fn. 40, page 5 Administering/Supervising/Taking Medication.

⁴¹ Above fn. 40, pages 19 and 20 regarding errors and incident reporting process.

⁴² Above fn.42.

46. On or about 12 December 2018, Mrs Pearce approached the Centre Manager to discuss the incident. On 24 December 2018, Mrs Pearce was suspended for two weeks while the Centre carried out an investigation. On 7 March 2019, Mrs Pearce's employment with the Salvation Army was terminated.
47. On 29 April 2019, Glenn Dodson, the Director of the Centre, submitted a notification of concern to the Board regarding Mrs Pearce's conduct in the March and December 2018 incidents. A PCC was then convened to consider these matters.

PCC Investigation

48. Mrs Pearce was not interviewed by the PCC until 20 August 2020. She made the following statements regarding her conduct:
 - a. In respect of the March 2018 incident, Mrs Pearce stated:
 - i. She had purchased and provided an over-the-counter herbal supplement (melatonin supplement) to a client, and that this was not the right process nor was it transparent, as she did not make any notes of what she was doing.
 - ii. In explanation, she said that she had personal experience of family members with ADHD and did not want the client to continue to use synthetic cannabis to assist with sleep. She said that she felt that her requests to nurses for melatonin to be purchased were not followed up and she felt frustrated.
 - iii. She put the melatonin in a container and gave one tablet to the client each night. She did not know whether she gave the client 47 tablets (based on the quantity missing from the bottle of 130 tablets).
 - iv. She accepted that her conduct in this regard was unprofessional and a breach of the Code of Conduct.
 - v. She said she did not realise at the time that her mental health had been deteriorating following a client threat incident. She said that she was subsequently diagnosed with anxiety and was undertaking regular counselling.
 - vi. Following the incident, she was reluctant to provide medication to clients at the Centre and avoided doing it unless she had to.
 - b. In respect of the December 2018 incident, Mrs Pearce said:
 - i. She accepted that she had dispensed medication to Client B incorrectly.

- ii. She denied knowing that the time had been changed in the record sheet and says that she panicked and had a breakdown when she realised the mistake in dispensing medication.
- iii. She did not think that Client B would experience any adverse effects from the overdose due to his build but acknowledged that she did not follow the correct procedure to advise the on-call staff member and file an adverse event report.
- iv. She accepted that she should have called the on-call staff member, and that it was the Centre's procedure to do so.
- v. She told the next shift that Client B had already had sufficient medication before his next dose, and that he should not need more medication until 4am. She said that the handover was rushed because she was late to get there.

The Charge -discussion

49. At the hearing, the Tribunal gave an oral indication of its finding that the established conduct amounted to professional misconduct. The reasons for this finding follow.
50. It was submitted for the PCC that:
- a. Mrs Pearce's conduct in relation to both incidents in 2018 was in breach of her obligations under the Code of Conduct and requires a disciplinary response for the purposes of protecting members of the public and to ensure the maintenance of proper professional standards.
 - b. Mrs Pearce's conduct breached the Code of Conduct in the following respects:
 - i. Principle 1: by failing to act honestly or ethically by engaging in the conduct charged. In that regard she provided melatonin supplements to a client without disclosing what she was doing to her employer at the relevant time, and nor did she obtain appropriate sign-off from the client's doctor before he was provided the supplements (thereby potentially risking the client's health being adversely affected). This was the antithesis of ethical behaviour. By not taking follow-up action after recognising the medication administration error in December 2018, Mrs Pearce also potentially placed the client's health at risk (although it was accepted that the risk was

mitigated by Mrs Pearce's actions in having informed handover staff of the error).

- ii. Principle 4: By failing to comply with the applicable Centre processes around the provision of client medication, Mrs Pearce failed to work in a safe way, which potentially placed the two clients at risk. By failing to take appropriate follow-up action with respect to the December 2018 incident, and attempting to conceal the error, Mrs Pearce also did not take accountability for her actions at the time (although it was acknowledged that subsequently Mrs Pearce admitted her conduct during the investigations into the incidents).
- iii. Principle 5: Mrs Pearce's conduct in placing pressure on Client B not to disclose the medication error because her job would be at risk breached principle 5.6. Mrs Pearce prioritised her own personal interests in keeping her job and disregarded the client's interests. Further, Mrs Pearce's actions in personally purchasing melatonin supplements and bringing them from home to provide to Client A also involved a failure to maintain appropriate professional boundaries. Based on Mrs Pearce's explanation for her conduct on that occasion, it is possible to infer that Mrs Pearce allowed her personal experience of family members with ADHD and frustration with the lack of follow-up from the Centre's nurses to compromise her professional judgement.
- iv. Principle 6: By failing to follow proper processes with respect to the two clients' medication, and by pressuring Client B not to tell another staff member about the administration error, Mrs Pearce breached principle 6.
- v. Principle 9: Mrs Pearce engaged in unprofessional behaviour during both incidents. She ought to have followed the applicable Centre processes for client medication, which she was aware of, having received training in providing medication to clients. She was informed by her Manager of the need to obtain sign-off from a health practitioner before Client A could be given melatonin, and she also completed additional training in administering medication after the first incident involving Client A and

before the second incident involving Client B.⁴³ By failing to follow proper processes Mrs Pearce placed both clients (who were already vulnerable given their personal circumstances and existing health issues) at unnecessary risk. Providing a person medication that has not been prescribed for them carries an obvious potential risk to that person's health, as does providing excess medication of a controlled drug. Further, Mrs Pearce's actions in agreeing to alter the medical chart and improperly pressuring Client B were "highly unprofessional" and risked bringing the social work profession into disrepute⁴⁴.

- vi. Principle 10: Mrs Pearce failed to document properly the relevant client interactions on both occasions. This had potentially serious implications for both clients. For example, there was no record of Client A taking melatonin, and so no consideration could be given to the potential effect of him taking melatonin (including in combination with the prescription medicine the client was already taking). As for Client B, not only did Mrs Pearce fail to document that excess medication had been provided, but she also agreed with a decision to falsify the records (contrary to principle 10.3). While the handover shift staff were informed of the error, the failure to document the incident potentially risked Client B's safety and continuity of care.
- c. As to the threshold, Mrs Pearce's conduct requires a disciplinary response having regard to the following factors:
 - i. Her conduct placed two clients' health and wellbeing at risk on two separate occasions. Both incidents involved multiple breaches of the Code of Conduct and cannot be characterised as one-off mistakes. For the first incident, Mrs Pearce not only made the decision to purchase melatonin for Client A without this having been prescribed, but she also brought the melatonin from home for approximately two weeks and provided it to Client A. As for the second incident, this not only involved a lack of care on Mrs Pearce's

⁴³ ASF at [11].

⁴⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28] for the test for when a practitioner's conduct brings, or is likely to bring, discredit to the relevant profession (adopted by this Tribunal in previous cases).

part in not checking the medication chart for the correct dose (resulting in Client B being provided excess medication in a 24-hour period), but also involved her failing to take proper follow-up action after recognising the error, failing to document the incident, and taking active steps to conceal the error.

- ii. Given the needs of the clients to whom the Centre caters, both clients were vulnerable, and Client B had existing health conditions which Mrs Pearce was aware of. Her conduct on both occasions involved her displaying a lack of proper regard for her clients' interests and wellbeing.
 - iii. The second incident occurred after Mrs Pearce had been required to undertake various rehabilitative steps by her employer, including repeating her medication competency and undergoing supervision. The fact that Mrs Pearce failed to follow the applicable policies on a second occasion reflects adversely on her fitness to practise as a social worker.
 - iv. It can be inferred from Mrs Pearce's accepted course of conduct during the second incident that she was acting dishonestly by agreeing to alter the medication chart and by placing pressure on Client B, to conceal the medication error and to ensure she kept her job. Mrs Pearce's conduct during the first incident also lacked transparency.
- d. As such, the conduct in relation to both Clients A and B was professional misconduct.
51. The Tribunal accepted those submissions from the PCC.
 52. Mrs Pearce admitted her conduct and she did not attempt to persuade the Tribunal that she was not liable for the disciplinary offence of professional misconduct. Mrs Pearce made some points orally about the factual circumstances by way of explanation for her conduct, most of which were evident from or expressly stated in the agreed statement of facts. The Tribunal had regard to those matters when it was considering penalty.
 53. In summary, the Tribunal was satisfied that Mrs Pearce's conduct in relation to each client was a breach of multiple principles of the Code of Conduct. In the opinion of the Tribunal those breaches were a significant departure from the conduct that the public and the social work profession would expect of a reasonable social worker, when viewed objectively. Further, the Tribunal formed the view that reasonable members of

the public, informed and with the knowledge of all the factual circumstances, would conclude that the reputation of the social work profession was lowered by Mrs Pearce's conduct and therefore that the conduct brought or would likely bring the profession into disrepute. The Tribunal was satisfied that the conduct on both occasions was sufficiently serious to warrant discipline, for the reasons submitted by the PCC.

54. It was for those reasons the Tribunal was satisfied the Charge was established. Mrs Pearce's actions both in March 2018 and December 2018 amounted to professional misconduct. 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

55. Having made an adverse finding of professional misconduct, the Tribunal was able to make penalty orders as specified in section 83(1) of the SWR Act.

Submissions for the PCC

56. Counsel for the PCC referred to the need for any penalty to be imposed to fulfil the functions connected with the purposes of the Act. That is, ensuring the protection of the public and enhancing the professionalism of social workers. The purpose of disciplinary proceedings is not to punish a practitioner, although there is a punitive element as the orders imposed may be seen as punitive from the practitioner's perspective.⁴⁵
57. The Tribunal observed that the most serious penalties of cancellation and suspension of registration are reserved for the most serious cases. Counsel submitted that Mrs Pearce's conduct was "relatively serious" and in terms of penalty, a lengthy period of suspension of registration was the appropriate starting point to reflect the nature and gravity of Mrs Pearce's conduct.⁴⁶
58. Counsel referred to the relevant penalty principles identified by His Honour Collins J in *Roberts v Professional Conduct Committee* [2012] NZHC 3354, at [44]-[55], which this Tribunal has adopted as relevant to the sentencing exercise here:
- a. What penalty most appropriately protects the public.

⁴⁵ *Z v CAC* [2009] 1 NZLR 1. (Supreme Court).

⁴⁶ Suspension of registration rather than suspension of practising certificate because Mrs Pearce did not currently hold a practising certificate (section 83(1)(1)(a)(i)).

- 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.
59. Counsel referred to cases from other disciplinary contexts involving health practitioners that were said may assist the Tribunal in determining the issue of penalty. Those cases involved a pharmacist⁴⁷ (where the pharmacist had dispensed incorrect medication in error to a client but where the Tribunal found that the pharmacist had not intentionally covered up the error, but rather had committed a series of misjudgements) and four registered nurses⁴⁸ who had been involved in various medication errors including administration errors. The Tribunal considered those cases and noted that in those cases the Health Practitioners Disciplinary Tribunal considered that suspension of registration was not necessary or warranted. The Tribunal had instead made orders of censure, imposed conditions on practice (including further training including in medication management and professional ethics, and supervision) and made costs orders.
60. As Counsel for the PCC identified, each individual case must ultimately turn on a consideration by the Tribunal of its own unique facts and circumstances.

⁴⁷ *Director of Proceedings v Zelcer* HPDT 877/Phar16/366D, 10 February 2017.

⁴⁸ *Director of Proceedings v Draper* HPDT 534/Nur12/227D, 30 April 2013, *PCC v Curry* HPDT 421/Nur11/189P, 8 December 2011, *PCC v Harbrow* HPDT 217/Nur08/92P, 9 April 2009, and *PCC v Jackson* HPDT 35/Nur05/20P, 12 May 2006.

61. It was submitted for the PCC that Mrs Pearce's course of conduct, particularly during the second incident, was relatively serious having regard to the following factors:
- a. Mrs Pearce failed to follow proper processes regarding client medication on two separate occasions. Her failure was repeated despite that she had received further training on providing client medication before the second incident and had been given a final warning by her employer (so she was on notice of the need to improve her practices in this area). She had also been expressly informed of the need for sign-off from a health practitioner before Client A could be provided with (scripted) melatonin. However, she proceeded to personally purchase a melatonin supplement despite knowing that this had not first been discussed with or prescribed by a health practitioner.
 - b. Mrs Pearce's conduct cannot be characterised as a one-off error. It involved an ongoing lack of professional judgement and a lack of regard for her professional responsibilities and the best interests and wellbeing of the two clients.
 - c. The conduct on the second occasion was particularly serious. It "lacked honesty and integrity".
 - d. The two clients were vulnerable. Client B had ongoing health issues and Mrs Pearce knew that. She also knew that Client A had not been prescribed melatonin and was taking other prescription medicine. Mrs Pearce's actions on both occasions had the potential to adversely affect the client's health and wellbeing, particularly during the second incident, when an excess dose of a restricted pain medication was provided to the client.
 - e. Mrs Pearce's conduct involved her displaying a lack of professional judgement, failing to maintain appropriate professional boundaries in the first incident where she personally purchased the supplements, exhibiting a lack of proper regard for the potential risk to the clients involved in her actions, engaging in poor record-keeping and decision-making and displaying a lack of integrity (particularly in relation to the second incident). Accordingly, her conduct not only raised a competence issue but raised broader conduct issues and concerns as to her fitness to practise social work.
62. As to personal factors Counsel submitted that the PCC is not aware of any aggravating factors personal to Mrs Pearce which are relevant to the issue of penalty.

63. In terms of mitigating factors, it was submitted for the PCC that these were that Mrs Pearce had no previous disciplinary history (which is to her credit), she had accepted her conduct and cooperated throughout the disciplinary process. She acknowledged that her conduct breached the Code of Conduct.⁴⁹
64. It was also noted that Mrs Pearce was experiencing mental health difficulties at the time the first incident occurred. This followed an incident involving a client threatening her while she was working at the Centre, in February 2018.⁵⁰ Mrs Pearce referred to this matter when she addressed the Tribunal orally at the hearing. Mrs Pearce explained that she had been diagnosed with anxiety following this incident and that she had since been undertaking counselling. The Tribunal accepted the submission for the PCC that this factor does not necessarily justify or excuse Mrs Pearce's conduct, but this was a factor relevant to the Tribunal's assessment of the penalty orders that should be imposed.
65. The other matter referred to by Counsel for the PCC was that Mrs Pearce had not worked as a social worker for over two years and at the time of the hearing she did not hold a current practising certificate.
66. As above, the starting point in terms of penalty was submitted to be suspension of registration as a social worker. That submission was made on the basis that a lesser starting point would not reflect the seriousness of Mrs Pearce's conduct, and her considerable departure from her professional obligations as a social worker.
67. It was submitted that if the Tribunal were satisfied that the matter could be dealt with by way of a penalty short of cancellation, having regard to Mrs Pearce's personal mitigating circumstances, then orders of censure and the imposition of conditions⁵¹, as well as an order requiring Mrs Pearce to undergo additional training or professional development in ethics (together with a costs order) would be appropriate.

⁴⁹ ASF at [27 (a)(iv)].

⁵⁰ ASF at [27(a)(v)]. Date provided by Mrs Pearce orally at the hearing.

⁵¹ The PCC submitted that the conditions that should be imposed included that Mrs Pearce should be required to provide a copy of the Tribunal's decision to any prospective or current employer (in a social work role) for a period of at least two years from the date of the Tribunal's decision; and a condition requiring Mrs Pearce to undergo appropriate supervision or mentoring from a registered social worker for at least 12 months upon her resuming a role in social work.

Mrs Pearce

68. Mrs Pearce addressed the Tribunal orally. The Tribunal was grateful for her attendance and participation at the hearing. Mrs Pearce stated that she knows that what she did was wrong and that she had breached the Code of Conduct. She expressed that she was very sorry about this.
69. Mrs Pearce told the Tribunal that she needed the disciplinary process to be over for her so she could move on with her life, which she said had been on hold for two-and-a-half-years. She stated she needed closure. Mrs Pearce was critical of the length of time the PCC had taken to investigate the matters that had been referred to the Committee by the Board. The Tribunal noted that Mr Dodson had made his notification to the Board on 29 April 2019⁵² and the PCC's Charge (as it was originally laid) was dated 11 December 2020. The Tribunal understood Mrs Pearce's concerns about the timeframe of the PCC investigation and had some sympathy for her given that she said she was dealing with mental health issues over that period, her husband was unwell with a heart condition (and had not been able to do much work) and she had not been working because of those matters. She referred to having had to survive with assistance from WINZ and food banks, as well as family support.
70. Mrs Pearce indicated that she did not intend to practise as a social worker again.

Penalty - Discussion

71. Taking all relevant factors into account the Tribunal considered that the conduct it has reviewed in this case and the circumstances of the offending are at the relatively serious end of the spectrum in terms of conduct on the part of a provisionally registered social worker that requires disciplinary sanction.
72. The Tribunal considered the aggravating features were those identified by the PCC. In summary those were:
 - a. That the conduct was repeated on a second occasion despite that Mrs Pearce had received further relevant training and a final warning after the first incident.
 - b. That the conduct on each occasion reflected professional misjudgements that had the potential to harm the health and wellbeing of the two clients involved.

⁵² ASF at [5].

- c. The dishonesty and lack of integrity displayed on the second occasion (agreeing with a colleague's suggestions to record false information as to the date and time the client had been administered an excess dose of a controlled drug; and her action in requesting the client not to disclose the matter to another staff member because she would lose her job).
 - d. The vulnerabilities of the two clients in terms of their health and personal circumstances.
 - e. The concealment of the conduct by virtue of Mrs Pearce's failure to make records of relevant events.
73. There is also the feature that Mrs Pearce's offending on both occasions only came to the light when disclosures were made by others, to the employer.
74. In terms of mitigating factors, the Tribunal considered those were the factors identified by the PCC relating to Mrs Pearce's personal circumstances. In addition, the Tribunal had regard to Mrs Pearce's expression of sorrow for her offending and acknowledgement of her misconduct, which indicated that there was a level of insight into the offending. There was also the letter from Julie Baker, Counsellor of Christchurch, dated 28 February 2020. Ms Baker confirmed she had been seeing Mrs Pearce in a professional capacity since April 2018 when Mrs Pearce self-referred to counselling. Ms Baker stated that Mrs Pearce had attended sessions regularly for the first 9 months on a fortnightly basis and since January 2019, on a monthly basis. Ms Baker's concluding statement was that she believed that Mrs Pearce has grown in her personal understanding, self-esteem, and professional integrity through the therapy she had chosen to commit to. Mrs Pearce is to be commended for her commitment to counselling and rehabilitation.

Penalty - findings

75. The Tribunal considered that this was not a case where cancellation of registration should be ordered and that the penalty objectives sought could be achieved by lesser orders. The Tribunal recognised that 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 convictions in question and deter the social worker and other social workers from engaging in similar conduct.

76. The Tribunal considered whether an order suspending Mrs Pearce's registration was appropriate reflecting the nature and gravity of the offending and to best achieve the objectives of protecting the public and maintaining the standards of the social work profession.

77. As was said by the Privy Council in *Dad v General Dental Council*⁵³ at [1543]:

Such consequences [cancellation or suspension] 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.

78. The Tribunal concluded that suspension of registration was not necessary. While ordinarily the imposition of a period of suspension may be warranted in such cases where a social worker has behaved in a way that has involved conduct of the nature reviewed here (including dishonesty), this was not considered necessary as Mrs Pearce has not been practising for over two years. Further, having seen and heard from Mrs Pearce the Tribunal was satisfied Mrs Pearce has insight into the severity and unacceptability of her conduct and that rehabilitation should be more of a focus.

79. The Tribunal formed the view that there is a likelihood that Mrs Pearce can be rehabilitated and in view of that, went on to assess what would be appropriate conditions to impose on practice and whether she should be required to undertake further training or professional development.

80. The Tribunal considered that there is a need to maintain public confidence in the profession and for the professionalism of social workers who practise in settings such as those Mrs Pearce worked in at the relevant times. More generally, a strong message needs to be sent to Mrs Pearce and other social workers that behaviour of the nature the Tribunal has reviewed is unacceptable in the profession and reflects poorly on a social worker's fitness to practise.

⁵³ Referred to in *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02, 8 October 2002, Randerson J) at [31]

81. The Tribunal concluded that the following combination of orders would achieve the objective of penalty imposition in this case:
- a. an order censuring Mrs Pearce to mark the Tribunal's disquiet about the conduct which has been reviewed.
 - b. An order that Mrs Pearce may practise as a social worker only in accordance with the following condition:
 - i. A condition requiring Mrs Pearce to provide a copy of the Tribunal's written decision to any prospective or future employer of hers (in a social work role) for a period of two years from the date of her resumption of practice; and any such prospective or future employers will confirm receipt of the decision, to the Board; and
 - c. An order requiring Mrs Pearce to undergo additional professional development in personal and professional ethics, as approved by and to the satisfaction of the Board. The cost of the professional development is to be met by Mrs Pearce.
82. The Tribunal considered that the condition is necessary to ensure that employers are aware of the Tribunal's findings. The Tribunal agreed with the PCC that they will likely be relevant to an employer's assessment of the steps and support structures that may need to be implemented in terms of Mrs Pearce's work in a social work capacity.
83. The order requiring Mrs Pearce to undergo further professional development on personal and professional ethics was considered necessary to address the broader conduct issues raised by Mrs Pearce's actions relating to her poor record-keeping, decision-making, and honesty and integrity. Such a requirement will further assist with Mrs Pearce's rehabilitation.
84. A condition requiring Mrs Pearce to undergo a period of supervision or mentoring (as was suggested by the PCC) was not considered to be necessary. That is because supervision is a mandatory requirement for all practising social workers in any event. The profession already recognises that supervision provides significant support to social workers and is one means by which the safety of members of the public is protected. The social work profession differs from many of the health professions in that regard.

Costs

85. The PCC sought an order of costs.

86. The relevant principles⁵⁴ are well established, including that:
- a. The full cost of investigating and prosecuting a social worker should not fall on the social work profession (as a whole).
 - b. Members of the profession who appear on disciplinary charges should make a proper contribution towards the costs of the investigation, prosecution, and the hearing.
 - c. Costs are not punitive.
 - d. A social worker's means, if known, are to be considered.
 - e. A social worker has a right to defend himself or herself and should not be deterred by the risk of a costs order; and
 - f. In a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards⁵⁵.
87. The PCC indicated that the costs incurred for its investigation and prosecution of the Charge totalled \$22,051.50 (\$6,284.50 – investigation and \$15,767 – prosecution) (excluding GST). The Tribunal's costs were estimated to be \$6,634.00 (excluding GST).
88. The Tribunal was cognisant of the fact that the ordering of costs should not create undue hardship.⁵⁶The Tribunal took account of Mrs Pearce's current financial circumstances. In that regard Mrs Pearce told the Tribunal that since she stopped working two-and-a-half years ago (because she had not been in a mental state where she could work), she had been doing only voluntary work for a school and a pre-school mothers' group. Her husband had been unable to work much or at all because of his own health issues. Consequently, she had been "getting further behind" with "everything" and was in financial hardship. As above, she stated that she required financial support from WINZ and had relied on food banks. In a written document Mrs Pearce filed before the hearing she provided her monthly budget and explained that she and her husband have a deficit every month. Mrs Pearce's support person confirmed that Mrs Pearce lives in modest circumstances.

⁵⁴*Vatsyayann v PCC* [2012] NZHC 1138.

⁵⁵*Cooray v Preliminary Proceedings Committee* HC Wellington AP/23/94, 14 September 1995, Doogue J.

⁵⁶*RSW Vaiangina* RSW6/SWDT/2020.

89. The Tribunal was satisfied that a costs order would cause real financial hardship to Mrs Pearce. In other cases where that has been the situation the Tribunal has made minimal costs orders. Rehabilitation was a focus when the Tribunal considered the issue of penalty, and the Tribunal would not want a significant costs order to impede Mrs Pearce's ability to return to the social work profession should she wish to do so in the future.
90. All matters considered, the Tribunal was of the view that Mrs Pearce should be ordered to pay a contribution toward the costs that have been incurred by the PCC and the Tribunal. It is important that the Tribunal ensures that orders are made fairly against those practitioners who appear before it and are found guilty, as otherwise the social work profession will bear the entire cost of the proceedings. However, the contribution is to be a contribution which has regard to Mrs Pearce's current financial circumstances.
91. Accordingly, the Tribunal determined to make an order that Mrs Pearce is to pay a contribution towards the total costs in the sum of \$2000 to be divided evenly between the PCC's costs and the Tribunal's hearing costs. That is a small (token) contribution to the actual costs incurred but it will be significant for Mrs Pearce.
92. But for Mrs Pearce's limited financial means the Tribunal would have made a reduced costs order requiring her to pay 30% of the total reasonable costs incurred by the PCC and the Tribunal which would have meant an order in the sum of \$8,605.65. A reduced order would have taken account of the extent to which Mrs Pearce cooperated in these proceedings (although noting that because of her cooperation the total costs incurred will likely have been less), including the courtesy she extended by fronting up to her professional peers at the hearing.
93. 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 Mrs Pearce wishes to enter 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

94. The Tribunal indicated at the commencement of the hearing that it was satisfied that it was desirable to make permanent the interim order that had been in place in respect of the names of Client A and Client B. Having regard to their privacy interests there is

no public interest in their names and any identifying features being published in connection with these proceedings. Accordingly, there will be a permanent order to that effect pursuant to section 79(2)(d) of the SWR Act.

95. There will also be a permanent order suppressing from publication any confidential medical information relevant to Clients A and B that forms part of the Tribunal's record in these proceedings, if any, pursuant to section 79(2)(c) of the SWR Act. That Client A had a diagnosis of ADHD may be published.
96. Mrs Pearce 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, now that she had been found guilty of professional misconduct.

Result and Orders

97. The Charge against Mrs Pearce is made out under section 82(1)(a) of the SWR Act. Mrs Pearce's conduct was professional misconduct.
98. Mrs Pearce is censured (section 83(1)(b)).
99. There is an order pursuant to section 83(1)(a)(iii) that Mrs Pearce may practise as a social worker only in accordance with the following condition:
 - i. A condition requiring Mrs Pearce to provide a copy of the Tribunal's written decision to any prospective or future employer of hers (in a social work role) for a period of not more than two years from the date of her resumption of practice; any such prospective or future employers will confirm to the Board that they have received the written decision; and
100. There is an order pursuant to section 83(1)(c) requiring Mrs Pearce to undergo additional professional development in personal and professional ethics, as approved by and to the satisfaction of the Board. The cost of the professional development is to be met by Mrs Pearce.
101. Ms Pearce is to pay \$1,000 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)) and \$1000 by way of a contribution towards the total costs and expenses of and incidental to the Tribunal's hearing (section 83(1)(e)(iv)).

102. There is to be a permanent order for non-publication of the names of Clients A and B pursuant to section 79 ((2)(d)).
103. There is to be a permanent order for non-publication of any confidential medical information relating to Clients A and B that may form part of the Tribunal's record in these proceedings pursuant to section 79(2)(c). That Client A had a diagnosis of ADHD may be published.
104. 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 22nd day of June 2021.



Jo Hughson
Chairperson
Social Workers Complaints and Disciplinary Tribunal