

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF RSW16/D1/SWDT/2021

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 **ALAZAY WAIRUA NOBLE** of Tauranga, registered
Social worker
Practitioner

HEARING by audio visual link on Monday 13 September 2021 at 9.00am

TRIBUNAL Ms C Garvey, Ms S Hunt, Mrs J Pearse, Ms S Jarvis, Ms F Wilson

IN ATTENDANCE Ms G J Fraser, Hearing Officer

Ms E Mok Counsel for the Professional Conduct Committee (PCC)

No appearance by or for the practitioner

DECISION ON LIABILITY AND PENALTY - 11 OCTOBER 2021

Introduction

1. This disciplinary hearing relates to an allegation of money dishonestly obtained by Alazay Noble in the course of her employment as a social worker. Ms Noble registered with the Social Workers Registration Board on 20 April 2018. Her registration was cancelled on 4 June 2021 by order of the Tribunal (differently constituted) in relation to an earlier disciplinary charge¹. That charge was laid following Ms Noble's conviction for theft from a former employer.
2. The events the subject of this charge occurred between March and September 2019, when Ms Noble was registered and practising as a social worker. Pursuant to section 134 of the Social Workers Registration Act 2003 (the Act) the Tribunal has jurisdiction to determine this matter. Section 134 provides:

“The cancellation or suspension of a social worker's registration or the suspension of their practising certificate does not affect their liability for any act or default occurring before the cancellation or suspension.”
3. The Professional Conduct Committee (PCC) interviewed representatives of Ms Noble's former employer, Te Runanga O Ngai Tamawhariua Incorporated², during the investigation into her theft conviction. During this interview reference was made to a separate concern that Ms Noble had obtained \$500 from a contractor by alleging an overpayment due to administrative error, where her employer had no reason for that money to be refunded. This was brought to the attention of the Board and on 3 April 2020 the Board referred the allegation to the existing PCC. On 15 April 2021 following an investigation, the PCC laid a disciplinary charge pursuant to section 72(3) of the Act.
4. The hearing proceeded by audio visual link on 13 September 2021. Ms Noble did not attend the hearing. For reasons set out in more detail below, the Tribunal was satisfied that adequate notice of the hearing and the opportunity to attend was given to Ms Noble.

¹ RSW12/D2/SWDT/2020

² This was not the employer in relation to whom Ms Noble was convicted from theft. The earlier disciplinary charge related to theft from Liquorland Mount Maunganui in the sum of \$11,513.50.

The disciplinary charge

5. The charge reads as follows:
 1. Pursuant to section 72(3) of the Act, the Professional Conduct Committee charges Alazay Wairua Noble, registered social worker with:
 - (a) professional misconduct pursuant to section 82(1)(a) of the Act, in that she engaged in conduct which breached the Code of Conduct issued by the Social Workers Registration Board pursuant to section 105 of the Act (Code) and/or which brought, or was likely to bring, discredit to the social work profession; or alternatively
 - (b) conduct unbecoming of a social worker that reflects adversely on her fitness to practise as a social worker pursuant to s 82(1)(b) of the Act.
 2. In particular:
 - (a) On or around 12 March 2019, Ms Noble dishonestly obtained \$500 from a contractor to her then employer (Te Runanga O Ngai Tamawhariua Incorporated). At this time, Ms Noble was serving an electronically-monitored sentence following a conviction for theft, and was subject to an employment risk management plan which restricted her access to funding and cash;
 - (b) The nature of Ms Noble's conduct, as set out above, reflects adversely on her fitness to practise a social worker;
 - (c) By engaging in the above conduct, Ms Noble breached any or all of Principles 1, 8 and 9 of the Code, and in doing so, she engaged in conduct that has brought, or was likely to bring, discredit to the social work profession.

The disciplinary test

6. The onus of proving the charge rests with the PCC. The burden of proof in disciplinary proceedings is the civil standard, that is, the balance of probabilities. Addressing the inquisitorial nature of disciplinary proceedings Elias CJ described the role of a professional disciplinary tribunal as follows in *Z v Dental Complaints Assessment Committee*³:

“Consistent with its purpose of public protection, the Act does not extend to those subject to its disciplinary processes all of the protections afforded to a defendant at a criminal trial. This emphasises the significant differences in the two types of proceedings. The Tribunal is engaged in an inquiry rather than a trial. It can receive evidence that would not be admissible in a court of law. It must observe the rules of natural justice, but is mandated to take an inquisitorial approach in doing so. The statutory scheme reflects the long established view that proceedings such as those before the Tribunal are not criminal in nature. A flexible application of the civil standard of proof is entirely consistent with these features of the Act, which are typical in governing statutes regulating occupational disciplinary proceedings.”

7. For the Tribunal to determine whether there has been professional misconduct requires a two-step analysis of the evidence.⁴ In this case:
 - a. The first step is to make an objective analysis of whether Ms Noble’s acts or omissions can be reasonably regarded by the Tribunal as constituting a breach of the Code of Conduct (section 82(2)(a)), or as conduct which brings discredit to the social work profession (section 82(2)(d)).
 - b. The Tribunal is then required to be satisfied that those acts or omissions require a disciplinary sanction for the purposes of protecting the safety of the public and/or enhancing the professionalism of social workers. That is, whether the threshold for discipline is met.

³ [2008] NZSC 55, [2009] 1 NZLR 1 at [115], Elias CJ

⁴ *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774

8. The Tribunal must assess the conduct against the standards of “competent, ethical and responsible practitioners.”⁵ The PCC submitted that if we found that Ms Noble dishonestly obtained money, then in doing so she breached the Code. The Code contains standards that a competent, ethical and responsible practitioner is required to meet.
9. Referring to section 82(2)(d) and the allegation of bringing discredit to the profession, the PCC submitted that Ms Noble’s conduct was contrary to the professional standards to which social workers are required to adhere. Ms Mok referred to the expectation that a social worker will behave with professionalism, honesty and integrity.
10. The meaning of discredit in the medical disciplinary context was considered in the High Court in *Collie v Nursing Council of New Zealand*⁶, where Gendall J said:

“To discredit is to bring harm to the repute or reputation of the profession. The standard must be an objective standard for the question to be asked by the Council whether reasonable members of the public, informed and with 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.”

11. We agree that to bring discredit for the purposes of section 82(2)(d) means conduct which would lower the good standing or repute of the social worker, and the social work profession.
12. As for the alternative pleading of conduct unbecoming that reflects adversely on a social worker’s fitness to practise, this also involves a two-step approach:
 - a. An objective analysis of whether Ms Noble’s acts or omissions can be reasonably regarded as constituting conduct unbecoming of a social worker.

⁵ B v Medical Council of New Zealand, HC Auckland, HC11/96, 8 July 1996 Elias J (noted as [2005] 3 NZLR 810

⁶ [2000] NZAR 74 at [28]

- b. Then, whether the acts or omissions reflect adversely on Ms Noble's fitness to practise and require sanction for the purposes of protecting the public and/or enhancing the professionalism of social workers.
13. The PCC submitted that members of the social work profession would not find Ms Noble's conduct acceptable in that it "displayed a serious departure from proper professional standards". Ms Mok submitted that the conduct does reflect adversely on Ms Noble's fitness to practise "given the need for social workers to act with honesty and integrity in their professional lives and given the position of trust and responsibility that they occupy."

Formal Proof

14. The hearing proceeded by way of formal proof. The PCC produced affidavits from the following:
 - a. Christopher Jacob, manager at Te Runanga O Ngai Tamawhariua Incorporated.
 - b. Rochelle Gardiner, registered social worker and former team leader within the health and social services team at Te Runanga O Ngai Tamawhariua Incorporated.
 - c. Sean Hayden, a boxing and martial arts coach who was contracted by Te Runanga O Ngai Tamawhariua Incorporated to deliver a martial arts programme for at-risk youth in Katikati.
 - d. David Quested, Convenor of the PCC.
15. The Tribunal also received as exhibits the transcripts of the PCC interviews with Mr Jacob, Ms Gardiner and Mr Hayden. The accuracy of these transcripts was confirmed in each of the affidavits, albeit with some clarification. The bundle of documents received by the Tribunal included a copy of the subject cheque, screenshots of text messages between Mr Hayden and Ms Noble, emails between counsel for the PCC and Ms Noble, and emails between the Hearing Officer and Ms Noble.

Particular 2(a) – “On or around 12 March 2019, Ms Noble dishonestly obtained \$500 from a contractor to her then employer ...At this time, Ms Noble was serving an electronically monitored sentence following a conviction for theft and was subject to an employment risk management plan which restricted her access to funding and cash.”

16. Ms Noble was employed part time by Te Runanga o Ngai Tamawahariua Incorporated in October 2017. The acronym TRON was used by the deponents in their affidavits, so we have adopted that from here onwards. Following her conviction for theft on 16 September 2018, TRON put in place a Risk Management Plan which was accepted by Ms Noble. A copy of this plan was exhibited to Mr Jacob’s affidavit and is dated 8 February 2019, with a review date after one year. The plan identifies areas of potential risk or concern associated with Ms Noble’s role as an Alcohol and Other Drug (AOD) clinician, and steps to minimise the perceived risk. Ms Noble was not to have access to the main office, petrol card or petty cash. The reputation of the AOD service offered by TRON was noted as at potential risk of harm, to be managed by way of Ms Noble’s adherence to the plan, maintenance of registration with the Board, transparency with TRON’s clients, and the provision of Ms Noble’s probation reports to her employer.⁷
17. Part of Ms Noble’s role at TRON was to facilitate the Boss of My Body (BOMB) programme, which Sean Hayden was contracted to provide to youth in Katikati. Mr Hayden’s evidence was that Ms Noble was his primary contact with TRON. The BOMB programme was running throughout 2019. At the time there was no formal written contract between Mr Hayden and TRON, and Mr Hayden was paid by cheque for his delivery of the programme.
18. Mr Jacob was responsible for payments made on behalf of TRON, with cheques co-signed by a member of the Board. In his affidavit he explained that he co-signed a cheque made out to Mr Hayden for the delivery of the BOMB programme in the sum of \$3,586⁸. While Mr Jacob initially thought he had given this personally to Mr Hayden and said this during his PCC interview, he said in his affidavit:

⁷ Risk Management Plan, exhibit CJ1/Bundle of Documents pages 26-33

⁸ Exhibit CJ2/Bundle of Documents page 34

“As a result of my further consideration of my recollection of this, I now believe that I handed the cheque to Ms Noble, to then hand to Mr Hayden. However I cannot be certain of this.”

19. Mr Hayden’s recollection was that the cheque was given to him by Ms Noble. He stated in his affidavit:

2.2 Ms Noble told me that the cheque included an overpayment as a result of an administrative problem at TRON and said that I would need to return \$500 in cash to her.

2.3 I went to the bank to deposit and cash the cheque. I asked for \$3,000 to be deposited into my account and for the remainder to be given to me in cash.

2.4 When I next saw Ms Noble, I handed her \$500 from the cash obtained from the bank.

20. It appears nothing was said about the \$500 cash by Mr Hayden or Ms Noble over the following months. In Mr Hayden’s interview with the PCC he describes feeling frustration with a lack of follow through by Ms Noble and difficulty in delivering the BOMB programme because of this. Eventually Mr Hayden requested a meeting with Mr Jacob. Ms Noble was no longer employed by TRON at this point.

21. On 13 September 2019 following his request for a meeting Mr Hayden met with Ms Gardiner. He described raising the matter of the \$500 he had returned to Ms Noble as follows:

“During the meeting, after discussing other matters, I asked Ms Gardiner why TRON had needed \$500 back from the cheque I was given in March. She indicated that she did not know what I was referring to, so she went and got Mr Jacob. Mr Jacob then joined the meeting. He also said he was unaware of the request for the \$500 to be given back.”⁹

⁹ Affidavit of Sean Hayden 25 June 2021, at [3.2]

22. Ms Gardiner confirms in her affidavit that a query about the \$500 was raised by Mr Hayden and that she did not know what he was referring to, so she requested Mr Jacob to join them¹⁰. Mr Jacob likewise confirms in his affidavit that he also did not know what Mr Hayden was referring to in terms of an administrative error and a payment back to TRON of \$500.¹¹

23. Mr Hayden, Mr Jacobs and Ms Gardiner all contacted Ms Noble separately following the meeting. Mr Hayden sent a text message shortly after 7.30pm on 13 September 2019 to Ms Noble. Screenshots of the text exchange between Mr Hayden and Ms Noble were annexed to Mr Hayden's affidavit. Mr Hayden's initial text message included the following:

"I had a long meeting with Chris and Rochelle this afternoon. Among other issues it appears you stole \$500 from me. I was given a cheque for BOMB for \$3580 but you demanded a return of \$500 in cash. This was fraudulent. I need you to reimburse me ASAP or I will be going to the police with a formal complaint..."¹²

24. In the messages exchanged over the following days Ms Noble expressed surprise about the allegation she had dishonestly taken \$500, and denied wrongdoing. She asserted that she did not understand what was going on and implied that she was being held responsible for something she knew nothing about. On 16 September 2019 notwithstanding her denial, Ms Noble sent a text message stating:

"Hello Sean, two men at the academy today received an envelope for you."¹³

25. Mr Hayden did not see who delivered it, but did receive an envelope containing \$500 in cash. Mr Hayden did not make a formal complaint to the Police.

¹⁰ Affidavit of Rochelle Gardiner 30 June 2021 at [2.2] – [2.3]

¹¹ Affidavit of Christopher Jacob 30 August 2021 at [4.2] – [4.3]

¹² Affidavit of Christopher Jacob exhibit SH1/Bundle of Documents page 13

¹³ Bundle of Documents page 22

26. Mr Jacob stated in his interview with the PCC that after the meeting he sent Ms Noble a text message. He said that he thought he may have tried to telephone her first, but his recollection on this was not clear. He said:

“Anyway, we got into it and she pretty categorically said to me that she hadn’t taken the money. She didn’t know what Sean was going on about. There must be a confusion.

We had to go and look through all of our documentation to try and fathom out what had gone on and what had gone wrong. From our documentation, we could see that there was no confusion; the \$500 wasn’t supposed to be taken. She said to me that she hadn’t taken it.

To be honest with you, she’s never actually confirmed to me that she did take it. Then it wasn’t until Sean got the money back that obviously I knew she had taken it, because she’s returned it. You don’t return money you didn’t steal.”¹⁴

27. Ms Gardiner also referred to following up with Ms Noble, by way of a telephone call on 25 October 2019. By this date Ms Noble had repaid \$500 to Mr Hayden. Ms Gardiner said that she called Ms Noble to ask about “a \$500 administration payment from Sean to give back to TRON” and that:

“Alazay responded that she was tired of being accused of money going missing. Alazay said there was no \$500 admin to be given back to TRON. That was included in the budget before payment to Sean. I thanked Alazay and informed her that I was following up on behalf of Chris for auditing purposes.”¹⁵

28. David Quested’s affidavit sets out the course of the PCC investigation and the attempts that were made to engage with Ms Noble and obtain her response to the allegation. By correspondence dated 17 June 2020, Ms Noble was invited to address the allegation that she had obtained \$500 from a contractor to TRON (Mr Hayden was not named). Ms Noble did not respond. The PCC went on to gather information through interviews with Mr Hayden, Mr Jacob and Ms Gardiner. On 24 December 2020 the PCC

¹⁴ Transcript of interview page 6/Bundle of Documents page

¹⁵ PCC Transcript p5/ Bundle of Documents p59

sent an electronic copy of disclosure including the transcripts of the PCC's interviews to Ms Noble and invited her to meet with them. Ms Noble did not respond and did not attend an interview.¹⁶

29. On 9 March 2021 Ms Noble was notified by email of the PCC's preliminary determination to lay a charge and invited her to comment; she did not respond. On 31 March 2021 when the PCC notified Ms Noble of the intention to lay a disciplinary charge, Ms Noble replied by email on the same day. She wrote that she had "things to say" and that she had thought that the investigation related to her theft conviction. We note that by this time, a disciplinary charge had been laid in relation to the theft conviction and the PCC's communications with Ms Noble were clear as to what the investigation related to. The interview transcripts that were disclosed to Ms Noble leave no doubt about the subject matter.
30. Ms Noble was given notice of the Tribunal's preliminary telephone conference and subsequent notice of the timetabling orders made and the hearing date. When Ms Noble did not file evidence the Hearing Officer for the Tribunal followed up with her. In response, Ms Noble stated that she "no longer worked at Tamawhariua and cannot claim to have held evidence to clear my name." She went on to say:

"I asked sean to give back 500\$ of overpaid moneys for program delivery.

Money was received by myself in cash on Friday during a program.

After returning to the office, dropping off the program resources, work vehicle and keys the envelope was placed alongside the vehicle keys into the allocated draw for the manager on the Friday afternoon.

On the monday or tuesday verbal notice of the envelope was given to chris and a small red diary / notebook was used to record what was said.

No further follow up or conversation was had.

Understandably a angry message from sean was received speaking of how I stole from him and need to return his money. I tried to speak with sean and ask what he meant and to explain but there was no use his mind was made up and I was to decide what to do. I chose to give sean 500\$, which was not

¹⁶ Affidavit of David Qusted Exhibit DQ4 – DQ7 Correspondence between PC and Ms Noble/Bundle of Documents pages 80-90

made from the supposed personal gain. This was made from selling puppies and working a night job bar tending and proceeds from renovating houses.

This is fact. And all i have to respond.”¹⁷

31. The Tribunal is always assisted by hearing from a social worker who is the subject of a disciplinary charge. Had Ms Noble chosen to attend the hearing, an opportunity would have been provided to her to be heard. The PCC was provided with a copy of Ms Noble’s email and counsel included this in the Bundle of Documents.
32. Ms Mok submitted Ms Noble’s claims that she received \$500 from Mr Hayden, placed it in an office drawer, made a note of this in a notebook at TRON’s office and told Mr Jacob that she had done so, were contrary to the sworn evidence from Mr Jacob and Ms Gardiner that she had told them she had not received \$500. Counsel referred also to Mr Jacob and Ms Gardiner’s lack of knowledge of Mr Hayden returning any cash prior to 13 September 2019, and Mr Jacob’s evidence that he found no legitimate reason to suggest an overpayment to Mr Hayden.
33. Ms Mok further submitted that it lacked plausibility for a cheque to be offered for an amount that was known to be wrong with a request for cash back, rather than issuing a new cheque in the correct amount.
34. We agree with these submissions. The Tribunal finds that the evidence of Mr Hayden, Mr Jacob and Ms Gardiner is consistent with Ms Noble requesting Mr Hayden to return \$500 to her without a legitimate reason. Ms Noble’s decision to repay Mr Hayden, despite claiming a lack of knowledge and without contacting TRON, is consistent with receiving the cash for personal use. In the text message exchange with Mr Hayden, Ms Noble made no reference to having returned the money to TRON, as she later claimed to have done.
35. The Code of Conduct is issued by the Board pursuant to section 105 of the Act. The Code covers the minimum standards of integrity and conduct that apply to social workers and the social work profession. The charge alleged that Ms Noble’s actions

¹⁷ Bundle of Documents p94, email 25 August 2021

breached Principles 1, 8 and 9 of the Code, and for the reasons set out below we agree.

36. Principle 1 requires social workers to act honestly and ethically in all personal and professional behaviour (1.1), to be reliable, dependable and trustworthy (1.4), and to communicate in an appropriate, open, accurate and straightforward way (1.5). We agree with Ms Mok's submission that Principle 1 is squarely engaged in this case. Ms Noble deprived Mr Hayden of funds he was entitled to, in breach of the trust that had been placed in her by her employer and by Mr Hayden as a colleague.
37. The Tribunal also considers it relevant that the subject events were within one month of Ms Noble signing her Risk Management Plan. The plan required her to practise in a way that did not jeopardise the standing of TRON with service providers and the community.
38. Principle 8 describes expectations around engagement with colleagues within the social work profession and across other disciplines. This includes communicating with courtesy, openness and honesty (8.1). We find that Ms Noble did not act openly or honestly with Mr Hayden or TRON when she obtained cash from Mr Hayden as an alleged overpayment.
39. Principle 9 sets an expectation that social workers will maintain high standards in their personal and professional life. This includes avoiding activities that may bring the profession into disrepute (9.1) and avoiding using one's position for personal benefit (9.2). Having accepted that Ms Noble dishonestly obtained money from Mr Hayden, we find her actions in breach of Principle 9 also.
40. The disciplinary threshold is met, and the nature of the charge is serious given Ms Noble's actions were, as Ms Mok submitted, tantamount to theft. This reflected Mr Hayden's statements to the PCC that Ms Noble "stole money from me"¹⁸, and was "dishonest"¹⁹. Mr Jacob spoke to Mr Hayden about reporting to the Police. He said he went to the Police station to make a report but could not as the money had been taken from Mr Hayden, not from TRON.²⁰

¹⁸ Transcript of interview with PCCp7/p49 Bundle of Document

¹⁹ Transcript of interview with PCC p8/ Bundle of Documents p 50

²⁰ Transcript of PCC interview p 5/ Bundle of Documents p 72

41. Both Mr Jacob and Ms Gardiner considered that they had a good personal and professional relationship with Ms Noble, and the impact of her actions was apparent in their interviews. Ms Gardiner said:

“Personally, I was actually really, really disappointed in Alazay’s behaviour. Really, really disappointed. Disappointed that she had lied to us. I had supported Alazay to become a registered social worker, so I was disappointed in just the lies and the dishonesty...”²¹

42. In a similar vein, Mr Jacobs told the PCC:

“All I probably did want to say was that Alazay, whilst working for me, was a really, really good employee; she was really good at her community engagement and really good with youth. This situation blew my mind. I couldn’t believe that someone so talented would have done that to an organisation that I felt had taken care of her...I’m really disappointed...
...What I will say is, that personally and professionally it was gut-wrenching, because myself, my organisation and my team leader invested a lot of time wrapping around the supports to get her through that initial situation she was going through. That took a lot of time, effort and resources, to then have this happen not long after, it was truly devastating, when what was going on around us was going on around us, and something internal was starting to happen. It was one of the most challenging times of my working life actually.”²²

43. Mr Jacob also spoke about the kaupapa Māori ethos of TRON and that, had Ms Noble needed assistance from the organisation, it would have been available to her.²³

44. In addition to breaching the Code, we also find that Ms Noble’s conduct brought or was likely to bring discredit to the social work profession. As noted, the Risk Management Plan recognised the potential reputational risk to TRON if a social worker

²¹ Transcript of interview with PCC p 8/ bundle of Documents p62

²² Transcript of PCC interview p 9-10/Bundle of Documents p76-77

²³ Transcript of PCC interview p11/Bundle of Documents p 78

carrying out services in their name behaved dishonestly. This is borne out by Mr Hayden's comments to the PCC:

"Well, she's dishonest. I mean, regardless, I'm not in a position to comment on her professional ability as a youth worker, but someone who brazenly steals \$500, with huge risk to her....

...I think, in a role like hers, you've got to have exceptionally good character. She clearly hasn't. .."

45. Having found the charge of professional misconduct proved, it is not necessary to consider the alternative charge of conduct unbecoming.

Penalty

46. Section 83(1) of the Act sets out the penalty orders that are available to the Tribunal once a charge is proved. As has been affirmed by this Tribunal on many occasions, the principles to be taken into account are those set out by Collins J in *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*²⁴, summarised as follows:

- a. To protect the public, which includes deterring others from offending in a similar way.
- b. To set professional standards.
- c. Although not the primary purpose, penalties have a punitive function directly, and as a by-product of sanctions imposed.
- d. Rehabilitation of the social worker, where appropriate.
- e. To impose penalties that are comparable to those imposed in similar circumstances.
- f. To reserve the maximum penalties for the worst offending.

²⁴ [2012] NZHC 3354

- g. To impose the least restrictive penalty that can reasonable be imposed in the circumstances.
 - h. To assess whether the penalty is a fair, reasonable and proportionate one.
47. The fact that Ms Noble's registration was cancelled by order dated 4 June 2021 has implications for the penalty orders that the Tribunal can now impose.
48. We agree with the PCC that the charge was serious as it involved dishonest behaviour and a significant breach of trust. We also agree with Ms Mok's submission that repayment of \$500 to Mr Hayden does not mitigate the seriousness of Ms Noble's conduct. Repayment occurred some six months after the money was taken, and only when Mr Hayden stated he would otherwise be notifying the Police.
49. Ms Noble's recent history of an adverse disciplinary finding arising out of a conviction for theft and breach of trust with a previous employer is also relevant. The PCC submitted that the evidence is indicative of a wider pattern of dishonest behaviour, and that Ms Noble is not a fit and proper person to practise as a social worker. Ms Noble acted dishonestly despite the Risk Management Plan and when she ought to have been aware of the need for professionalism and honesty, especially when handling money.
50. Ms Mok also submitted that Ms Noble's failure to meaningfully engage with the disciplinary proceedings is relevant, as is the fact that she appears to have shown no remorse or insight. We agree these factors can be reflected in determining the appropriate penalty.
51. The PCC submitted that had Ms Noble's registration not already been cancelled, cancellation would have been the only appropriate outcome. Ms Mok invited the Tribunal to indicate what it would have done to send a clear message to the profession. The PCC also submitted that censure and a contribution towards costs are appropriate.
52. In reaching a penalty decision the Tribunal has taken into account the dishonesty involved, the proximity of Ms Noble's actions to her theft conviction and the breach of

the Risk Management Plan put in place by TRON. The recent disciplinary finding is also a relevant consideration.

53. In the absence of hearing directly from Ms Noble, the Tribunal was not aware of any mitigating factors.
54. As required by section 83(2), the Tribunal considered whether suspension or conditions rather than cancellation could have been imposed. In the circumstances we are satisfied that cancellation of Ms Noble's registration would have been appropriate. We do not consider that there could have been adequate protection of the public, or due regard to acceptable professional standards to impose a period of suspension. Nor do we consider conditions could adequately address the protection of the public in the circumstances.
55. The Tribunal considered whether to impose a fine. However, the cumulative effects of the cancellation of Ms Noble's registration, a second disciplinary finding relating to dishonesty and publication of the same, and the imposition of costs orders means that this would not add anything to meeting the purposes of the Act.
56. A censure is necessary, to reflect disapproval of the conduct that has led to this disciplinary finding.

Costs

57. Once a charge has been made out, the Tribunal may make an order for costs pursuant to section 83(1)(e) of the Act. Ms Mok indicated that the PCC would seek costs but did not have a final version of the PCC's investigation costs available at the hearing. Ms Noble was given an opportunity to provide submissions and a declaration of her financial means. Counsel for the PCC was to provide evidence of the PCC's costs promptly and to file submissions in reply if necessary.
58. By email dated 28 September 2021 Ms Noble acknowledged the efforts of the Hearing Officer in keeping her informed and providing the opportunity to produce financial information but she did not intend to provide any. Ms Noble indicated that she expected a costs order to follow.

59. An order for costs is discretionary. We adopt the following guidance²⁵:
- a. The profession should not be expected to bear the full weight of costs in disciplinary proceedings.
 - b. Those who are found guilty of a professional disciplinary charge and are found guilty should make a proper contribution towards costs.
 - c. The Tribunal should take into account the social worker's means, if evidence of this is available.
 - d. Social workers have a right to defend themselves and should not be deterred from doing so by the risks of a costs order.
 - e. In reliance on *Cooray v PPC*²⁶ which this Tribunal has followed previously, the starting point is 50% of reasonable costs with a discretion to adjust depending on the circumstances of each case.
60. The PCC's costs in this case were \$3,622.71 for the investigation and \$24,738.50 for the prosecution of the charge. The Tribunal's costs were \$7,594. The total costs are \$35,955.21.
61. The charge was proved and in the ordinary course an award of costs should follow. The AVL hearing took half a day. Even if Ms Noble had co-operated with the PCC, it is unlikely that the length of the hearing would have been materially reduced. The PCC was able to rely substantially on the transcripts of evidence that was obtained through interviews during its investigation.
62. Ms Noble is already subject to an order for costs following her first disciplinary hearing, in which the Tribunal made an award of costs representing 50% of the Tribunal's costs, and 35% of the costs incurred by the PCC²⁷. Ms Noble did not take the opportunity to provide the Tribunal with evidence as to her financial means in that case, either.

²⁵ *Vatsyayann v Professional Conduct Committee* [2012] NZHC 1138

²⁶ *Cooray v Preliminary Proceedings Committee* AP23/94, 14 September 1995, Doogue J

²⁷ RSW16/D1/SWDT/2021 at paras 68-70, being a total of \$11,178.80.

63. There are no cases that are factually very similar to the present, but the Tribunal has considered a number of charges relating to dishonesty. In RSW13²⁸ the social worker solicited a \$1000 loan from a client, which she failed to repay. This involved a clear breach of trust regarding the social worker's communications with the client and with her employer, and the Tribunal found the charge of professional misconduct proved. The social worker did not take any part in the disciplinary proceedings but had co-operated with the PCC to some extent. The Tribunal ordered that she pay 35% of the PCC's costs and 50% of the Tribunal's costs.
64. In RSW10²⁹, the Tribunal considered a charge arising out of a conviction for assault by the social worker on her colleague. The hearing also was conducted by audio visual link over approximately half a day. The social worker did not attend but did cooperate fully up to the hearing and provided significant evidence of remorse and insight. In addition to censure and conditions the Tribunal imposed an order for a contribution of \$2,500 towards costs.
65. We find that Ms Noble ought to be responsible for a reasonable contribution towards costs in relation to this matter. Without the benefit of a declaration of financial means or other reliable evidence as to Ms noble's financial position, the only matters that we have been able to consider are the costs award made against Ms Noble by the Tribunal in June and the fact that Ms Noble is unable to practice as a social worker. We have reduced the contribution that would otherwise have been ordered.
66. An order of costs made by the Tribunal is recoverable by the Board as a debt due, pursuant to section 87 of the Act.

Orders

67. Accordingly, the Tribunal makes orders as follows:
 - a. Ms Noble is censured.

²⁸ RSW13/D1/SWDT/2020, Professional Conduct Committee v K Noble

²⁹ RSW10/D1/SWDT/2020, Professional Conduct Committee v Hanley

- b. Ms Noble is to pay costs in the sum of \$10,887. These are to be attributed as follows: \$3,797 representing 50% of the Tribunal's costs and \$7,090, representing 25% of the costs incurred by the PCC.
68. No non-publication order was sought or made pursuant to section 79 of the Act. Accordingly, the names and identifying particulars of Ms Noble and other persons and entities referred to in this decision may be published.
69. The Tribunal directs the Hearing Officer to request the Board Registrar to publish this decision on the Board's website and to publish a summary of the Tribunal's decision in its professional publication to members of the social work profession.

DATED this 11th day of October 2021



Catherine Garvey
Deputy Chairperson
Social Workers Complaints and Disciplinary Tribunal