

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF **RSW12/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 **MS ALAZAY WAIRUA NOBLE** of Tauranga,
registered social worker
Practitioner

HEARING held by audio visual link on Wednesday, 12 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
No appearance by or for the practitioner

Introduction

1. Ms Noble is a registered social worker who fully registered with the Social Workers Registration Board (the Board) on 20 April 2018.¹ She holds a Bachelor of Applied Social Work.
2. The Professional Conduct Committee appointed by the Board charged that on 22 January 2019 Ms Noble was convicted I Te Kōti-Ā-Rohe Ki Tauranga Moana (in the Tauranga District Court) of a charge of theft (over \$1000) under sections 219 and 223(a) of the Crimes Act 1961 for stealing \$11,513.50 from her then employer, Liquorland Mount Maunganui, on 16 September 2018. This conviction was said to be for a qualifying offence (for considering discipline) and that the offence was committed in circumstances that reflect adversely on Ms Noble's fitness to practise as a social worker pursuant to section 82(1)(c) of the Social Workers Registration Act 2003 (the Act). In the alternative, it was alleged Ms Noble had engaged in professional misconduct pursuant to section 82(1)(a) of the Act.
3. In 2018 Ms Noble was employed as a youth alcohol and drug clinician at Te Runanga O Ngāti Tamawaharua Inc. At the time of her offending on 16 September 2018, Ms Noble was employed at Liquorland Mount Maunganui.
4. From 9 September 2019 Ms Noble was employed as a social worker² for the Ngāti Ranginui Iwi Society Incorporated (Ngāti Ranginui Iwi). She was employed in a 'registered social worker role' (care and protection role) but according to her employer, she was working in youth protection/youth mentoring³.
5. The conviction came to the attention of the Board and was referred to the PCC, on 1 October 2019⁴. The PCC investigated the conviction and the circumstances of the offending and laid the Charge before the Tribunal. By Order dated 22 December 2020 the Tribunal (separately constituted) suspended Ms Noble's registration pending determination of the Charge.⁵ The Tribunal was satisfied that there were reasonable

¹ Bundle of Documents (BOD), public register entry, Social Workers Registration Board.

² Police Summary of Facts.

³ Affidavit of David Quested, PCC Chair, Exhibit DSQ6 Transcript of interview with Roy Nathan (employer) on 15 November 2019.

⁴ Affidavit of David Quested, PCC Chair, at [2].

⁵ Order for Interim Suspension of Registration dated 22 December 2020.

grounds to believe that it was necessary and desirable in the public interest to make the Order.

6. In the years before her registration as a social worker, Ms Noble was convicted of a number of criminal offences including theft, unlawfully taking a motor vehicle, shoplifting, burglary, common assault and receiving, all of which were entered prior to 2006. She had also received three convictions for driving offences since 2006. The list of Ms Noble's convictions runs to almost two pages conviction history report.⁶ Those prior convictions were not referred to the Tribunal. Pursuant to section 82(3) of the Act the Tribunal must not make an order under section 83 in respect of an offence for which a social worker is convicted if, when the Board decided he or she should be registered it was aware of the conviction and was adequately informed of the circumstances of the offending. However, Ms Noble's previous convictions were considered when, having found the charge as it was brought under section 82(1)(c) established, the Tribunal considered what penalties to impose (as discussed below).

Hearing

7. The Charge was heard by audio visual link (AVL). The PCC was represented by Counsel. Ms Noble did not attend the hearing and had no part in the proceedings, although she had been interviewed by the PCC during its investigation. The PCC proceeded by way of formal proof of the Charge. Written and oral submissions were made by Counsel for the PCC.
8. There was produced to the Tribunal a Bundle of Documents which included an affidavit sworn by the presiding member of the PCC, David Quested⁷. Annexed to the affidavit was a Police Vetting Report to which was attached a conviction history report⁸ detailing Ms Noble's convictions prior to her registration, the Police Summary of Facts in the proceedings in the Tauranga District Court, a certified copy/extract from the Permanent Court Record of the proceedings evidencing the theft conviction entered on 22 January 2019, the pre-sentence report prepared by the Department of Corrections prior to

⁶ BOD, pages 8-11, Police Vetting Report, and conviction history report dated 1 July 2019.

⁷ This affidavit had been sworn in October 2020 in support of the PCC's recommendation for interim suspension of Ms Noble's registration pending the conclusion of the Tribunal's proceedings.

⁸ Dated 1 July 2019, as above fn. 6.

sentencing⁹, and the Sentencing Notes of Judge J P Geoghegan in the District Court at Tauranga¹⁰. Also annexed was a confirmed transcript of the PCC's interview with Ms Noble's then current employer, Mr Roy Nathan of the Ngāti Ranginui Iwi (interview on 15 November 2019)¹¹ and details of a 'risk management plan' which the Tribunal understood the employer put in place in relation to Ms Noble's employment in view of her theft conviction.

9. Prior to the hearing the Chairperson had indicated through a Minute¹² that if Ms Noble did not attend the hearing, then the Tribunal would wish to receive submissions from Counsel for the PCC as to why the transcript of the PCC's interview with Ms Noble (which was initially annexed to Mr Quested's affidavit) was admissible evidence in the proceedings. The Chairperson noted that although the Tribunal has a broad power to admit evidence that would not be admissible in a court¹³, the Tribunal is unlikely to accept an unsworn or unsigned and unconfirmed transcript of 'evidence' (as the transcript of Ms Noble's interview was) at a substantive hearing of a disciplinary charge, without justification. In the end the PCC elected not to produce the transcript.

Background and Facts

10. The factual background considered by the Tribunal (taken from the NZ Police Summary of Facts and the Sentencing Notes of Judge Geoghegan) was:
11. As above, at the relevant time in 2018, Ms Noble was employed by Liquorland, Mount Maunganui, as a casual worker. Her duties at Liquorland included the sale and supply of alcohol, cleaning the premises, and serving customers. She lived with her partner¹⁴ and her 17year old daughter, who was the "co-defendant", at an address in Tauranga.
12. Ms Noble was working at Liquorland on 16 September 2018. She entered a small room inside the store containing the store's safe and used her security code to open the safe. She removed the petty cash float, which was part of her normal duties.

⁹ BOD, pages 16-23, Department of Corrections, Provision of Advice to Courts, dated 15 January 2019.

¹⁰ BOD, pages 24-28, Notes of Judge J P Geoghegan on Sentencing (22 January 2019) [2019] NZDC 988: CRI-2018-070-004029.

¹¹ Affidavit of David Quested, at [5] and Exhibit DQ6. Mr Nathan was interviewed on 15 November 2019.

¹² Minute of Chairperson as to Evidence dated 4 February 2021.

¹³ Clause 6, Schedule 2, SWR Act 2003.

¹⁴ Sentencing Notes at [5].

13. Ms Noble then left the door to the safe ajar and exited the safe room. This was not part of her normal duties as all employees using the safe are expected to leave the door locked and secure after use.
14. Ms Noble returned to the safe room a couple more times later that day, this time deliberately leaving the door to the safe wide open and not just ajar. This was a deliberate action, and her behaviour was caught on a security camera inside the room.
15. At about 6.15pm Ms Noble asked the only other employee present to clean the toilets inside the store. The employee left the main shop area and went to clean the toilet as requested, leaving Ms Noble as the only person present in the shop area with a view to the safe room.
16. At about 6.18pm Ms Noble entered the safe room and moved items inside the safe before exiting the room, again deliberately leaving the door to the safe wide open.
17. Approximately 30 seconds later Ms Noble's daughter entered the store and walked directly to the safe room. The daughter did not work at Liquorland, was not known to staff there and should not have had any knowledge of the location of the room containing the safe. The daughter entered the safe room and immediately removed envelopes containing cash from the safe, placing these envelopes down her hooded top, before closing the door to the safe and leaving the safe room and the store.
18. The envelopes contained \$11,513.50 in cash, which was the property of Liquorland, Mount Maunganui.
19. At the completion of her shift Ms Noble then helped the duty manager lock the store as per usual before leaving.
20. The following day, management at the store completed a bank reconciliation and noticed that the money was missing.
21. Upon inspecting their security camera footage, management observed the activity of Ms Noble and her daughter and contacted Police.
22. When spoken to by Police Ms Noble's daughter admitted the offending. She stated that her mother (Ms Noble) had asked her to help and that they needed money for bills and a car. When Ms Noble was spoken to by Police, she claimed to have no knowledge of how the theft had occurred or who was responsible.
23. Ms Noble was charged by Police, as was her daughter. Ms Noble pleaded guilty. She was convicted of the one charge of theft and on 22 January 2019 she was sentenced in the

District Court at Tauranga to four months' and three weeks' home detention with special conditions. The special conditions included electronic monitoring in the form of GPS technology and a prohibition on the possession, consumption and use of any alcohol or drugs. She was also required to attend an assessment and complete any counselling, treatment, or programme as recommended or directed by a probation officer.

24. Ms Noble was also sentenced to 100 hours' community work and ordered to pay reparation of \$5754.76 to Liquorland, Mount Maunganui and \$6013.50 to Aon Insurance. Post-detention conditions were also imposed for six months past the sentence end date. In that regard Ms Noble was to complete any remaining treatment, counselling or programmes as directed by a probation officer.
25. At the time of sentencing the stolen cash had not been recovered¹⁵.

Practitioner's personal circumstances

26. Relevant more to penalty, when the practitioner was sentenced the District Court Judge referred to Ms Noble's early life as having been "*marked by disruption and offending, however, despite that [she] obtained qualifications as a social worker and alcohol and drug clinician.*" The Judge referred to the fact that Ms Noble was currently employed as a social worker, and that her employer had provided a reference which spoke highly of her and indicated a wish to retain her employment despite the offending. The Judge went on to comment: "*To say that I am surprised by that, given the nature of your offending and given the involvement by you of your daughter in it, would be an understatement.*"¹⁶ Further "*you have told the report writer that your offending was a case of survival at the time as you would have lost your house. I have been provided with nothing which would support that contention. What I am told is that you simply paid bills and in that regard the message you need to receive is that there are many people in this community who struggle on a day-to-day basis to pay their bills. They do not resort to stealing money from their employer or anyone else.*"¹⁷

¹⁵ Sentencing Notes at [2].

¹⁶ Sentencing Notes at [6].

¹⁷ Sentencing Notes at [7].

Legal Principles

Disciplinary charge under section 82(1)(c)

27. By virtue of section 82(1)(c) of the Act the Tribunal has jurisdiction to make an order under section 83 if, after conducting a hearing on a charge laid against a social worker, it is satisfied that the social worker, relevantly, has been convicted by a court (in New Zealand or elsewhere) of an offence that is:
- a. Punishable by imprisonment for a term of 3 months or longer [a qualifying offence]; and
 - b. Was committed in circumstances that reflect adversely on the social worker's fitness to practise as a social worker under the social worker's individual scope of practice.
28. The onus is always on the PCC to establish there is a qualifying conviction and that the offence which resulted in the conviction was committed in circumstances that reflect adversely on the practitioner's fitness to practise as a social worker, on the balance of probabilities¹⁸.
29. "Fitness" is inherently linked to the functions of the Act specified in section 3 being protection of the safety of the public, the maintenance of professional standards by ensuring that social workers are competent and accountable for the way they practice, and enhancement of the professionalism of social workers. As such an inquiry into fitness to practise is not restricted to consideration of a social worker's physical or mental fitness but can relate to whether the conduct or conviction impacts on wider standards of professional conduct and public and professional confidence in the practice of social work and the social work profession.

The Charge -discussion

30. The Tribunal accepted the following submissions for the PCC and was satisfied the Charge as it was brought under section 82(1)(c) was established:
- a. Ms Noble's conviction for theft was a qualifying offence for the purposes section 82(1)(c) (giving rise to the need to consider discipline) as it was for an offence which is punishable by imprisonment for a term of three months or more. The

¹⁸ *Z v Dental Council Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.

offence was against section 291 and section 223(b) of the Crimes Act 1961 and was punishable by a maximum of seven years' imprisonment.

- b. As to whether the offence was committed in circumstances that reflect adversely on fitness to practise, in *Hanley*¹⁹ the Tribunal held that this does not mean that the Tribunal must determine that the social worker is unfit to practise²⁰. Further, fitness to practise is not confined to matters that go to a social worker's competence, as is apparent from previous decisions of this Tribunal, and is clear from the distinction in the Act between competence and fitness in Part 3.
- c. The nature and circumstances of Ms Noble's offending reflect adversely on her fitness to practise as a social worker. With reference to *RSW Esera*²¹ "*social work almost always involves practitioners having to work with difficult and/or vulnerable clients and often on a one on one basis, both supervised and unsupervised and in settings outside of institutions: the power imbalance between a social worker and a client can therefore be particularly significant*". It follows from the nature of their work that social workers are expected to act with honesty and integrity in their professional lives and need to be trustworthy given the responsibilities they undertake, and the position of power they occupy, particularly with vulnerable clients.
- d. Although Ms Noble's offending did not occur in the course of her work as a social worker, her offending reflects adversely on her ability to conduct herself in the above manner. The Police Summary of Facts reflects that Ms Noble engaged in a high degree of dishonesty in carrying out the offending which also involved a significant breach of trust. Ms Noble deliberately provided opportunities for her daughter to steal a significant amount of money from her then employer, for Ms Noble's gain, indicating a degree of premeditation and planning. The fact that Ms Noble jointly offended with her daughter, who was aged only 17 at the time, shows a lack of judgement and regard for the possible consequences for her daughter in being involved in the offending.

¹⁹ *PCC v Hanley* RSW10/D1/SWDT/2020, 2 December 2020.

²⁰ With reference to the decision of the Medical Practitioners Disciplinary Tribunal in *Zauka* cited in *PCC v Hanley*, above fn.19.

²¹ *PCC v Esera* RSW1/D1/SWDT/2017, 30 May 2018 at [104].

- e. Further, Ms Noble's conduct is inherently inconsistent with that expected of a social worker acting in compliance with the standards normally observed by those who are fit to practise social work, and falls below expected standards, as those standards are reflected in the Board's Ngā Ture Whanonga Code of Conduct.²²
- f. In that regard, Principle 1 requires social workers to act with integrity and honesty in all personal and professional behaviour. Ms Noble's actions in stealing from an employer were the antithesis of honest and ethical behaviour. She acted dishonestly and for her own personal gain and her involvement of her 17-year-old daughter showed a lack of judgement and regard for potential consequences for her daughter.
- g. Principle 9 requires social workers to maintain public trust and confidence in the social work profession. Principle 9.1 makes it clear that social workers are expected to maintain a high standard of behaviour and avoid activities, work, or non-work, that may in any way bring the social work profession into disrepute. By engaging in dishonesty offending which resulted in a criminal conviction, Ms Noble risked bringing discredit to the social work profession.
- h. Ms Noble has shown by her offending that she is not a fit and proper person to practise social work in the future. Ms Noble's conduct poses a risk to members of the public if she is permitted to practise.
- i. For those reasons both requirements of a charge brought under section 82(1)(c) are met.

Further comments

- 31. The Tribunal had no difficulty being satisfied that the facts establish the theft conviction and that the offending itself was committed in circumstances that reflect adversely on Ms Noble's fitness to practise as a social worker, and that a disciplinary response is warranted.
- 32. There can be no doubt that this was very serious offending by Ms Noble and that it reflects adversely on her fitness to practise social work. Extracts from the District Court Judge's Sentencing Notes demonstrate the gravity of the conduct that had been

²² SWRB Code of Conduct (March 2016) issued under section 105, SWR Act. BOD pages 36-69.

committed by a member of the social work profession, and the conviction and include, relevantly:

"[8] It is of concern....to read that your remorse appeared to be related to the impact it had on you rather than the impact it had upon your victim. Given your professional qualifications [as a social worker] that comes as a very considerable surprise....

...

[12] That someone who is qualified and employed as a social worker dealing with vulnerable people, would involve her 17 year old daughter in the commission of an offence of this kind is quite frankly astounding. How you retain your employment, as I have said, is puzzling to me but that is a matter for your employer and not for the Court.

[13] The aggravating features of your offending are that your offending involved a very significant breach of trust. Your offending involved pre-meditation and a degree of planning, although it was not sophisticated. It involved theft of a not insignificant amount of money and it involved your actively engaging the assistance of your daughter, who is entitled to be provided by you and viewed by you with some values and standards rather than being engaged in criminal offending.

....

[14] I consider that looking at the offending as a whole, a starting point of one year's imprisonment would be appropriate.....

...

33. The Tribunal was of the view that when it is considered objectively, there is no doubt that Ms Noble's offending, all circumstances considered, reflects adversely on her ability to discharge her ethical and professional obligations as a social worker, particularly towards vulnerable young clients.
34. As was said by the Tribunal in *RSW Lumsden*²³ a social worker works with people, many of whom are vulnerable and carry significant health and social issues. They often work in unsupervised settings. There is a significant trust placed by clients in the social worker that they will be properly cared for and their interests promoted to the extent necessary

²³ *PCC v Lumsden* RSW8/SWDT/2020.

for their current needs. They trust the social worker to do what is right for them and they follow the advice given to them or recommendations made in respect of them. That means that the social worker must show self-restraint and act with honesty and integrity in his or her own life, and in how they interact with and treat people.

35. A social worker must always demonstrate that they act in accordance with the law, which includes being honest and not being involved, or involving others, in criminal offending. Given the responsibilities undertaken by a social worker and the position of power they are in in the context of a professional relationship with a vulnerable client, it is of the utmost importance that they conduct themselves with integrity and in accordance with the law at all times. This is necessary for the protection of public safety and the maintenance of standards.
36. The Tribunal considers that Ms Noble's conduct which resulted in the theft conviction that was entered against her is at the more serious end of the spectrum in terms of misconduct which reflects adversely on a practitioner's fitness to practise as a social worker, and that discipline is warranted.

Conclusion as to liability

37. For the reasons given, the Tribunal was satisfied the Charge as it was brought under section 82(1)(c), was established. Having made that finding the Tribunal was not required to go on and consider the Charge as it was laid in the alternative ("professional misconduct") under section 82(1)(a)), and it did not do so.
38. However, the Tribunal did question whether a charge of "professional misconduct" under section 82(1)(a) could ever be established in respect of conduct that did not occur during, or without any logical link or connection to, a social worker's practise of social work. The Tribunal considers that it was more likely Parliament's intention that failure by a social worker to adhere to standards of conduct expected of social workers (for example, as set out in the Code of Conduct) in their personal lives would be captured by section 82(1)(b) – conduct that is unbecoming if a social worker and reflects adversely on a practitioner's fitness to practise as a social worker. However, no finding is made to that effect as that will be a question for another day in an appropriate case.

Penalty

39. Satisfied that the Charge was established, the Tribunal was able to make penalty orders specified in section 83(1) of the Act. The orders the Tribunal was able to make in this case were, relevantly:
- a. An order that:
 - i. The practitioner's registration be cancelled, or her registration or practising certificate be suspended for a period of not more than 3 years; and
 - ii. For a period of not more than 3 years, she may practise as a social worker only in accordance with stated conditions (as to employment, supervision, or otherwise); and
 - b. An order that the practitioner be censured; and
 - c. An order that the practitioner apologise "to the complainant"; and
 - d. An order that the practitioner undergo stated additional training, professional development or both; and
 - e. An order that the practitioner pay part or all of the costs and expenses of and incidental to:
 - i. Any inquiry made by the PCC in relation to the subject matter of the charge; and
 - ii. The prosecution of the charge by the PCC; and
 - iii. The hearing (by the Tribunal).
40. In dealing with a matter that constitutes an offence for which the social worker has been convicted by a court, as Ms Noble has, the Tribunal must not impose a fine.²⁴
41. Any penalty imposed must fulfil the functions connected to the purposes of the Act which the Tribunal has referred to above. There is also a punitive element although that is much less of a feature in cases where the Tribunal has considered conduct that has already been considered in a criminal court. In *Singh v Director of Proceedings*²⁵ at [62] Ellis J concluded:
- "In terms of the general approach to be taken and principles to be applied, it also seems clear to me that care must be taken not to analogise too far with the criminal sentencing

²⁴ Section 83(3), SWR Act

²⁵ [2014] NZHC 2848.

process. As the Supreme Court noted in Z the relevant societal interests in each case are different...”

42. The relevant penalty principles identified in *Roberts v Professional Conduct Committee of the Nursing Council*²⁶, which this Tribunal has previously affirmed and adopted as relevant to the sentencing exercise in this jurisdiction, are:
- a. What penalty most appropriately protects the public.
 - b. The important role the Tribunal plays in setting professional standards.
 - c. The penalties imposed may have a punitive function but protection of the public and setting professional standards are the most important factors.
 - d. Where appropriate, the rehabilitation of the social worker involved.
 - e. That any penalty imposed is comparable to other penalties imposed on social workers in similar circumstances.
 - f. Assessing the social worker’s behaviour against the spectrum of sentencing options available and trying to ensure that the maximum penalties are reserved for the worst offenders.
 - g. An endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
 - h. Whether the penalty proposed is fair, reasonable, and proportionate in the circumstances presented.
43. As the Court identified in *Roberts* the imposition of penalties involves a “*finely balanced judgement*”. It is not “*a formulaic exercise*”.

Submissions for PCC

44. In addition to referring to those principles, Counsel for the PCC referred to previous cases involving dishonesty offending, including from other disciplinary contexts, and the penalties imposed in those cases²⁷. Counsel identified that there are no cases involving conduct that is analogous to that reviewed here. It was acknowledged that each case must ultimately be considered on its own facts.

²⁶ [2012] NZHC 3354, at [44]-[55].

²⁷ *CAC v Suroweiz-Lepper* RSW3/D3/SWDT/2015, 3 September 2015, *National Standards Committee v Toner* (lawyer) [2013] NZLCDT 38 and *CAC v Wilson* NZTDT 2019/14, 19 June 2019 (teacher) and *CAC v Teacher* NZTDT 2014/5, 23 January 2014.

45. The PCC submitted that the offending was “highly serious” having regard to the following factors:
 - a. Ms Noble was convicted of theft for stealing over \$11,000 from (one of) her then employer[s]. the theft involved a not insignificant amount of money, apparently for Ms Noble’s personal gain.
 - b. The theft occurred in circumstances where Ms Noble was in a position of trust as an employee of the liquor store.
 - c. There were elements of premeditation and planning in the offending. Ms Noble not only left the safe open and asked her co-worker to leave the floor, but she involved her 17year old daughter in the offending.
 - d. Ms Noble’s decision to involve her daughter in the offending displayed a lack of judgement and regard for her daughter’s wellbeing.
46. The Tribunal agreed and accepted those submissions.
47. As to relevant personal factors Counsel for the PCC noted Ms Noble’s previous criminal convictions for dishonesty offending prior to her registration as a social worker, had primarily been entered against her in her youth. It was noted that Ms Noble had been granted registration as a social worker notwithstanding those convictions. While the PCC did not suggest Ms Noble’s previous offending should be taken account of as an aggravating factor warranting a more serious penalty, it was submitted that the previous convictions, when viewed together with the theft conviction, is relevant to the question of penalty. The Tribunal accepted that submission.
48. Ms Noble’s conviction history displays a pattern of dishonesty offending. In the Tribunal’s opinion, the fact that Ms Noble’s offending in September 2018 which led to the conviction the Tribunal has reviewed was not an isolated occurrence does suggest that she presents as an ongoing risk of engaging in similar conduct in the future. As Counsel put it “in other words, rather than being a one-off instance of dishonesty, Ms Noble’s theft offending ought to be seen as a continuation of a wider pattern of behaviour. This pattern of conduct suggests that Ms Noble is not a fit and proper person to be a social worker.”
49. The PCC advanced the following mitigating factors:

- a. Ms Noble had no previous disciplinary history. It was acknowledged, rightly, that this factor should be given limited weight because Ms Noble's conduct occurred a short time (six months) after her registration as a social worker.
 - b. Ms Noble had pleaded guilty in the criminal proceedings. It was noted that this did not come at the earliest opportunity.²⁸
50. The Tribunal was disappointed that Ms Noble did not participate in the proceedings. The social worker members considered that in the circumstances of this case, her non-participation demonstrated a lack of regard for her profession. In any event, because Ms Noble did not participate there was no evidence of any other mitigating factors that are relevant to penalty. For example, there was no evidence produced to the Tribunal that Ms Noble had taken steps to mitigate the risk of her engaging in similar conduct in the future (for example, that she has undertaken rehabilitative steps), or that she has genuine remorse for her conduct (which would be indicative of a level of insight into her conduct). Nor was there any evidence to demonstrate that Ms Noble had taken any steps to repay the money stolen.
51. It was submitted for the PCC that balancing the seriousness of Ms Noble's criminal offending, and the above factors, cancellation of registration was the "only" appropriate outcome. Further, that when the offending which led to the conviction the Tribunal had reviewed is considered together with her previous offending history, this supports the view that Ms Noble is not fit to practise as a social worker. It was submitted that a lesser penalty would not be sufficient to address the purposes and principles of the Act and disciplinary proceedings which have been discussed above.

Penalty - findings

52. Taking all factors into account, the Tribunal considered that the conviction it has reviewed in this case and the circumstances of the offending are at the more serious end of the spectrum in terms of conduct on the part of a registered social worker that requires disciplinary sanction.

²⁸ Police Summary of Facts, BOD at pages 14 and 26. As above, initially, when spoken to by Police, Ms Noble maintained she had no involvement in the offending.

Cancellation of registration

53. When the conviction and the circumstances of Ms Noble's offending is considered on its own, and then with her previous convictions (including previous dishonesty offending), and the fact there is no evidence of any rehabilitative steps having been taken, the Tribunal concluded that cancellation of Ms Noble's registration is necessary. Criminal conduct of the nature Ms Noble has engaged in and been convicted for, is not acceptable for a member of the social work profession. The nature and gravity of the offending indicates that Ms Noble is not fit to practise as a social worker. The Tribunal considered that as matters currently stand, Ms Noble is a risk to vulnerable clients, particularly tamariki and rangatahi, and others she may work with in a social work (or youth work) role. Therefore, in the Tribunal's opinion, the public requires protection from Ms Noble.
54. Accordingly, the Tribunal orders cancellation of Ms Noble's registration.
55. The Tribunal was statutorily required to first consider suspension or the imposition of conditions on the person's registration or practising certificate before it decided to make an order cancelling Ms Noble's registration and it did so²⁹. As has been indicated in previous recent decisions, the Tribunal accepts that cancellation of registration should not be ordered if an alternative penalty can achieve the objectives sought. Rehabilitation of the social worker is a factor requiring careful consideration. Ultimately, the Tribunal must balance the nature and gravity of the offences and the offending and their bearing on the social worker's fitness to practise against the need for removal and its consequences to the individual. As was said by the Privy Council in *Dad v General Dental Council*³⁰ at [1543]:

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

²⁹ Section 83(2), SWR Act.

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

56. The Tribunal did not consider that suspension and the imposition of conditions was an appropriate or proportionate penalty response to the serious conduct it had reviewed. The Tribunal was of the view that it would not be fulfilling its obligation to impose a penalty that is consistent with the need to protect the safety of the public and to maintain professional standards, were it to make those lesser orders.
57. In terms of rehabilitation, as above, the Tribunal was not assisted by any evidence which demonstrates that Ms Noble has taken any rehabilitative steps to mitigate the risk of her engaging in similar conduct in the future, or that she is genuinely remorseful for her behaviour. There was no material before the Tribunal at the hearing from any counsellor, treatment, or other programme provider to verify that Ms Noble complied with her sentence. For those reasons, arising as they did from Ms Noble's lack of engagement in the proceedings, the Tribunal was unable to have any confidence that Ms Noble is able or willing to comply with any order that had a rehabilitative focus.
58. The Tribunal considered whether to make any of the orders it has a discretion to make under section 84 of the Act (orders as to restoration to the register) but in the end declined to make any orders.
59. Should Ms Noble ever seek a return to the social work profession then she will have to make an application to the Board to be restored to the register. Any such application would have to take account of the censure and cancellation orders which the Tribunal is ordering in these proceedings, the theft conviction that was entered against Ms Noble and the factual circumstances of her offending. Further, there would also be a need for the Board, as the registration authority, to take account of any matters that Ms Noble may advance to satisfy it that she is a fit and proper person to practise social work, that there is no possibility she will reoffend, that the public is adequately protected from her and that she will maintain the standards of social work profession.

Censure

60. In addition to an order cancelling Ms Noble's registration the Tribunal makes an order censuring her. A censure is necessary to denote the seriousness of the breach of standards of personal behaviour that are expected of social workers that has occurred by virtue of the criminal offending. A censure is also necessary to mark the Tribunal's serious disapproval of the conduct, and for standards maintenance to enhance the professionalism of social workers.

Costs

61. The PCC sought an order of costs. The general principles which need to be taken account of when considering costs orders³¹ are well settled and have been referred to in previous decisions of the Tribunal.
62. In essence the issue for the Tribunal is determining what proportion of the total costs should be borne by the social work profession as a whole and what proportion should be borne by the practitioner who has been responsible for those costs being incurred in the first place.
63. The general principles include 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 hearing³².
 - c. Costs are not to punish³³.
 - d. A social worker's means, if known, are to be taken into account³⁴.
 - e. A social worker has a right to defend himself or herself and should not be deterred by the risk of a costs order³⁵; 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 downwards³⁶.
64. The normal approach for the Tribunal based on the authorities³⁷ is to start with a 50% contribution. Other factors may be taken into account to reduce or mitigate that proportion, or to increase that proportion. The balance of the investigation, prosecution, and the hearing after the order for costs must be met by Ms Noble's colleagues (other members of the social work profession), through the Social Workers Registration Board.

³¹*Vatsyayann v PCC* [2012] NZHC 1138.

³²*G v New Zealand Psychologists Board* Gendall J, 5 April 2004, HC Wellington, CIV-2003-485-217; *Vasan v Medical Council of New Zealand* 18 December 1991, AP43/91 at page 15.

³³*Gurusinghe v Medical Council of New Zealand* [1989] 1 NZLR 139 at 195.

³⁴*Kaye v Auckland District Law Society* [1988] 1 NZLR 151.

³⁵*Vasan* above fn. 77 and *Gurusinghe* above fn. 78.

³⁶*Cooray v Preliminary Proceedings Committee* Unreported, High Court Wellington Registry, AP/23/94, 14 September 1995, Doogue J, at page 9.

³⁷*Cooray v Preliminary Proceedings* above fn. 36.

65. The PCC indicated that the legal costs and expenses incurred for its investigation and prosecution of the Charge totalled \$16,431.00 (excluding GST). In addition, the PCC's own costs (members' fees and disbursements) totalled \$1,717.00 (excluding GST). The costs for the Tribunal were estimated to be \$9,654.00 (excluding GST), which is reflective of the reduced costs associated with holding a public hearing by AVL.
66. When the Tribunal gave an oral indication of the penalty orders it intended to make under section 83 of the Act (at the conclusion of the hearing), the Tribunal directed the Hearing Officer to give Ms Noble the opportunity to make submissions and provide any evidence of her current financial position before the Tribunal made costs orders. Ms Noble did not respond to this invitation within the specified timeframe and no submissions or evidence of any sort (for example, a declaration of financial means) were received. The Tribunal was cognisant of the fact that the ordering of costs should not create undue hardship³⁸. However, because Ms Noble's means were not known, they could not be taken into account.
67. On that basis the Tribunal proceeded based on the figures indicated by Counsel for the PCC and by the Hearing Officer and accepted that the total reasonable costs of the investigation, the prosecution and the hearing were in the vicinity of \$27,802.00.
68. All matters considered, the Tribunal was of the view that Ms Noble should be ordered to pay a contribution toward the costs that have been incurred by the PCC and the Tribunal. The social work profession should not be expected to meet all the costs of the disciplinary process which has been initiated because of Ms Noble's own actions and increased because of her failure to engage with the Tribunal's process.
69. The Tribunal considered that Ms Noble should be ordered to pay a contribution of 35% of the PCC's total reasonable costs and expenses of and incidental to its investigation and prosecution, being payment of the sum of \$6,351.80, and accordingly there will be such an order. This order reflects a deduction from the starting point to allow for any saving from Ms Noble's participation in the PCC's investigation, if any.
70. Further, there will be an order that Ms Noble is to pay a 50% contribution towards the costs and expenses of and incidental to the Tribunal hearing, being payment of the sum of \$4,827.00.

³⁸ RSW *Vaiangina* RSW6/SWDT/2020.

71. This means the orders of the Tribunal are that Ms Noble is to pay \$11,178.80 for costs.
72. It is noted that section 87 of the Act provides that all costs and expenses ordered to be paid under section 83(1) are recoverable by the Board as a debt due to the Board. If Ms Noble wishes to enter 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 orders

73. No non-publication orders were sought under section 79 of the Act.
74. It is desirable in the public interest that Ms Noble's name is published in connection with these proceedings.

Result and Orders

75. The Charge against Ms Noble is made out under section 82(1)(c).
76. Ms Noble's registration as a social worker is cancelled (section 83(1)(a)(i)).
77. Ms Noble is censured (section 83(1)(b)).
78. Ms Noble is to pay the sum of \$6,351.80 towards the costs and expenses of the PCC (section 83(1)(e)(ii) and (iii)).
79. Ms Noble is to pay the sum of \$4,827.00 toward the Tribunal's costs and expenses (section 83(1)(e)(iv)).
80. The Tribunal directs the Hearing Officer to request the Board Registrar to publish this decision on the Board's website and to publish a summary of the Tribunal's decision in its professional publication to members of the social work profession.

DATED at Wellington this 4th day of June 2021.



Jo Hughson

Chairperson

Social Workers Complaints and Disciplinary Tribunal