

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF 03/SWCDT21/18P

UNDER the Social Workers Registration Act 2003 (“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 **FRANCESCA LYNCH** of Christchurch, registered social worker
Practitioner

HEARING Held at Christchurch on Monday, 27 June and Tuesday, 28 June 2022 in person and penalty on Monday 15 August 2022 by audio visual link

MEMBERS Ms J C Hughson (Chairperson)
Dr S Hunt, Ms A McKenzie, and Ms F Wilson (registered social workers), Ms N Walker (layperson)

Ms G J Fraser (Hearing Officer)
Ms K O’Brien (Stenographer)

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

Introduction

1. Francesca Lynch (Ms Lynch) obtained registration as a social worker on 17 February 2011. Ms Lynch worked as a social worker at the Canterbury District Health Board (CDHB) until 9 July 2019, primarily in the emergency department at Christchurch Hospital¹. She then worked at the Salvation Army as a social worker, in the Community Housing team, based at the Salvation Army's Addington site, from 18 November 2019 to 11 July 2020. The Salvation Army is an emergency transitional housing provider. Clients of the Community Housing team are based in the community and include mothers (and sometimes fathers) with tamariki whose other parent is not present often because of issues of abuse within the whānau or incarceration². At the Addington site there is a 76-bed all-male hostel. Ms Lynch did not work in the team that serviced the hostel clients, many of whom have gang connections and a strong history with the Department of Corrections, and all of whom have "a significant past"³.
2. A Professional Conduct Committee (PCC) appointed by the Social Workers Registration Board (the Board) laid a disciplinary charge⁴ against Ms Lynch. The charge (as it was amended) was comprised of several particulars which were said either individually or cumulatively to amount to professional misconduct under section 82(1)(a) (and 82(2)(a) or (d)) of the Social Workers Registration Act 2003 (the Act) or alternatively, conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker ('conduct unbecoming') under section 82(1)(b) of the Act.
3. The particulars of the amended charge were:

Conduct following termination of employment with Canterbury District Health Board

- a. (Particular 1) Between 1 September 2019 and 31 December 2020, Ms Lynch engaged in conduct that was threatening and/or harassing towards Mr X [name permanently suppressed], an employee of CDHB, namely by;

¹ Brief of Evidence of Mr X at [7].

² Hearing transcript at page 68.

³ Hearing transcript, pages 49-51 and 65 (a further 12 males reside at Salvation Army premises in Bealey Avenue, Christchurch) - evidence of Glenn Dodson.

⁴ The Tribunal granted leave to the PCC to file an amended disciplinary charge. The amended charge was dated 17 June 2022.

- i. Sending direct messages to Mr X on social media from a social media profile in the name of “Willie Morris”; and/or
 - ii. Leaving voicemails on Mr X’s phone that were abusive and contained personal threats about Mr X’s job and personal safety.
- b. (Particular 2) Between 1 September 2019 and 31 December 2020, Ms Lynch made posts on social media from a social media account in her name that made disparaging remarks about the reputation and character of CDHB and Mr X.

Conduct whilst employed by the Salvation Army

- c. (Particular 3) Between 1 March 2020 and 30 June 2020, Ms Lynch engaged in an unprofessional and/or inappropriate relationship with a Salvation Army client, (Mr Z – name permanently suppressed), including by:
 - i. Spending a significant amount of time with Mr Z when he was not Ms Lynch’s direct social work client but a client of the Salvation Army; and/or
 - ii. sending a significant number of text messages and placing a number of calls to Mr Z’s phone, and receiving a number of text messages from Mr Z on her work phone
 4. A further particular (4) alleged that Ms Lynch’s conduct breached Principles 1, 5, 6, 8 and 9 of the Code of Conduct applying to social workers.⁵
 5. As at the date of the hearing Ms Lynch’s registration and practising certificate as a social worker were suspended⁶. Her registration and practising certificate were suspended by the Board on 24 July 2020 after it had received a notification of concern from the Salvation Army which included the matters which were the subject of particular 3 of the Charge. Her suspension has been renewed every ten days since then.

Legal Principles

6. The onus of proof of the Charge rested throughout on the PCC.

⁵ Issued by the Social Workers Registration Board pursuant to section 105 of the Act. March 2016 version.

⁶ Register entry and letter from Board to Ms Lynch dated 24 July 2020. Email correspondence between Counsel for the PCC and Hearing Officer dated 28 June 2022, provided on the Tribunal’s request made at the hearing.

7. As to the standard of proof, the appropriate standard is the civil standard; that is, proof to the reasonable satisfaction of the Tribunal on the balance of probabilities (rather than the criminal standard). This is a static standard. However, as the seriousness of an allegation rises, so does the cogency of the evidence required to satisfy the balance of probabilities standard⁷.
8. Section 82 of the Act defines the grounds on which a registered social worker may be disciplined. Section 82(1) provides that the Tribunal can impose certain disciplinary sanctions set out in section 83 if, relevantly, the Tribunal is satisfied the social worker has been guilty of professional misconduct (section 82(1)(a)) or if the social worker has been guilty of conduct that is unbecoming of a social worker and reflects adversely on the social worker's fitness to practise as a social worker (section 82(1)(b)).
9. Section 82(2) of the Act provides that a social worker is guilty of professional misconduct if he or she, relevantly, breaches the Code of Conduct (section 82(2)(a)) or commits an act or omission that, in the opinion of the Tribunal, has brought or is likely to bring discredit to the social work profession (section 82(2)(d)).
10. In previous decisions the Tribunal has adopted a two-step approach to assessing professional misconduct:
 - a. The first step requires an objective analysis of whether the social worker's acts or omissions can reasonably be regarded by the Tribunal as constituting a breach of the Code of Conduct or was an act or omission that could reasonably be regarded by the Tribunal as constituting a departure from acceptable professional standards that brings or would likely bring discredit to the profession.
 - b. If the Tribunal is so satisfied, the second step requires the Tribunal to form an opinion as to whether those acts or omissions warrant discipline for the purposes of protecting the public and/or enhancing the professionalism of social workers. This step is commonly referred to as the "threshold".
11. In assessing conduct against the standard of avoiding conduct that puts the reputation of the social work profession at risk, or brings discredit to the profession, "bringing

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

discredit” on the nursing profession was considered in *Collie v Nursing Council of New Zealand*⁸ where at paragraph [28] Gendall J considered a definition of this:

“To discredit is to bring harm to the repute of the profession. The standard must be an objective standard for the question to be asked by the Council being whether reasonable members of the public, informed and with the knowledge of all the factual circumstances, could reasonably conclude that the reputation and good-standing of the nursing profession was lowered by the behaviour of the nurse concerned.”

12. The Tribunal accepted the submission for the PCC that if the Tribunal forms the view that the conduct would be considered by members of the social work profession and the public to be unacceptable, then it is conduct which brings or would likely bring discredit to the profession.
13. As to the threshold step, in cases of both professional misconduct and ‘conduct unbecoming’ the Tribunal must decide whether the departure from the Code and/or accepted standards is significant enough to warrant sanction.”⁹. The threshold is one of degree¹⁰.
14. It was submitted for the PCC that the threshold step should not be overstated in the context of section 82(1)(a) of the Act “which firmly places the focus of the enquiry on the first stage” (whether there has been a breach of the Code, or not), which is a difference between the terms of the Health Practitioners Competence Assurance Act 2003. It was submitted that applying the terms of the Social Workers Registration Act 2003 (the Tribunal noted section 82(2)(a) in particular), any breach of the Code constitutes professional misconduct. The Tribunal did not need to address that issue in this case for reasons which will be obvious from the discussion below. However, this may be a matter for another day when the Tribunal is faced with the situation where it has found that a social worker has breached the Code of Conduct, but the breach is not considered by the Tribunal to be sufficiently serious to warrant discipline (a disciplinary finding). The Tribunal, as it was constituted in this case, was inclined to the

⁸ *Collie v Nursing Council of New Zealand* [2000] NZAR 74 (High Court)

⁹ The Tribunal has in previous cases adopted the approach taken in the health practitioner discipline context. Guidance for applying the two-step test can be found in the decision of the Court of Appeal in *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 at [80].

¹⁰ *B v Medical Council* noted at [2005] 3 NZLR 810.

view that it cannot be that every breach of the Code of Conduct or 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). It is noted that in other disciplinary contexts, including health practitioner discipline, breaches of professional codes of conduct are not determinative of whether there has been misconduct or professional misconduct.

15. The two-stage test for professional misconduct is an objective one and does not allow the Tribunal to consider matters personal to the practitioner in any significant way when objectively assessing whether there has been professional misconduct (or 'conduct unbecoming').¹¹ Personal factors may be given full consideration at the penalty stage if a charge is found to have been established.
16. As to the charge laid in the alternative under section 82(1)(b), the Tribunal has in previous decisions adopted a similar two-step approach to the assessment it is required to make of whether established conduct amounts to 'conduct unbecoming'. Because in this case the Tribunal found that Ms Lynch's established conduct was professional misconduct, for the reasons given below, it did not need to go on and consider the charge as it was laid in the alternative.
17. As to how the relevant conduct must be measured, the standards to be applied are those of competent, ethical, and responsible practitioners. In *B v Medical Council*¹², Elias J stated:

"The structure of the disciplinary processes set up by the Act, which rely in part upon judgement by a practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical, and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the standards applied must ultimately be for the Court to determine, having taken into account all the circumstances including not only usual professional practice but also patient interests and community expectations, including the expectation that

¹¹ *Cole v Professional Conduct Committee of the Nursing Council* [2017] NZHC 1178, at [126]-[130]. *Martin v Director of Proceedings* [2010] NZAR 333.

¹² Noted at [2005] 3 NZLR 810.

professional standards not be permitted to lag. The disciplinary process in part is one of setting standards.”

18. The primary purpose of the Social Workers Registration Act 2003 is to protect the safety of members of the public by prescribing or providing mechanisms to ensure that social workers are competent and accountable for the way in which they practise.¹³ A further purpose is to “enhance the professionalism of social workers”.¹⁴ The disciplinary regime in Part 4 of the Act is one of the principal mechanisms by which the purposes of the Act are fulfilled. As to the purpose of disciplinary powers in *A v A Professional Conduct Committee*¹⁵ it was said at [87]-[82]:

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

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

19. There is also a punitive element to disciplinary proceedings under the Act. This is reflected in the fact that the Tribunal has the power to fine (section 83(1)(c) and censure (section 83(1)(b)) registered social workers who commit disciplinary offences in terms of section 82 of the Act.
20. The Tribunal accepted and had regard to the above principles for the purposes of the charge in this case.

¹³ SWR Act, section 3(a).

¹⁴ SWR Act, section 3(d).

¹⁵ [2008] NZHC 1387; also *CAC v Dr Casey* Judicial Committee of the Veterinary Council, 8 July 2013 and *CAC v Dr A* Judicial Committee of the Veterinary Council, 8 May 2014 and *CAC v Dr Baird* Judicial Committee of the Veterinary Council, 22 August 2018.

Relevant standards

Code of Conduct

21. It is well established that ethical documents established by the Board as the professional body are relevant to determining the standards reasonably expected of a social worker, and therefore in considering whether his or her acts or omissions amount to misconduct.
22. The standards which should apply in situations such as the present are evident from the Code of Conduct issued by the Board pursuant to section 105 of the Act. The March 2016 version of the Code of Conduct applied in relation to the conduct the Tribunal reviewed in this case as it was alleged to have occurred between September 2019 and December 2020.
23. The Code of Conduct extends beyond professional practice to personal conduct and integrity.¹⁶ It does not prescribe, in detail, every behaviour expected of a social worker, and nor could it. It is “a minimum set of professional standards of behaviour, integrity and conduct”.
24. The Code of Conduct also serves as a means by which clients and the public can know the standards of conduct that they can reasonably expect from social workers.
25. Relevantly, the Code of Conduct (2016) provides:
 - a. **Principle 1 (Act with integrity and honesty)** requires social workers to act honestly and ethically in all personal and professional behaviour, be responsible for their own actions and decisions, be reliable, dependent and trustworthy, communicate in an appropriate, open, accurate and straightforward way, and not work in a situation where there is a conflict of interest.¹⁷ In relation to not working in a situation where there is a conflict of interest the Code requires social workers to discuss potential or actual conflicts of interest (both professional and personal) with the client and take all reasonable steps to protect the client’s interests as much as possible. Further, social workers are required to tell a supervisor or employer about any potential or actual conflicts of interest and if they cannot be resolved then end the relationship and refer the client appropriately.

¹⁶ The Preamble to the Code notes that “[b]ecause they are in positions of trust and confidence [registered social workers] must also have high standards in their personal lives”.

¹⁷ Code of Conduct at [1.1]- [1.3], [1.4], [1.5] and [1.7].

- b. **Principle 5 (Protect the rights and promote the interests of clients)** requires social workers to recognise and use responsibly the power that comes from any social work role, keeping the dignity of the client front of mind; maintain personal and professional boundaries and not form inappropriate relationships with those close to them; to abstain from sexual relationships or any form of sexual interaction with clients or with those close to them; and to never abuse, neglect, harm or exploit clients in any way.¹⁸
- c. **Principle 6 (Strive to maintain the trust and confidence of clients)** requires social workers to behave in a professional manner, and to take complaints seriously and respond to them in an appropriate, professional, and constructive way¹⁹.
- d. **Principle 8 (Work openly and respectfully with colleagues)** requires social workers to communicate with colleagues with courtesy, openness, and honesty, work cooperatively with colleagues when such cooperation serves the wellbeing and best interests of clients, resolve any conflicts with colleagues respectfully and constructively, never bully, harass or discriminate against colleagues, and not discuss colleagues in public places or on social media.²⁰
- e. **Principle 9 (Maintain public trust and confidence in the social work profession)** requires social workers to maintain a high standard of professional and personal behaviour and to avoid activities, work or non-work, that may in any way bring the social work profession into disrepute; the same standards of conduct are expected when using social media and electronic forms of communication, never use or condone the use of violence, work cooperatively with, and be honest, open and constructive in their dealings with managers, employers, the Board and other authorities, and cooperate fully with any formal inquiries or investigations of any kind.²¹

¹⁸ Code of Conduct at [5.4], [5,7], [5.8] and [5.9].

¹⁹ Code of Conduct at [6.2] and [6.9].

²⁰ Code of Conduct at [8.1],[8.2], [8.3], [8,4] and [8.7].

²¹ Code of Conduct [9.1], [9.5], [9.6] and [9.7].

No participation by Ms Lynch:

26. Ms Lynch did not participate in the proceedings. She did not attend the hearing or give any evidence about any of the allegations in the charge, and nor had she engaged with the PCC as to the substance of the matters it investigated (which included the matters alleged in the charge). Ms Lynch was afforded every opportunity to participate in these proceedings, at each stage in the process. The Tribunal's Hearing Officer, Ms Fraser, kept Ms Lynch informed of the progress of the proceedings, provided her with all documents received or generated by the Tribunal, and Ms Lynch was informed of the key dates including the hearing details. However, in her responses to Ms Fraser, Ms Lynch made it clear she had no intention of participating. Ms Lynch's communications with Ms Fraser, which were produced to the Tribunal, broadly speaking were highly inappropriate, unprofessional, and abusive²².

The evidence called by the PCC in support of the charge:

27. The PCC called evidence in respect of the charge, to formally prove the allegations. As discussed below, the Tribunal was satisfied the evidence given by the witnesses and the contemporaneous records that were produced to the Tribunal established each of the particulars of the charge.

Evidence as to conduct post termination of employment with CDHB (Particulars 1 and 2)

28. **Mr X:** Mr X is a barrister and solicitor who holds a current practising certificate issued by the New Zealand Law Society. At the time of the relevant events, he was employed as an in-house Employment Relations Specialist in the People and Capability Team at CDHB. In his role, he was responsible for providing legal advice to the business on employment matters, preparing responses to letters and claims, and representing the CDHB in mediations and in the Employment Relations Authority.
29. Mr X provided details about Ms Lynch's employment at CDHB including the fact that she was stood down from her employment on 13 March 2019 and was the subject of an internal employment investigation to review alleged concerns that had been

²² Transcript pages 3-5 and Document 1 – Timeline of communications with Ms Lynch attaching relevant correspondence with Ms Lynch from the date the Notice of Disciplinary Proceedings was sent to her until the commencement of the hearing on Monday, 27 June 2022.

reported about her. Ms Lynch's employment terminated once the investigation was completed and the CDHB was satisfied the report of concerns were made out. Mr X explained that he was one of the in-house employment lawyers who provided privileged advice in respect of Ms Lynch's matter (including in respect of termination of Ms Lynch's employment and around the DHB's mandatory reporting obligation to the Social Workers Registration Board), to the Executive Director of Allied Health, Scientific and Technical at CDHB (Dr Jacqui Johnston), although he did not attend disciplinary meetings.

30. Mr X stated that a couple of months after Ms Lynch's employment was terminated, she began to harass and make threats against him, and she had also publicly ridiculed his name on social media. Mr X's evidence, supported as it was by relevant contemporaneous documents, was that on multiple occasions he received threats and inappropriate remarks from Ms Lynch through email, social media platforms and voice messages left on his phone.
31. Mr X's evidence was that in August 2019, Ms Lynch began to indicate in emails that she took issue with him and his conduct during the internal employment investigation. He produced an email exchange with Ms Lynch that began on 7 August 2019 in response to his email to discuss Ms Lynch's final pay²³. In the email exchange that followed:
 - a. Ms Lynch expressed her concern that Mr X had responded to an email query from her father on one occasion
 - b. Mr X confirmed to Ms Lynch by email on 12 August 2019 that her concerns were noted, and he would not reply to her father anymore. Mr X suggested that Ms Lynch advise mediation services about this also, because he understood they would continue to copy him into correspondence and his (Mr X's) understanding was that Ms Lynch did not want her father to be included in this.
 - c. Ms Lynch replied to Mr X saying, *"You do NOT dictate to me who I speak with regarding this mediation particularly my father"*. Among other things, Ms Lynch went on to say, *"you may have played god with my career for the past 6 months, but you will not continue this behaviour...you are not employed as an "employment*

²³ PCC Bundle of Briefs of Evidence and document at Tab 8 of PCC Bundle of Documents.

lawyer” for the CDHB; therefore it would be appreciated that you work within your scope of practice and discontinue sending me irrelevant emails.”

32. Mr X stated that he understood Ms Lynch was attempting to say he was not an employment lawyer, because she had made similar remarks (referred to below).
33. Mr X responded to Ms Lynch on 12 August 2019, clarifying his role within the CDHB, outlining the fact that because she was self-represented, he needed to contact her directly at times, and addressing her concerns about his reference to mediation services and contact with her father. Mr X produced his email and Ms Lynch’s response at 11.28am on 12 August 2019²⁴ in which she:
 - a. Opened with the statement, *“Thank you for your drawn out lengthy unnecessary email.”*
 - b. Told Mr X he would not contact her and that she did have representation but indicated she was not *“required to expand”* on that, and asking him to *“stop dictating a process which is not led by [me] and out of [my] control”*; and
 - c. Continued to assert that Mr X was not a legitimate employment lawyer, stating *“You may have a current law practicing [sic] certificate for the duration of my investigation however we have determined, and I was also informed by David Beck that you are not employed as an employment lawyer for the CDHB. You are not employed as a lawyer for the CDHB. You are an employment relations advisor with a law degree”*.
34. Mr X explained that he received another email from Ms Lynch on 11 October 2019 entitled *“Give it up”*. He stated he found the content of the email to be unprofessional and demeaning. In that email, which was produced to the Tribunal²⁵, Ms Lynch:
 - a. Started by saying *“Give it up Mr [X – Christian and full name] !!!!”*
 - b. In relation to the employment relations process, said *“I have to give you 10/10 for entertainment purposes hahahaha threatening to pull a settlement offer hahaha their [sic] was no settlement in the first place to pull you moron!!!!”*

²⁴ PCC’s Hearing Bundle at Tab 9.

²⁵ PCC Bundle of Documents at Tab 10

- c. Made what Mr X said he considered to be a threat to the effect of *“it’s now time for CDHB People in Capabilities [sic] to be exposed for what really occurs. I have it all recorded and I’m only one of hundreds of ex-employees”*.
 - d. claimed Mr X is a bully and that she knows he was bullied growing up because of body image issues.
 - e. Claimed she recorded the meetings from the mediation.
 - f. Made insulting remarks towards Mr X such as *“what a sad little man you are”* and indicated she had the *“upper hand”* saying *“I control the situation now, not you or your side kick Michael Frampton and David Meates”*.
35. Mr X then stated that he became aware from Dr Johnston that she had received a direct message on Facebook Messenger from Ms Lynch’s account. When Dr Johnston showed Mr X a copy of the message, Mr X said he instantly noticed it was from the profile of Francesca Lynch. He said the impression he got was that Ms Lynch was behind the message as the content of the message stood out to him because it was consistent with previous sentiments that Ms Lynch had expressed towards him via email. The message, the screenshot of which was produced to the Tribunal²⁶, contained the following:
- You vile person! I’m so glad you are finally being named and shamed on social media!!!!About time!!!!Thank you, media. You’re abject failure in your own country. You disgusting pig! You won’t be in your job for too much longer.*
36. Mr X stated that subsequently he received another message via Facebook messenger. This was from a profile called ‘Willie Morris’. Mr X said he does not know anyone with this name and he suspected the account was being operated by Ms Lynch because of the nature of the messages. Also, he thought it would be unusual that a random person who he did not know would be messaging him in this manner. The messages, screenshots of which Mr X produced²⁷:
- a. Referred to Mr X as a *“grotesque and repulsively ugly person”*
 - b. Said that karma was going to bite Mr X twice as hard *“on your fat ass”*?
 - c. Said that Mr X must have *“been bullied at some point in your life”* and because of this [you] *“immerse yourself in evil behaviour and get off on this”*. Mr X said this

²⁶ Screenshot of Facebook message at Tab 11, PCC Bundle of Documents.

²⁷ Screenshot of Facebook message at Tab 12, PCC’s Bundle of Documents.

- was something that made him consider the message was from Ms Lynch because Ms Lynch had referred to him being bullied, in her email dated 11 October 2019 (as above).
- d. Made a threat that Mr X should “*wait till [he] get exposed*” and that “*evidence is so favourable when you have recordings*”. Mr X said he believed this was consistent with the 11 October 2019 email, namely the reference to Ms Lynch having recordings of the mediation meetings.
 - e. Said that Mr X is a “*malicious, vile, iniquitous and egregious person*” and that he “*won’t be able to hide behind your knight in armour. They won’t rescue you this time*”.
 - f. Said that “*people that are merciless sink fast. That’s why you aren’t a lawyer in the community anymore and never will make a successful solicitor...Eva. We will make sure of that. Your discreditable reputation is already being altered as this is typed, phone calls are being made and time for you to fight your way through it.*”
 - g. Said “*ticking time bomb. Things are commencing. Let’s see how you are in 3 months time...you think you are inexorable. That’s in your head only...it doesn’t stop here for you, it’s only just begun for you [X – shortened Christian name and surname]*”
37. Mr X stated that he responded to “Willie Morris” Facebook messages advising that he had reported the matter to the Police. He said he received a response saying “*of course u have Hahaha*” and that “*Police have better things to do then listen your wee mouth go off again*”.²⁸
38. Mr X stated that Ms Lynch also made a number of comments on a post that was made by another Facebook profile that had shared a news article about an employment dispute subject matter that he was involved in. He stated there were a number of comments on this post that were made from a profile called “John Smith”. Mr X stated that like the “Willie Morris” messages, he thought the profile was fake and Ms Lynch was behind it. That was because of the content of the post which stated, “*Yes, I’m another unlawfully dismissed CDHB staff member who has a story to tell involving the (in my opinion) bully!! [Mr X] and others I just wondering about the correct approach in releasing it to you soon or do I go straight to the board or straight to the Minister of*

²⁸ Tab 12, PCC’s Bundle of Documents.

Health.” Mr X stated that the fact this profile had referred to him by name and referred to him as a bully made him think it was Ms Lynch. A screenshot of this Facebook post was produced to the Tribunal.²⁹

39. Mr X said Ms Lynch also made a comment from her own Facebook account: *“Well done to her lawyer Robert Thompson and to Chris [the name of the profile who posted this article] for exposing this evil unhinged guy. He gets off on tormenting hard working front line staff and finally he’s been named and shamed.”* Mr X said he understood from the context that the *“evil unhinged guy”* referred to him. Mr X produced the screenshot of this message to the Tribunal.³⁰
40. Mr X’s evidence was that the Facebook account *“Willie Morris”* posted a comment under a *“Stuff NZ”* article shared on Facebook. The post, a screenshot of which was produced³¹, referred broadly to the CDHB’s human resources department as *“dishonest”* and *“disreputable”*. Further, the post stated *“Name and shame. [Mr X] indulges in villainous behaviour as do multiple employees working in People and Capability’s [sic].”*
41. In addition, Mr X referred to a further comment on the Facebook account of *“Willie Morris”* which responded directly to a comment made by Facebook user *“Heather Clay”*. The post (screenshot produced³²) called for termination of the CEO of the CDHB (Mr Meates) and *“clean out”* of his human resources department. The post referred to the human resources department employees as *“dishonest”* and *“disreputable”* and that *“HR need to be exposed and an investigation needs to occur ASAP.”* It went on to say *“name and shame these bullies on 3 figure salaries. [Mr X] indulges in villainous behaviour as do multiple employees working in People and Capability’s [sic]. When is the Press – www.press.co.nz going to conduct their investigation ??????”*
42. Mr X explained that the *“Willie Morris”* Facebook profile continued to send him direct messages on Facebook Messenger that he considered were inappropriate and derogatory. One message, a screenshot of which was produced to the Tribunal³³, called him *“fat”* and *“obese”* and went on to say *“Abject failure in law; next best offer human*

²⁹ Tab 13, PCC Bundle of Documents.

³⁰ Tab 14, PCC Bundle of Documents.

³¹ Tab 15, PCC Bundle of Documents.

³² Tab 16, PCC Bundle of Documents.

³³ Tab 17, PCC Bundle of Documents.

remains lol HR. Why don't you go deal with your childhood and your teenage years of bullying". Again, Mr X stated that he was of the view that it was Ms Lynch who was operating this Facebook account.

43. Mr X stated that on 11 November 2020 he was also contacted by Ms Lynch on his work mobile³⁴. She had left a voice message at 2.17pm the previous day, which sounded like a clock ticking. The following day (11 November 2020) Mr X received five voice messages; one at 8.06am, another at 8.08am, a third at 8.14am (indistinguishable noises), a fourth at 8.15 am (silence), and the final message was left at 8.20am. Mr X told the Tribunal it was his opinion that the voice messages were extremely abusive and contained personal threats. He said he downloaded and saved the messages to his phone. A USB stick containing the recordings was produced to the Tribunal and the Tribunal listened to the messages at the hearing when Mr X gave his evidence. Mr X stated that he recognised the voice of the caller immediately, to be that of Ms Lynch's voice. He explained that he has spoken with Ms Lynch in person on numerous occasions because of his involvement with her when she was going through the employment investigation. Mr X stated that five of the messages were left the day after a media report had been published, written by Christchurch reporter, who the Tribunal was told is a relative of Ms Lynch. The media report was about the case that Ms Lynch mentioned in her voice messages. Mr X explained that the CDHB had lost the case in the Employment Relations Authority, and he had acted for the CDHB³⁵.
44. The Tribunal's hearing transcript records the following voice messages, which Mr X said were all left from the same cell phone number³⁶:

[Recordings played]

Message received yesterday at 2.17 pm - [sound of clock ticking]

*Message received today at 8.06 am -
"[Mr X - Christian name and surname], congratulations, how does it feel to lose a big case in the ERA? You are one motherfucker. I'm so glad the media has finally exposed you, name and shame you over every social*

³⁴ In his brief of evidence Mr X dated two voice messages to 11 September 2019 however he corrected that in his evidence in chief. He confirmed the dates of all six voice messages as being in November 2020, with reference to a communication he received from the New Zealand Police. Transcript pages 30 and 31.

³⁵ Transcript pages 32 -33.

³⁶ Transcript pages 26-29.

media page possible. I really hope you've seen the article that's been written about you, you fat disgusting pig, ruining people's livelihood. Hey, well you know what buddy, it's your turn now. Let's just see how you suffer miserably (inaudible) day in day out. We all know you were bullied as a kid, just look at you, you're a fat, grotesque pig that is totally inadequate at everything you do in your role. And finally a lawyer by the name of Robert exposed you, you dumb motherfucker. Let's just see now where you go to from here. Because it's about time you leave the DHB.

I told you I was powerful. Let's just see what happens now eh? Watch the events unfold drastically. Let's just see what happens with you pretending to be a lawyer for the DHB. You know, you're nothing more than an incapable pig. You can't even turn up to a meeting on time. You are a disastrous pig. Let's just see from now how you handle what happens with you. Thank God my life has moved on from you and your corrupt ways. I'm doing great now, I'm in a great new profession with nice, normal people. You're nothing but an evil piece of shit. And I'm so glad that media has exposed you, finally. You (inaudible) sack people and dismiss people, reading all the comments. It's only been 18 months since the last one you did. Geez, wow, do an offering do you? Let's just see what happens from here eh? I told you right at the beginning, I'm a powerful person. Let's just see what happens now with your job and your career. Phone calls are going to be made (inaudible) to your fill-in boss and his boss and (inaudible). Let's see how long you last in your job now [Mr X].

The nightmare has only just begun for you, just begun."

Message received today at 8.08 am - "Hey, and One final thing mate. You know what? You can't do anything about me. That must make you feel extremely angry and unsettled and worried and anxious. You've got no hold on me any more bro, no hold on me whatsoever and it feels fantastic to me, you've got no hold. Nothing you can do can ruin my life any more because you've got nothing. Same with your bosses, they've got nothing. They can write to whoever they want to look into, but at the end of the day nothing will be done because I haven't done anything wrong, you have. And by the way, nice picture that the media have used on you, you disgusting pig with your three chins and your overweight, grotesque stomach. It must feel awful

being in the media (inaudible) let alone the disastrous mess you did to a young girl from Burwood Hospital. Let's just see now how you stand up and handle what's about to happen to you. We'll be in touch [Mr X - Christian name], don't you worry about that. See ya"

Message received today at 8.14 am - [indistinguishable noises]

Message received today at 8.15 am - [silence]

Message received today at 8.20 am - "How does it feel [Mr X - Christian name]? From taking someone to the ERA for \$10 which turned into 42,000. You've really got no idea what you're doing in your job. You're completely and utterly incompetent and this just raises more and more and more of a case to slam you; In the media, in court, take you to court, we'll take you to court, see what happens from that day moving forward for you, we'll see what happens for you. Because you lost that case and some comments that I'm reading online you do this all the time. So I don't think you're going to be in a job for much longer.

I'm not going away, I am not going away. Your nightmare has just begun and mine is finished. Yours has just begun buddy. Yours is only just beginning. I'd hate to see my photo in the newspaper, I would hate that. You're such a -- must be just so demoralising when you do massive cock-ups like that on people's lives, that's what happens. It's only just begun for you. I'm allowed to feel passionate, I'm allowed to feel passionate about this. For that girl in Burwood, her family. We're just very concerned about you, very concerned, very."

45. Mr X told the Tribunal that he reported the messages and the Facebook profiles to Netsafe New Zealand (in September 2020, regarding the online communications) and the New Zealand Police (in November 2020 after he had received the phone calls and voice messages). He also referred them to the legal team at the CDHB and was advised that a formal notification would be made to the Social Workers Registration Board.
46. **Gregory Micheal Brogden:** Mr Brogden is the Senior Corporate Solicitor in the CDHB and the West Coast District Health Board³⁷. He has been in this role since 2001. Mr

³⁷ Brief of Evidence of Gregory Micheal Brogden signed on 31 March 2022.

Brogden explained that he was aware of the termination of Ms Lynch's employment as a social worker at the CDHB although he was not directly involved in the disciplinary process that was handled by Mr X in the Employment Relations Team. Mr Brogden stated that to the best of his knowledge he has never met or spoken with Ms Lynch. He said he became involved in Ms Lynch's case in around July-August 2020 in relation to a report of concern she was harassing and threatening staff at the CDHB, in particular Mr X.

47. Mr Brogden confirmed he received Mr X's report of concern during November 2020 and that he was provided with several screenshots of Facebook messages and posts, and the voice mail recordings referred to above. He said he listened to the voicemail messages which he described as "extremely abusive and contain personal threats to [Mr X]". Mr Brogden said that because of the terminology used by the caller which was similar to some of the phrases used in the Facebook posts/messages, and Mr X's advice that he recognised the caller as Ms Lynch, he and Mr X were of the opinion that the caller was Ms Lynch.
48. Mr Brogden confirmed the CDHB's response which involved filing a complaint with the Police on 11 November 2020 and notifying the Social Workers Registration Board on 7 December 2020. He also confirmed that he provided the Police and the PCC with all the information held by the CDHB in relation to the matter. Helpfully, Mr Brogden confirmed that the dates the Tribunal was given for the screenshots of the relevant Facebook posts and messages were taken from the dates that Mr Brogden saw on the messages when Mr X showed the messages to him on his phone³⁸.
49. Mr Brogden told the Tribunal, in answer to a question from the Chair, that he has observed the significant impact of Ms Lynch's behaviour on Mr X, although he has not discussed this with Mr X. He said that as a colleague he had made sure Mr X is supported and had been supported.
50. **David Murray Quested:** Mr Quested was the presiding member of the PCC. He is a former Police Officer and a former Child Youth and Family Youth Justice Social Worker and Youth Justice Coordinator. As to the matter of Ms Lynch's conduct after the termination of her employment by the CDHB, Mr Quested, in his amended brief of

³⁸ On the screenshots produced to the Tribunal the dates of the messages/posts did not show.

evidence³⁹ stated that in April 2022 he was made aware that in criminal proceedings in 2022 Ms Lynch had admitted to having on 15 July 2021 created a Facebook account named “Willie Morris” and that she accepted responsibility for messages sent from that account and the Facebook account with her name “Francesca Lynch”.

Evidence as to conduct whilst employed by the Salvation Army (Particular 3)

51. **Glenn Dodson:** Mr Dodson is the Director for Salvation Army, Addington Supportive Accommodation Services based in Christchurch. Mr Dodson explained that Ms Lynch was employed in the social work practice at the Salvation Army, specifically in the three-person Community Housing Team from 18 November 2019 until 11 July 2019. Mr Dodson provided organisation management to Ms Lynch although she reported to other practice leaders for professional supervision. He explained that the Community Housing social workers are based at the Salvation Army hostel in Addington although their clients are in the community. Mr Dodson stated those social workers usually would not have any casework involvement or contact with hostel clients as they (the hostel clients) are Supportive Housing clients and have caseworkers who work for that team allocated to them. However, both community clients and Supportive Housing clients have similar presentation of issues for which they require Salvation Army’s help.
52. Mr Dodson stated that he received reports of concern from various staff members (and individual clients of the service also) about inappropriate conduct by Ms Lynch in March and April 2020 (during the Covid-19 lockdown at the times when she was present on-site at the hostel and not out seeing her clients in the community), relating to her engagement with hostel clients. In particular, the allegations were that Ms Lynch had developed a relationship with Mr Z who was a hostel client (as part of a bail condition⁴⁰), that was beyond “a professional capacity”. Mr Dodson stated that Pip Mills, Operations Manager, met with Ms Lynch informally on two separate occasions to discuss the concerns and Ms Mills briefed him about those meetings. They decided they would both meet with Ms Lynch as part of an internal investigation that was commenced.

³⁹ Amended brief of evidence signed on 17 June 2022. The Tribunal did not require Mr Qusted to attend the hearing to give evidence. The nature of his evidence was to produce relevant documents obtained by the PCC and correspondence with Ms Lynch, during the PCC investigation.

⁴⁰ Hearing transcript, page 81.

53. The first meeting was held on 23 April 2020 in Mr Dodson's office (Ms Mills and Christine Levett also attended: Ms Levett is an experienced social worker who was Ms Lynch's direct line manager⁴¹ although at the time Ms Levett was not practising as a social worker) at which time Mr Dodson said he raised with Ms Lynch that it was starting to appear that a male client, Mr Z, was hanging around to wait for her return, which staff had observed was becoming a regular arrangement. His evidence was that he conveyed to Ms Lynch that it appeared she was having a lot of involvement with Mr Z when he was not part of her caseload (which was partly based on his own observations⁴²). He stated that Ms Lynch said she did not wish for her actions to cause any issues at the worksite. Mr Dodson's evidence was supported by contemporaneous notes that were made of this meeting.⁴³
54. The second meeting was held on 28 May 2020 and Ms Mills and Ms Levett attended but he did not. Mr Dodson said that the purpose of this meeting was to share concerns about observations made by the wider staff about Ms Lynch's increasing engagement with Mr Z, and particularly their observations that Ms Lynch was still hanging out with Mr Z and other hostel clients during lunchtime. Mr Dodson stated that Ms Mills briefed him after the meeting, and he was told that Ms Lynch denied hanging out with Mr Z and said that her friendly personality was being targeted by two staff members although she did not say who they were.⁴⁴
55. Mr Dodson explained that on 8 July 2020 he uplifted camera footage covering the period 15 May to 3 June 2020, from the hostel's security system. He said that Ms Lynch was aware that cameras ran live across the site including in the staff area.⁴⁵ He said he viewed a large amount of footage⁴⁶ and made a summary of events involving Ms Lynch and Mr Z. The footage was produced to the Tribunal as were the notes Mr Dodson made at the time summarising what he had seen⁴⁷. At the conclusion of the hearing on 27 June 2022 the Tribunal viewed the footage. Mr Dodson recorded that he had observed

⁴¹ Hearing transcript at page 57.

⁴² Hearing transcript at page 54.

⁴³ Tab 2, PCC Bundle of Documents.

⁴⁴ Tab 3, PCC Bundle of Documents

⁴⁵ Hearing transcript at page 83.

⁴⁶ Mr Dodson explained that the site is a hectare and at the time there were 15 professional, high-definition cameras, running 24 hours a day (12 external and three internal cameras). Hearing Transcript page 47 L 1-17.

⁴⁷ Tab 4 PCC Bundle of Documents.

on the footage nine occasions when there were encounters or meetings between Ms Lynch and Mr Z, sometimes with another hostel client (Mr C) present⁴⁸ (Mr Dodson said that Mr C was a “*friend, close ally*” of Mr Z⁴⁹); meetings which lasted for over ten minutes on several occasions. On one occasion, Ms Lynch gave both Mr Z and Mr C a hug. This was during their final encounter on Wednesday, 3 June 2020. On that date Mr Z was being discharged from the Salvation Army into custody. Mr Dodson explained that his discharge was because of Ms Lynch’s suspected relationship with him (Mr Z), and because his own issues were also starting to impact the hostel (he had become a risk to others because he was making threats of harm to others), although Mr Z was not told of the concerns held about his relationship with Ms Lynch⁵⁰. At 16:36 Ms Lynch can be observed on the footage arriving and heading straight to Mr Z who was located in the driveway between two sections of the hostel. At 16:42 Ms Lynch is seen giving hugs to Mr Z and Mr C in the entrance foyer before they dispersed⁵¹. Mr Dodson stated that it was his view that Ms Lynch and Mr Z would also meet and go to where they could not be observed by the CCTV cameras, noting that there were obvious boundaries in terms of how far Mr Z could go outside the boundaries.

56. Mr Dodson explained that in addition to obtaining CCTV footage, on 5 August 2020 he also obtained a spreadsheet of phone records from Ms Lynch’s work phone⁵². These records were also produced to the Tribunal.⁵³ The records show a significant number of calls and texts between Ms Lynch and Mr Z between April and July 2020, at various hours of the days including after hours. There were 102 text messages and 8 calls made from Ms Lynch’s work mobile to one mobile number which Mr Dodson said he cross-checked with the records held for Mr Z and the number matched. In addition, Ms Lynch’s mobile received 99 text messages from Mr Z’s number. There were logs of 5 calls having been received on Ms Lynch’s work phone from Mr Z’s number. On some

⁴⁸ Friday, 15 May 2020 at 15:46, Monday, 18 May 2020 at 12:59, Tuesday, 19 May 2020 at 13:48, Thursday, 21 May 2020 at 14:00, Friday, 22 May 2020 at 13:50, Monday, 25 May 2020 at 14:15, Tuesday, 25 May 2020 at 13:49, Thursday, 28 May 2020 (early afternoon) and Wednesday, 3 June 2020 at 16:36.

⁴⁹ Hearing Transcript at page 46 L3-7.

⁵⁰ Hearing Transcript at page 46 L 8-22 and page 81 L13-22 and page 84 L 19-28.

⁵¹ Brief of evidence of Glenn Dodson at [28].

⁵² Mr Dodson explained these were obtained by the Salvation Army IT Department, from Vodafone. Hearing transcript at pages 77 and 78.

⁵³ Tab 5, PCC Bundle of Documents.

occasions multiple text messages were exchanged. On 3 July 2020 Ms Lynch and Mr Z spoke for nearly 10 minutes (9.23 minutes). By then Mr Z had been discharged from the Salvation Army hostel. Mr Dodson told the Tribunal that on that date he had given Ms Lynch a letter advising her of the investigation. Mr Dodson stated that he noticed from the pattern of calls that they stopped around the period of Mr Dodson's and Ms Mills' investigation.

57. Mr Dodson stated that on 6 July 2020 he and Ms Mills met with Ms Lynch who they had formally invited to attend. Mr Dodson said he conveyed to Ms Lynch the findings of the investigation and the evidence that had been compiled. Ms Dodson said he told Ms Lynch that based on all the evidence, the Salvation Army was concerned about the inappropriate nature of her relationship with Mr Z. Mr Dodson's evidence was that Ms Lynch said Mr Z had confided in her about personal issues but had told her not to disclose this to anyone and she did not record these as a result; she did not have Mr Z's cell phone number and nor did he have hers; and the relationship between her and Mr Z was "nothing". Mr Dodson stated that by that stage Ms Lynch had expressed her intention to resign. A transcript of the audio of the meeting prepared by the PCC, which lasted 1.5 hours, was produced to the Tribunal through Mr Quested, as was the audio itself.
58. Mr Dodson confirmed his attendance at a meeting with Ms Mills and a staff member who was a casual Support Worker, Salvation Army, Addington Services, the following day, 7 July 2020. More is said about this meeting, below.
59. Mr Dodson explained that on 9 July 2020 he sent Ms Lynch a formal letter inviting her to a meeting on 13 July 2020 to discuss the termination of her employment.⁵⁴ He stated that on 11 July 2020 he received an email from Ms Lynch resigning from her role, with immediate effect. Ms Lynch indicated she did not wish to meet to discuss this, but she continued to deny the allegations and maintained her innocence⁵⁵. On 13 July 2020 Mr Dodson wrote to Ms Lynch and indicated her resignation was accepted. On 17 July 2020 he made a report to the Social Workers Registration Board and subsequently he supplied his investigation file to the Board.

⁵⁴ Tab 6, PCC Bundle of Documents.

⁵⁵ Tab 7, PCC Bundle of Documents.

60. **Pip Mills:** Ms Mills is the Operations Manager for Salvation Army, Addington Supportive Accommodation Services. She is responsible for the day-to-day management of the Addington branch, including general management of social workers at the hostel and human resource matters. Ms Mills has worked for the Salvation Army for 25 years and has worked in management roles at the Addington branch for 21 of those years. Ms Mills confirmed she was not Ms Lynch's manager (Ms Levett was) but she was responsible for the social worker who was managing Mr Z.⁵⁶
61. Ms Mills confirmed she assisted Mr Dodson with the investigation and that she held a meeting with Ms Lynch in late May 2020 where they discussed the matter.⁵⁷ Ms Mills spoke about attending the meeting with the staff member on 7 July 2020 and playing and listening to the voice messages that Ms Lynch had left for the staff member through Facebook Messenger, about events that were occurring around Mr Z exiting the site (in early June 2020)⁵⁸. Ms Mills recalled that the voice messages were recorded off the staff member's phone on 3 June 2020, but they were from different days⁵⁹. The voice messages were produced to the Tribunal through Ms Mills and were played during the hearing.
62. In those messages Ms Lynch talked about⁶⁰:
- a. "[Mr C]" messaging her and saying he and [staff member] would drink her under the table
 - b. Saying "*hopefully I hear from [Z] at some point...obviously only emails in prison*"
 - c. That she thought it must be so different without them not coming to hang around and have smokes, and that she was not looking forward to going back to work because she did not get to see "*those boys*"
 - d. That "*he*" had been telling her last night things that made her think he was institutionalised, and it would be so much easier getting to know someone in the real world rather than an "*environment like that*".

⁵⁶ Hearing transcript, page 103 L 6-13.

⁵⁷ Tab 3, PCC Bundle of Documents.

⁵⁸ Hearing transcript at page 80 L 18-31.

⁵⁹ Hearing transcript at page 100 L 12-23.

⁶⁰ A USB stick containing the recordings was produced. Messages transcribed as recorded in Hearing transcript at pages 90-100. See also Transcript of the recording of the meeting between Ms Mills and a staff member at Tab 23, PCC Bundle of Documents.

- e. She noted that *“at the end of the day, it’s my career, it’s my job”* so she was looking forward to hanging out *“away from that system”*.
- f. “[Z]’ and Mr C had told her that A[man] had complained about them last night. She said she did not ask [Z] what they had said to A.
- g. Said that there were *“connections”* with some people more than others, and that she had had to rein it in on occasions because she had to recognise that she was at work and needed boundaries.
- h. Acknowledged that [Z] was messaging her saying he wanted to meet up, but that was becoming too frequent, and people were getting suspicious and *“snitching”* to management.
- i. She said this would *“not happen now”* and she would be able to focus on work. It would now be *“way easier”* to hang out with them because she would not have to be looking over her shoulder.
- j. [Z] wanting to have a meeting with Ms Mills and saying that her name would not come up and that he *“had her back”* because she was getting worried. She said they had discussed that if Ms Mills asked questions about something going on between them that he would say that he was interested in youth justice and could pass off the hug as *“just friends”*.
- k. She recognised that Ms Mills would likely say that she could not have clients as friends, and that she would say he was not her client – and Ms Mills would say he was a *“client of the service”*.
- l. Said that she was glad she *“was not there when his kids mum came”*.

63. **Mr Quersted:** Mr Quersted produced documents obtained by the PCC relevant to the allegation in particular 3 including a transcript of Ms Lynch’s meeting with Mr Dodson and Ms Mills on 6 July 2020. The transcript shows that at that meeting Ms Lynch said that:

- a. She did not have Mr Z’s number and she did not think he had hers. She said she did not contact him, and he did not contact her. She said she had not spoken to Mr Z since he had been discharged from their service. On 3 June 2020 when Mr Z was discharged, she denied corresponding with him and knowing that he was to be discharged from the service in advance.

- b. She did not believe that clients were waiting for her. She said she did reduce the amount of contact time with clients around the site. She denied it was a pre-arranged thing for the clients to be waiting for her.
- c. She knew what boundaries were and did not think there was an issue. She said she acknowledged they were clients of the service and did not overlook that, despite them not being direct clients. She said that whatever she talked about with hostel clients was strictly professional.
- d. Mr Z would talk with her about social work, and about a personal issue he had. She did not record that because it was not concerns for the service; it was personal issues.
- e. The relationship between them was “*nothing*”.
- f. She denied having any contact with Mr Z since he left the service and then since he came out of prison.

Tribunal’s consideration of the charge:

Discussion

64. The PCC submitted that Ms Lynch’s conduct as particularised in the charge had been established on the evidence (outlined above). For the reasons given below, the Tribunal accepted that submission and therefore, that the conduct alleged in each particular of the Charge was proved.

Particular 1 and 2 – Conduct following termination of employment with CDHB

65. The Tribunal was satisfied on the balance of probabilities that:
- a. Ms Lynch was responsible for:
 - i. The Facebook messages and comments/posts that are in the name of “Willie Morris”.
 - ii. The Facebook comments/posts in the name of Francesca Lynch.
 - iii. The Facebook comments/posts in the name of John Smith’.
 - b. Ms Lynch was responsible for the voicemails left on Mr X’s phone.
 - c. The direct messages Ms Lynch sent to Mr X on social media and the voice messages she left for him on his phone were abusive and contained personal threats about

Mr X's job and personal safety. Ms Lynch's conduct was threatening and harassing towards Mr X.

- d. Ms Lynch's conduct in that same period in making posts on social media from a social media account in her name involved Ms Lynch making disparaging remarks about the reputation and character both of Mr X and the CDHB.

66. As to the first particular of the charge, the messages from "Willie Morris" coincided with or were around the similar time as the emails with Ms Lynch around her final pay and used similar language, including referring to having recordings and to Mr X having been bullied when he was growing up. The voice messages refer to Mr X having lost the CDHB's case in the Employment Relations Authority and Mr X explained in his evidence about how the Employment Relations Authority issue came about and the news articles that were written by a relative of Ms Lynch and then reported on by the New Zealand Herald. That links back to the comments that were posted on news articles about the Employment Relations Authority reportings on Mr X. Further, there was similar language used between all the messages and the posts, including ones that were sent in Ms Lynch's name, including the message sent to Dr Johnston. There was a common theme underpinning all the messages which was that Mr X was responsible for the issues at the CDHB and/or being the specific target or the person specifically named in the comments. There is also a commonality of language around people being "evil" or "vile", "villainous bullies", and the phrase "abject failure" is used on more than one occasion in between the various messages. Mr X is referred to as being "fat" or "obese" and as having been bullied as a child, which is a common theme throughout the messages, as is the reference to people being named and shamed. The Tribunal was satisfied there is sufficient commonality and links between all the various messages and around the context that was occurring at the time, and because of that the Tribunal was satisfied that Ms Lynch was responsible for all the social media postings.

67. The Tribunal was satisfied the evidence established that the voice messages left on Mr X's phone were left in November 2020, based on a letter from the Police which confirmed Police were notified about the messages at that time (and Mr X's evidence that Police were notified immediately). In the messages, much of the derogatory and insulting language used to describe or refer to Mr X being in the media and photos that

were posted alongside the news articles in those stories, was used. The evidence established that there was a high degree of derogatory and insulting language used in the voicemails and a number of threats. There are several commonalities between the language used in the voice messages, the Facebook posting comments and the emails that Ms Lynch exchanged with Mr X. Ultimately, Mr X, having listened to the voice messages was of the opinion this was Ms Lynch. The Tribunal had the benefit of other audio recordings of Ms Lynch that it compared with the voice messages. It had no difficulty being satisfied that the voice messages left on Mr X's phone were from Ms Lynch.

68. Based on the evidence the Tribunal heard it was satisfied on the balance of probabilities that Ms Lynch was responsible for all the voicemails.
69. It was for those reasons that, the Tribunal was satisfied that particulars 1 and 2 of the charge were established on the evidence before it and that Ms Lynch engaged in the conduct as charged.
70. It was submitted⁶¹ for the PCC that Ms Lynch's conduct in her use of social media and in leaving the voice messages for Mr X breached the Code of Conduct (including principles 1.1, 1.5, 8.3, 8.4, 8.7 and 9.1) in a manner that requires disciplinary sanction. The Tribunal agreed.
71. The relevant principles from the Code of Conduct are as outlined above.
72. The Tribunal considered previous cases relating to rudeness, harassment, and threatening of others in a professional context, for further guidance as to the relevant standards against which to measure Ms Lynch's behaviour.
73. There are no directly analogous previous cases in the social worker disciplinary context.
74. The PCC referred to three decisions of the Health Practitioners Disciplinary Tribunal as follows:
 - a. *Professional Conduct Committee v Hugill*⁶² : one of the charges the nurse faced was that she had posted offensive and/or inappropriate comments which were derogatory to Māori on a Facebook page which was open to the public (the New Zealand Nurses Organisation (NZNO) Facebook page). The comments were posted

⁶¹ Transcript, Oral Closing Submissions on Liability, pages 87-95

⁶² HPDT 1114/Nur20/468P, 28 September 2020.

after a link to a news article from an online news website was posted to the site. Nurse Hugill had accused Māori nurses of being lazy, dishonest, and unprofessional, and when challenged on her views, denied she was racist and said she was being “factual”. The Tribunal was satisfied the comments were offensive, inappropriate and derogatory and that Nurse Hugill had failed to observe the Nursing Council’s Code of Conduct and Social Media Guidelines. The posts also made allegations of unprofessional conduct by other nurses she had worked with, the New Zealand Nursing Council and the NZNO. The Tribunal considered these were disrespectful, describing the comments as “aggressive and demeaning”. The Tribunal found that Nurse Hugill’s conduct was “self-evidently serious misconduct that falls well below the standards expected of any registered nurse or health professional.” It considered that her post failed to uphold the expectations of her by a very wide margin, being immoral and unethical conduct, and likely to bring substantial discredit to the nursing profession.

- b. *In Drury*⁶³ a registered psychologist was found to have committed professional misconduct as a result of a number of breaches that arose in a professional setting over two and a half years involving inappropriate interactions with and comments made to clients and caregivers and other conduct including making critical and derogatory comments to social workers and adopting an unhelpful and sarcastic attitude in a meeting of members of his team. The inappropriate comments and interactions including expressing scepticism in the form of a laugh in a situation of a disclosure of sexual abuse. On two other occasions Mr Drury spoke forcefully to social workers expressing criticism of them and spoke in derogatory terms to social workers to the point of calling them either child abusers or as having the potential for child abuse which was considered inappropriate and unprofessional. The Tribunal considered that the totality of the matters proved to be such as to bring harm to the repute or reputation of the profession.
- c. *Professional Conduct Committee v H*⁶⁴ involved an allegation of unprofessional behaviour related to incidents of rudeness and verbal abuse towards a colleague,

⁶³ *Professional Conduct Committee v Drury* HPDT 500/Psy12/216P. 10 December 2012.

⁶⁴ 1105/Med19/448P.

and on another occasion Dr H was considered “brusque” towards another colleague. The Tribunal found that Dr H had breached the *Good Medical Practice* principle that colleagues must be treated “courteously, respectfully and reasonably”. It found that the exchanges Dr H had with the colleague were both rude and verbally abusive toward her and they were conduct which brought discredit to the medical profession.

75. The Tribunal accepted the following submissions:
- a. Ms Lynch’s conduct in engaging in harassing and bullying conduct towards someone she had previously had a professional relationship with reflected adversely on her reputation and the reputation of the social work profession. Viewed objectively, a reasonable member of the public would consider the conduct unacceptable for a social worker to engage in and is conduct that would bring discredit to the social work profession.
 - b. Social workers are expected to confront and deal with situations of conflict on a daily basis. They are expected to do so professionally and respectfully. Social workers are also required to work with a myriad of different professionals, including lawyers and health professionals. It is expected that social workers are able to do so appropriately and professionally, even when there is disagreement.
 - c. There is an expectation of appropriate use of social media by social workers, including that “all online posts should be considered public and permanent”. Clear and appropriate professional boundaries should be maintained in all forms of communication, including via electronic means and social media. Bullying and harassing conduct of the nature Ms Lynch has engaged in was a significant falling short of those expected standards of behaviour.
 - d. Social workers are placed in positions of trust and responsibility through their role. They are expected to act honestly, and with integrity. It is expected that social workers maintain a high standard of professional and personal behaviour, to avoid activities, work or non-work that may in any way bring the social work profession into disrepute. This applies equally when using social media and electronic forms of communication. Ms Lynch failed to maintain that high standard of professional and personal behaviour that was expected of her, and has brought the social work profession into disrepute. Her use of false Facebook profiles to harass a former

colleague, and to post publicly about purported issues within a former employer, is a totally inappropriate way to deal with any concerns Ms Lynch may have had.

76. The Tribunal agreed with the submission that it is concerning that:
- a. Ms Lynch's conduct had its origins in an employment-related dispute and escalated to personal attacks on individuals involved in that employee's organisation.
 - b. The public nature of some of the comments includes many serious allegations against Mr X and the CDHB, including stating that Mr X is a bully, is evil and unhinged, is villainous and that the CDHB HR employees are "dishonest and disreputable".
 - c. The use of false profiles is deceptive, and in the case of public comments on Facebook, makes it appear as though there are several people alleging these things about Mr X and CDHB, rather than one disgruntled employee.
 - d. In Mr X's case, the messages involve the use of aggressive language, including swearwords and make personal and derogatory comments about his appearance.
 - e. The messages and voicemails contain threats of further action and say that things have "only just begun" for Mr X. In particular, the voice message featuring a ticking clock, carried a sinister undertone. The cumulative effect of the messages targeting Mr X gives rise to concern about whether these were to be followed up with some physical or other action against him. Mr X told the Tribunal about how he had genuine concerns going out, and that he changed his social media presence as a result.
 - f. The use of false profiles also adds a further layer to the threat and uncertainty about the extent to which this might be escalated.
77. The Tribunal has no difficulty being satisfied that Ms Lynch's conduct in each of particulars 1 and 2 was a serious departure from the professional standards which the public and the profession expect of registered social workers, breached principles of Code of Conduct, and brought discredit to the social work profession. The nature, number and degree of the communications and the significant period over which they occurred, meant the Tribunal could be in no doubt that the conduct was sufficiently serious to warrant discipline. As such the conduct in each of particulars 1 and 2

constituted professional misconduct for the purposes of both section 82(1)(a) and section 82(2)(a) and (d) of the Act. It goes without saying that when particulars 1 and 2 are considered cumulatively, there was professional misconduct.

78. The Tribunal considered that Ms Lynch's professional misconduct called into question her ability to practise social work ethically in the future.
79. Having regard to the health practitioner cases the Tribunal has referred to above, the Tribunal considered that Ms Lynch's behaviour towards Mr X was far beyond the conduct in the *Drury* and *H* cases. It involved very threatening and intimidating conduct as opposed to just rude or demeaning conduct. In *Hugill*, the Tribunal found the nurse's comments about Māori nurses generally, were inappropriate and derogatory and that this conduct was "self-evidently serious misconduct". Ms Lynch's posts were derogatory of a particular organisation, the CDHB, and of Mr X. They made a number of allegations about the CDHB and Mr X, including that they were "villainous" and "dishonest". Given that Ms Lynch's comments were intimidating and contained threatening undertones to individuals the Tribunal considered that Ms Lynch's actions were of an additional seriousness to those of Nurse Hugill's conduct in making offensive and inappropriate comments.
80. Put simply, in the Tribunal's opinion, Ms Lynch's conduct was disgraceful.

Particular 3 – conduct whilst employed by the Salvation Army

81. For the reasons given below, the Tribunal was satisfied on the balance of probabilities that Ms Lynch engaged in an unprofessional and inappropriate relationship with Mr Z, who was a client of her employer, the Salvation Army.
82. The reasons for this finding are as follows:
83. The Tribunal accepted Mr Dodson's evidence that hostel clients were equally clients of the Salvation Army as community clients. Ms Lynch, as a social worker employed by the Salvation Army, was expected to recognise and abide by that. There was an element of being in a position of trust and authority by virtue of Ms Lynch being a Salvation Army social worker and Mr Z a Salvation Army client. While he was not a direct client, the Tribunal accepted the submission for the PCC that there was still a requirement for Ms Lynch to act professionally, and not engage in any form of inappropriate, unprofessional, or personal relationship with him.

84. The number of messages and calls exchanged between Ms Lynch and Mr Z show that there was something beyond a purely professional relationship occurring, in the Tribunal's view. Ms Lynch referred to helping Mr Z with a personal matter, talking about social work and giving him a hug, but there is little or no explanation for the remainder of the times they met up or exchanged calls or text messages. Moreover, the phone records show that Ms Lynch's denial of having any phone contact with Mr Z was not true, nor was her assertion that there was no communication after he had left the service. Further, the records established that the level of text and voice communications included a number of communications out of work hours.
85. The Tribunal agreed with the submission made for the PCC that Ms Lynch's voice messages left for the staff member speak for themselves. It is clear from the messages (the context and the content of the messages) that Mr Z was being discussed. The essence of Ms Lynch's messages was that she was sad that Mr Z would no longer be a client of the Salvation Army – he had been exited from the service – but that this would make it easier to get to know him in the real world. Ms Lynch spoke about needing to recognise the boundaries she was given at work and this being difficult when there is a connection with some people more than others. Ms Lynch said that her and "Z" had spoken about him having a meeting with Ms Mills because Ms Lynch was worried, and Z said he had her back and that her name would not get mentioned unless Ms Mills brought it up. She discussed that they had always "stuck to the fact" they had a connection over youth justice, and that the Salvation Army did not "have any evidence" other than a hug, which could be passed off as friends.
86. The Tribunal accepted the submission that Ms Lynch acknowledged there was a crossing of boundaries with Mr Z, and instead of stopping that or reflecting on that, she focussed on whether there was "evidence" of this and how they could pass off or excuse the connection they had.
87. For those reasons, the Tribunal's view was that the number of phone calls, messages and the meetings observed on the CCTV footage, along with Ms Lynch's own characterisation of matters in the voice messages, supports the conclusion the Tribunal reached that there was a close, personal relationship between her and Mr Z, going beyond what is appropriate in a professional context.

88. The Code of Conduct notes that for the purposes of the Code “client” may refer to an individual, a student, a family, a group or organisation. It was submitted that although Mr Z was not a direct client of Ms Lynch, the same boundaries that apply in the direct social worker-client relationship applied here because Mr Z was a client of the Salvation Army for whom Ms Lynch was employed as a social worker. The Tribunal agreed. Ms Lynch herself acknowledged that boundaries were required between all clients of the Salvation Army and its social workers. The Tribunal accepted the submission that there is an obligation to maintain professional boundaries and not form inappropriate relationships with clients or those close to them and this applied equally to the hostel clients of the Salvation Army. The Tribunal had little difficulty concluding that by her conduct, Ms Lynch breached the Code of Conduct; in particular principles 5.8 and 9.1.
89. The Tribunal noted the evidence that was given by Mr Dodson that there were several occasions when Ms Lynch was warned about boundaries and how her spending time with the hostel clients was perceived by others; which Ms Lynch indicated she understood, or at least that she did not want to cause issue for the service. The importance of keeping professional boundaries, including with hostel clients, was reiterated to her on numerous occasions. As stated, the extent of the contact between Ms Lynch and Mr Z, as demonstrated by the phone records and the CCTV footage, shows there was a close and dependent relationship between them. The evidence indicated that as a hostel client, Mr Z had a number of difficulties that made him vulnerable. Ms Lynch indicated that Mr Z had shared a personal issue with her. If that was so, this ought to have indicated to Ms Lynch that she needed to respect the professional boundary with him and assist him in her professional capacity, rather than engaging with him on a personal level. That Ms Lynch did not case-note any of the personal matters she maintained that Mr Z discussed with her further supports that the relationship she had with Mr Z was inappropriate, in the Tribunal’s view. Further, there was a professional expectation on Ms Lynch to have spoken to her manager, Ms Levett, and to Mr Z’s social worker if Mr Z began confiding in her about personal matters or accessing her social work skills. The Tribunal drew an inference from the fact that she did not, that Ms Lynch knew there was an issue and that she did not raise it up because this would expose herself to the very allegation that she was involved in an inappropriate relationship with Mr Z.

90. The Tribunal's view was that having a personal, unprofessional and inappropriate relationship with Mr Z fell well short of the conduct reasonably expected of a social worker. The Tribunal was quite satisfied that considered objectively, having conducted herself in this way, Ms Lynch brought discredit to the social work profession, given the critical importance of the need to maintain strict professional boundaries between client and social worker.
91. The Tribunal was assisted by two comparable previous decisions, which highlight that the profession takes very seriously conduct which has involved a social worker breaching professional boundaries. A sexual relationship does not need to be found before professional misconduct can be found. In *CAC v Austin* Ms Austin was a social worker in the mental health services of the CDHB. She was client X's case manager from September 2014 to October 2014. Client X was a male with a significant psychiatric history. Ms Austin remained in contact with client X after his discharge from her care and began a friendship. There were many phone calls and text messages between her and client X. Ms Austin stated that their relationship was an "intense friendship" but was not sexual. Client X moved into Ms Austin and her husband's house. The Tribunal found the charge of professional misconduct was made out. Client X had a history of mental health issues and when Ms Austin met him he was acutely unwell. The Tribunal found that it was likely that she discussed continuing a personal relationship with client X before he was discharged from her care. The Tribunal held that as an experienced social worker Ms Austin ought to have understood the risks of entering a personal relationship with client X. The nature of the contact showed a close and dependent relationship and Ms Austin's lapse of judgement was significant.
92. In the *Surowiez-Lepper* case the social worker was employed by the Wellington City Mission. She formed a friendship with a City Mission client and took the client out for lunch and later told the client she was no longer a social worker and so they could be friends. In the following year, the pair's friendship continued, and they met frequently. The client gave Ms Surowiez-Lepper several gifts. Ms Surowiez-Lepper did not declare the gifts or the fact of the friendship to the City Mission. On other occasions, Ms Surowiez-Lepper would drive the client to the bank to withdraw money for her (Ms Surowiez-Lepper). The Tribunal found that Ms Surowiez-Lepper had exploited the trust

of the client, who was known to be vulnerable, and professional boundaries were blurred, and the conduct was professional misconduct.

93. In summary, the Tribunal was satisfied that Ms Lynch's conduct in particular 3 was a serious and significant departure from the professional standards which the public and the profession expect of registered social workers, breached principles of the Code of Conduct, and brought discredit to the social work profession. The Tribunal was in no doubt that the conduct was sufficiently serious to warrant discipline. As such the conduct constituted professional misconduct for the purposes of both section 82(1)(a) and section 82(2)(a) and (d) of the Act.

Penalty

94. Where the Tribunal makes an adverse finding of professional misconduct under section 82(1) of the Act it may make any one or all the penalty orders specified in section 83(1) of the Act.
95. The penalty which is imposed must fulfil the functions connected to the purpose of the Act which is to protect the public and maintain (and/or set) professional standards to enhance the professionalism of social workers. In addition, it is recognised that punishment may be an incident of the disciplinary exercise but the penalties available to the Tribunal that involve punitive elements ((fine, censure, suspension, and cancellation) are aimed at protecting the public and enhancing professionalism by acting as deterrents and holding social workers to account for their actions.
96. In previous decisions of the Tribunal, the Tribunal has adopted the sentencing principles which apply in the Health Practitioners Disciplinary Tribunal, which were identified by Collins J in *Roberts v Professional Conduct Committee*⁶⁵:
- 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.

⁶⁵ [2012] NZHC 3354, at [44]-[55],

- 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.
97. The Court in *Roberts v Professional Conduct Committee* referred to the penalty imposition as involving a "finely balanced judgement" and it not being "a formulaic exercise".
98. In *Singh v Director of Proceedings*⁶⁶ at [62] Ellis J concluded:
- "In terms of the general approach to be taken and principles to be applied, it also seems clear to me that care must be taken not to analogise too far with the criminal sentencing process. As the Supreme Court noted in *Z* the relevant societal interests in each case are different..."
99. In determining the appropriate penalty the Tribunal can take into consideration the practitioner's disciplinary history and the approach taken by the practitioner to the disciplinary process.⁶⁷

Cases

100. Counsel for the PCC referred to the outcomes in the cases that are outlined above.
101. Relevant to Ms Lynch's conduct following the termination of her employment with the CDHB, in *Hugill* the Health Practitioners Disciplinary Tribunal cancelled Nurse Hugill's registration. It was acknowledged that Nurse Hugill had also faced and was found guilty of a charge of practising while suspended. Cancellation of registration was considered the appropriate penalty given the serious nature of the two charges. The Tribunal held that the attitudes and beliefs expressed by Nurse Hugill in her Facebook posts have "no place in the nursing profession" and that misconduct, combined with her failure to adhere to the terms of her suspension, made cancellation of her registration necessary.

⁶⁶ [2014] NZHC 2848.

⁶⁷ *Hart v Auckland Standards Committee 1* [2013] 3 NZLR 103.

In *Drury*, the psychologist was ordered to be supervised for a period of 18 months, censured and ordered to pay costs. *Dr H* was censured. Conditions were not imposed as the Tribunal felt that lessons had been learned by the doctor.

102. Relevant to Ms Lynch's conduct when she was employed by the Salvation Army, in *CAC v Surowiez-Lepper* this Tribunal ordered censure and cancellation of registration for what was found to have been "gross misconduct".⁶⁸ A stand-down period of 3 years was imposed and before she could reapply for registration, the social worker was required to complete a Board-approved education programme with an emphasis on professional boundaries and ethics.
103. The aggravating features of that case were that Mrs G was elderly and had been specifically referred to the Wellington City Mission because she lived alone and needed support. The practitioner blurred the boundaries of the personal and professional relationship, and Mrs G was vulnerable to Ms Surowiez-Lepper's deception. The behaviour was ceased only when Mrs G questioned her conduct. The only mitigating factor was that Ms Surowiez-Lepper did not defend the proceedings and accepted her actions were wrong, although the Tribunal found that she lacked any significant insight into her harm.
104. In *CAC v Austin*, this Tribunal indicated that it would have imposed a period of suspension of Ms Austin's registration had she not spent 17 months away from social work at the time of the hearing, and it would have imposed a fine. Ms Austin was censured and ordered to undergo a fitness to practise assessment prior to obtaining a practising certificate, and close supervision on her return to practice and conditions on her practising certificate (as well as costs).

Discussion

105. It was submitted for the PCC that taken cumulatively, Ms Lynch's conduct warranted cancellation of her registration.

⁶⁸ Prior to the Act being amended in February 2019, in order to make a cancellation order the Tribunal had to have first found that the conduct in question was "gross misconduct",

Seriousness of conduct and aggravating and mitigating factors:

106. The Tribunal considered that the conduct it has reviewed in this case and the circumstances of the offending taken together are at the serious end of the spectrum in terms of conduct on the part of a registered social worker that requires disciplinary sanction.

107. As to Ms Lynch's conduct after the termination of her employment with the CDHB (particulars 1 and 2) the Tribunal accepted the submission for the PCC that the following features of Ms Lynch's conduct added to its gravity:

- Deliberate and sustained conduct: Ms Lynch's conduct was not spontaneous. It was deliberate conduct designed to harass Mr X on more than one occasion. This is evident in the creation of a false social media profile in the name of "Willie Morris" which the Tribunal has found Ms Lynch used to send private messages to Mr X; the voice messages making personal threats against Mr X, and disparaging remarks that were made on Facebook directed to Mr X and the CDHB.
- Motive: there was an available inference from the content of Ms Lynch's communications and the circumstances in which the communications arose that Ms Lynch's conduct was motivated by retribution.
- Deceptive conduct: Ms Lynch's creation and/or use of a false profile to message Mr X is conduct that was deceptive.
- Threatening conduct: Ms Lynch's conduct involving the voice messages was threatening towards Mr X.

108. The PCC indicated it was not aware of any relevant mitigating features, and on the information before it, the Tribunal did not consider there were any.

109. As to Ms Lynch's conduct whilst she was employed by the Salvation Army (particular 3) the Tribunal accepted the submission for the PCC that the following features of Ms Lynch's conduct added to its gravity:

- Breach of trust: Ms Lynch's relationship with Salvation Army client Mr Z, was a breach of the trust implicit in her position as a social worker. Ms Lynch was duty bound to act professionally and in the best interests of all Salvation Army clients even though Mr Z was not part of her caseload.

- Personal gain and conflict of interest: Ms Lynch's actions prioritised her interests over the interests of Mr Z. Her actions placed at risk the welfare of Mr Z, and the welfare of other Salvation Army clients.
- Wilfulness: Ms Lynch was spoken to and warned on several occasions that there were concerns about her relationship with Mr Z and that it would be inappropriate for anything of a personal or intimate nature to be occurring. Ms Lynch ought to have known that the nature of her relationship with Mr Z was beyond professional yet she engaged in and sustained an inappropriate and unprofessional relationship with him at least until she resigned from the Salvation Army. Ms Lynch had every opportunity to pull back and instead of doing so, the evidence showed that instead, she became more deceptive.

110. In addition, the Tribunal also considered as an aggravating feature, Mr Z's vulnerability, regardless of how charming or manipulative he was. He was a client of the Salvation Army because of a trauma history, and he was on bail (electronically-monitored bail – the Tribunal noticed from the CCTV footage that Mr Z was wearing an ankle-bracelet). The only reason Ms Lynch met Mr Z was because of her professional role as a social worker employed by the Salvation Army, of which he was a client. Ms Lynch had the power, as a social worker, and the onus was on her to pull away from the situation. The Tribunal considered that by her conduct, Ms Lynch put Mr Z in an even more vulnerable position as the concerns that were held about the inappropriateness of their relationship, ultimately led to Ms Mills taking steps to have Mr Z discharged and returned to custody. Further aggravating the situation was that clients who complained to management about what they had observed between Ms Lynch and Mr Z were also put in a position of danger, in the Tribunal's view.

111. The Tribunal did not consider there were any mitigating features relating to this conduct.

112. The Tribunal took into account the aggravating factors and it also assessed the sentencing principles, the previous cases in this Tribunal and (to a lesser extent) in the Health Practitioners Disciplinary Tribunal as referred to above, as well as the nature and gravity of the established conduct. The Tribunal's focus was on the protection of the public and on maintaining professional standards in the context of the disciplinary regime under the Act.

Penalty - findings

113. The Tribunal was statutorily required first to consider suspension of registration or practising certificate or the imposition of conditions on the person's scope of practice before it decided whether to make an order cancelling the practitioner's registration.⁶⁹ It did so.
114. The Tribunal accepts that cancellation of registration should not be ordered if an alternative penalty can achieve the objectives sought. Rehabilitation of the social worker is a factor requiring careful consideration. The Tribunal must balance protection of the public and the maintenance of professional standards with the need to express its disapproval about the conduct in question and deter the social worker and other social workers from engaging in similar conduct.
115. As was said by the Privy Council in *Dad v General Dental Council*⁷⁰ 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.”
116. The Tribunal carefully considered whether there were any alternatives to cancellation of registration which would achieve the objectives of protecting the public and maintaining the standards of the social work profession. The Tribunal concluded that a penalty short of cancellation of registration would not meet the purposes of the imposition of a disciplinary penalty and would not be a proportionate response.
117. The Tribunal's opinion was that Ms Lynch's conduct, taken together, was of a nature and gravity which indicates that she is unfit to practise as a social worker and that her name must be erased from the register. There is a strong need to maintain public confidence in the social work profession and in the Tribunal's view, that can only be achieved in Ms Lynch's case by cancelling her registration. This is one of those cases where cancellation can properly be regarded as inevitable.

⁶⁹ Section 83(2), SWR Act

⁷⁰ Referred to in *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02, 8 October 2002, Randerson J) at [31]

118. The Tribunal considered that a further period of suspension of Ms Lynch's registration and practising certificate would not be sufficient to ensure that Ms Lynch has completed any rehabilitative courses before she resumed practice. Further, there would be no ability to ensure that Ms Lynch has completed any rehabilitative courses or training before she resumed training after a period of suspension (which was a concern for the PCC). In addition, Ms Lynch's conduct to date and her lack of regard for the legitimacy of the disciplinary process, gives rise to real concerns for the Tribunal about her compliance with any conditions imposed on her scope of practice.
119. The Tribunal considered that the public requires protection from Ms Lynch. It considered that an order cancelling her registration was appropriate because her conduct was without doubt serious enough to warrant the imposition of this most severe of penalties. Suspension or the imposition of conditions would not adequately protect the public and enhance the professionalism of social workers, for the reasons outlined. There is also a need to maintain public confidence in the profession. A strong message needs to be sent to Ms Lynch and other social workers that engaging in behaviour of the nature the Tribunal has reviewed is unacceptable in the profession and indicates that a social worker may be unfit to practise. Ms Lynch's conduct taken cumulatively was a significant departure from acceptable professional standards and eroded the mana of the social work profession. Her conduct demonstrates that Ms Lynch lacks appreciation for or is prepared to disrespect, professional boundaries. She has demonstrated a lack of regard for appropriate professional conduct as a social worker and her conduct was unbecoming of a social worker. Her conduct towards Mr X was a sustained period of harassment, involving threatening conduct in retaliation for a perceived grievance. It went far beyond rudeness and inappropriate remarks to colleagues and as the Tribunal has said, it was disgraceful conduct.
120. The Tribunal therefore concluded that in all the circumstances, the proportionate penalty overall and the least restrictive penalty that could reasonably be imposed to fulfil the purposes of the Act was as follows:
- a. A censure to denote the seriousness of Ms Lynch's breaches of standards, to mark the Tribunal's disapproval of the conduct it has reviewed in this case, and for standards maintenance. The public and members of the social work profession will learn from reading this decision that the practitioner was censured and further

penalised for what was regarded as a series of actions that involved a significant falling short of professional standards in multiple respects.

b. For the purposes of protecting the public, an order cancelling Ms Lynch's registration as a social worker.

121. The Tribunal also considered whether the imposition of a fine was appropriate but decided a fine would not be imposed. In part, the Tribunal took into account that Ms Lynch will bear the burden of costs to be paid in this proceeding (as discussed below) in circumstances where her registration has been cancelled and she will be unable to work as a social worker in the future.

Costs

122. The PCC sought an order of costs. The general principles which need to be taken into account when considering costs orders⁷¹ are well settled and have been referred to in previous decisions of the Tribunal.

123. 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.

124. The general principles include that:

- The full cost of investigating and prosecuting a social worker should not fall on the social work profession (as a whole).
- Members of the profession who appear on disciplinary charges should make a proper contribution towards the costs of the investigation, prosecution, and the hearing⁷².
- Costs are not to punish⁷³.
- A social worker's means, if known, are to be taken into account⁷⁴.

⁷¹*Vatsyayann v PCC* [2012] NZHC 1138.

⁷² *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.

⁷³ *Gurusinghe v Medical Council of New Zealand* [1989] 1 NZLR 139 at 195.

⁷⁴ *Kaye v Auckland District Law Society* [1988] 1 NZLR 151.

- A social worker has a right to defend himself or herself and should not be deterred by the risk of a costs order⁷⁵; and
 - In a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards⁷⁶.
125. The normal approach for the Tribunal based on the authorities⁷⁷ 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 Lynch's colleagues (other members of the social work profession), through the Social Workers Registration Board.
126. The PCC indicated that the legal costs and expenses incurred for its investigation and prosecution of the Charge totalled \$50,273.67 (excluding GST). It was indicated that this sum reflected a deduction of the costs that were incurred associated with a third matter that was investigated by the PCC that did not end up reflected in a charge before the Tribunal.
127. The costs for the Tribunal were estimated to be \$31,983.00 (excluding GST) which reflects that the costs associated with a public hearing are not insubstantial.
128. Ms Lynch was given the opportunity to make submissions and provide any evidence of her current financial position before the Tribunal made costs orders. No submissions or evidence of any sort (for example, a declaration of financial means) was received. On 6 July 2020 the Hearing Officer received an email from Ms Lynch's email address but purportedly written on her behalf by her father,⁷⁸ advising that "*Francesca will not be paying a cent towards your costs...She does not need to provide you with any information pertaining to her financial position!!!!. **Their [sic] is not money transfer occurring...***" In that email there was reference to the "*pathetic dysfunctional [social work] profession*" and a clear statement that "*we will not be corresponding with you idiots! All the best with your next victims*". Therefore, because Ms Lynch's means were not known, they could not be considered.

⁷⁵ Vasan above fn. 77 and Gurusinghe above fn. 78.

⁷⁶ *Cooray v Preliminary Proceedings Committee* Unreported, High Court Wellington Registry, AP/23/94, 14 September 1995, Doogue J, at page 9.

⁷⁷ *Cooray v Preliminary Proceedings* above fn. 83.

⁷⁸ Email from Ms Lynch's email address to Counsel for the PCC and the Tribunal's Hearing Officer, Ms Fraser.

129. The Tribunal proceeded on the basis of the figures indicated by Counsel for the PCC and by the Hearing Officer and accepted that the total reasonable costs of the investigation, the prosecution and the hearing were in the vicinity of \$82,256.00.
130. All matters considered, the Tribunal was of the view that Ms Lynch 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 Lynch's own actions and increased because of her refusal to engage with the Tribunal's process.
131. The Tribunal considered that Ms Lynch should be ordered to pay a contribution of 40% of the PCC's total reasonable costs and expenses of and incidental to its investigation and prosecution, being payment of the sum of \$20,110.00. This reflects a deduction from the 50% start point to take account of the amendments that were made to the charge during these proceedings. A deduction of 10% was considered appropriate because the amendments did not affect the costs of the PCC's investigation, they did not prejudice Ms Lynch and an in-person hearing was still required because of Ms Lynch's failure to engage with the process.
132. Further, there will be an order that Ms Lynch is to pay a 40% contribution towards the costs and expenses of and incidental to the Tribunal hearing, which she did not attend, being payment of the sum of \$12,793.00. This reflects a deduction of 10% from the start point of 50% to take account of the Tribunal's attendances on matters that ultimately led to the amendments that were made to the charge (matters which were largely determined in Ms Lynch's favour).
133. This means the orders of the Tribunal are that Ms Lynch is to pay \$32,903.00 for costs.
134. 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.

Non-publication orders

135. The jurisdiction to make a non-publication order is found in section 79 of the Act.
136. When considering an application for a non-publication order the Tribunal is required to consider whether it is desirable to prohibit publication of the name and/or identifying particulars of the person in respect of whom the order is sought, after considering the interests of any person (including the unlimited right of a complainant to privacy) and

the public interest⁷⁹. A fact-specific assessment is required, and usually the balance will fall differently depending on the public interest in knowing a particular fact.⁸⁰

Mr X

137. On behalf of Mr X, the PCC sought an order for the permanent non-publication of his name (the application did not extend to his identifying particulars).
138. Mr X gave evidence relevant to this which in essence was that he is concerned that if Ms Lynch or those close to her wanted to publicise matters relating to these proceedings, there may be an element of fault, or allegations of threats consistent with those Ms Lynch has been found to have made against him. Mr X explained that part of his concern is that if more comments were published about him, including comments which have a bearing on his reputation as a lawyer (like the comments that were made about him in Mr Lynch's media article about the case in the Employment Relations Authority), this may result in people not wanting to hire him in the future ("if they felt I conducted myself in such a way that exposed myself or any potential employer to criticism")⁸¹. Mr X also gave evidence about how Ms Lynch's conduct towards him had affected him. The Tribunal was satisfied that Ms Lynch's behaviour had significant impacts on Mr X's wellbeing.
139. The PCC submitted that there is little legitimate public interest in knowing Mr X's identity, his name in particular.
140. The Tribunal accepted the submission that the public interest lies squarely in publication of Ms Lynch's name and the conduct that has constituted professional misconduct in respect of which Ms Lynch has been found guilty. That can all fairly be the subject of publication whilst Mr X's name is permanently suppressed.
141. The Tribunal concluded that to protect the privacy interests of Mr X going forward, it is desirable that his name is permanently suppressed from publication. Mr X has legitimate concerns that are not without a reasonable foundation given the Tribunal's findings on particulars 1 and 2. The Tribunal considered also that there is a public

⁷⁹ The relevant public interest factors were summarised in *Director of Proceedings v Y* 591/Med13/258P, 23 December 2013 in respect of an identical test under the Health Practitioners Competence Assurance Act 2003.

⁸⁰ *Y v Attorney-General* [2016] NZCA 474 at [32]-[33].

⁸¹ Hearing transcript at pages 34 and 35.

interest in suppression here so as not to discourage employees who are the subject of similar sorts of behaviour by a social worker, from reporting their concerns to their employer. Accordingly, there will be a permanent order suppressing from publication Mr X's name, pursuant to section 79(1)(d).

Mr Z

142. The Tribunal was satisfied that it was desirable to make permanent the interim order that had been in place in respect of the name of the Salvation Army client involved, Mr Z, and his identifying details. Having regard to his privacy interests the Tribunal concluded his name and any identifying features should be permanently suppressed. Indeed, the Tribunal considered that there was a public interest in his name being permanently suppressed. Accordingly, as was announced orally at the commencement of the hearing there will be a permanent order to that effect pursuant to section 79(2)(d) of the Act.

Mr C and other Salvation Army clients

143. Likewise, the interim order that has been in place in respect of the names and identifying features of Mr C and any other clients of the Salvation Army who are named in the evidence in these proceedings, is made permanent, also pursuant to section 79(2)(d) of the Act. As with Mr Z, there is a public interest in their names being permanently suppressed from publication.

Ms Lynch's name may be published

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

Result and Orders

145. The Charge against Ms Lynch is made out in all respects under section 82(1)(a) of the Social Workers Registration Act 2003. Ms Lynch is guilty of professional misconduct.

146. Ms Lynch is censured (section 83(1)(b)).

147. Ms Lynch's registration as a social worker is cancelled (section 83(1)(a)(i)).

148. Ms Lynch is to pay \$20,110.00 by way of a contribution towards the total costs and expenses of and incidental to the PCC inquiry and the prosecution of the Charge (section 83(1)(e) (ii) and (iii)).
149. Ms Lynch is to pay \$12,793.00 by way of a contribution towards the total costs and expenses of and incidental to the Tribunal's hearing (section 83(1)(e)(iv)).
150. There is to be a permanent order for the non-publication of the name of the employee of the Canterbury District Health Board who is referred to as Mr X in this decision, pursuant to section 79(2)(d).
151. There is to be a permanent order for the non-publication of the name and any identifying features of the Salvation Army client involved pursuant to section 79((2) (d)). He is referred to in this decision as "Mr Z".
152. There is to be a permanent order for the non-publication of the names and any identifying features of Mr C and any other clients who are named in the evidence in these proceedings, also pursuant to section 79(2)(d).
153. **It is noted that a person commits an offence, and is liable on conviction to a fine not exceeding \$2000, if they intentionally and without lawful excuse publish any information in breach of a suppression order made under section 79(2)(b) to (d) of the Act.**
154. 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 13th day of September 2021.



Jo Hughson
Chairperson
Social Workers Complaints and Disciplinary Tribunal