

Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

REF 001/SWCDT21/17P

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 **JACQUELINE MAREE WASTNEY** of Christchurch,
registered social worker
Practitioner

HEARING held at Christchurch on Thursday, 23 June 2021

Penalty hearing held by audio-visual link on Monday, 15 August 2021

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

Ms G J Fraser (Hearing Officer)

APPEARANCES Ms E Mok for the Professional Conduct Committee

Mr A Williams and Ms A Conew for Ms Wastney

Introduction

1. Ms Wastney registered as a social worker on 11 September 2017.¹ At the time of the conduct the Tribunal has reviewed she was based in Christchurch and was a social worker employed by VisionWest Community Trust (VisionWest). She began working at VisionWest in 2017. Ms Wastney is currently employed by Odyssey House in Christchurch as the Clinical Coordinator for Te Whare, a women's transitional unit for women leaving He Kete (the residential women's programme run by Odyssey House) or other residential rehabilitation services².
2. VisionWest is a community services provider operating in several regions throughout New Zealand, including Canterbury. In Christchurch VisionWest's focus is on housing and homelessness and as part of this, the Trust employs social workers to work with whānau to provide community housing services³. Social workers assist to provide social services to people during their time in community housing and they work to address the causes of their homelessness. This includes assisting clients by obtaining grants or food parcels from other organisations.⁴ Ms Wastney worked with vulnerable tenants predominantly Housing New Zealand tenants who were having difficulty as tenants, and in transitional housing, supporting people who were struggling to find accommodation.⁵
3. A Professional Conduct Committee (PCC) appointed by the Social Workers Registration Board (the Board) laid a disciplinary charge against Ms Wastney. The charge was comprised of four particulars which were said either individually or cumulatively to amount to professional misconduct under section 82(1)(a) and section 82(2)(a) or (d) of the Social Workers Registration Act 2003 (the Act) or alternatively, conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker ('conduct unbecoming') under section 82(1)(b) of the Act.
4. Particulars 2 and 3 alleged that while employed by VisionWest, Ms Wastney engaged in conduct that reflects adversely on her fitness to practise as a social worker in that:

¹ Register entry, Social Workers Registration Board.

² Affidavit of Jacqueline Maree Wastney ("Ms Wastney's affidavit") affirmed on 24 May 2022

³ Brief of Evidence of Nathan Timothy Beale at [2].

⁴ BOE of Nathan Beale at [3].

⁵ Transcript pages 26 -28.

- a. Between October 2017 and November 2018, Ms Wastney dishonestly took food parcels obtained from the O800 Hungry service which were intended for clients of VisionWest; and/or
 - b. In or around October 2018, Ms Wastney dishonestly took 16 supermarket vouchers worth a total of \$320 which were intended for clients of VisionWest.
5. Particular 4 alleged that Ms Wastney's conduct breached any or all of Principles 1,6, 9 and/or 10 of the Code of Conduct applying to social workers⁶, and in doing so she engaged in conduct that has brought or was likely to bring discredit to the social work profession.
6. O800 Hungry Ministries is a charitable trust (O800 Hungry) that provides a food parcel service in Christchurch. VisionWest would arrange to collect food parcels from O800 Hungry on behalf of their clients,⁷ as discussed below.

Legal Principles

7. The onus of proof of the Charge rested throughout on the PCC.
8. 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 standard⁸.
9. 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)).

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

⁷ Accepted and Disputed Facts document signed by Counsel on 13 May 2022 at [3].

⁸ *A v A Professional Conduct Committee of the Medical Council of New Zealand* [2018] NZHC 1623 at paras [11] – [16] and as confirmed in *Z v Dental Council Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) endorsing the comments of Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

10. 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)).
11. In previous decisions the Tribunal has adopted a two-step approach to assessing professional misconduct:
 - a. The first step requires an objective analysis of whether the social worker's acts or omissions can reasonably be regarded by the Tribunal as constituting a breach of the Code or was an act or omission that could reasonably be regarded by the 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".
12. 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 discredit" on the nursing profession was considered in *Collie v Nursing Council of New Zealand*⁹ 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."
13. 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.
14. As to the threshold step, in cases of both professional misconduct and 'conduct unbecoming' the Tribunal must decide if there has been a departure from accepted

⁹ High Court, Wellington Registry, AP300/99, 5 September 2000.

standards and then whether the departure is significant enough to warrant sanction. The threshold is one of degree.¹⁰

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':
 - a. The first step involves an objective analysis of whether the social worker's acts or omissions can reasonably be regarded by the Tribunal as constituting conduct unbecoming of a social worker.
 - b. The second step (threshold) requires the Tribunal to be satisfied that the social worker's acts or omissions reflect adversely on the social worker's fitness to practise as a social worker, and therefore require sanction for the purposes of protecting the safety of the public and/or enhancing the professionalism of social workers.
17. As to the 'reflects adversely on fitness to practise' rider, as has been said in previous decisions of this Tribunal, it is not necessary that the proven conduct conclusively demonstrates that the social worker is unfit to practise; that is, the Tribunal is not required to find that in fact the social worker is not a fit and proper person to practise as a social worker. The conduct will need to be of a kind that is inconsistent with what might be expected from a social worker who acts in compliance with the standards normally observed by those who are fit to practise social work. Not every divergence from recognised standards will reflect adversely on a social worker's fitness to practise. It is a matter of degree.¹²

¹⁰ *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 CA and *B v Medical Council* [2005] 2 NZLR 810.

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

18. As to the standards to be applied, in *B v Medical Council*¹³, Elias J stated:

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

19. The primary purpose of the Social Workers Registration Act 2003 is to provide mechanisms for the protection of the safety of members of the public by ensuring that social workers are competent and accountable for the way in which they practise.¹⁴ A further purpose is to “enhance the professionalism of social workers”.¹⁵ 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*¹⁶ it was said at [87]-[82]:

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

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

¹³ Noted at [2005] 3 NZLR 810.

¹⁴ SWR Act, section 3(a).

¹⁵ SWR Act, section 3(d).

¹⁶ [2008] NZHC 1387.

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

Facts

21. Some of the relevant facts were accepted by the parties. Others were disputed and the Tribunal was required to determine those facts after hearing evidence.
22. As to the accepted facts, which the Tribunal found established¹⁷, these were:
23. On 24 January 2019, VisionWest submitted a notification of concern to the Board about Ms Wastney, notifying that Ms Wastney had resigned from her employment due to her concerns about bullying and conflict between staff members at VisionWest. The notification was made during a disciplinary investigation VisionWest was carrying out in respect of Ms Wastney that she had misappropriated food parcels obtained from 0800 Hungry intended for clients of VisionWest, and that she had misappropriated supermarket vouchers from Fast Connect intended for clients of VisionWest. Ms Wastney denied both allegations during the PCC investigation.

0800 Hungry food parcels

24. Between around 12 October 2017 and around 12 December 2018, Ms Wastney submitted a number of delivery forms to 0800 Hungry. This was purportedly to arrange for the collection of food parcels on behalf of VisionWest clients named on the delivery forms. However, for 11 of the delivery forms submitted by Ms Wastney, the names she had recorded on the delivery forms were not the names of any clients of VisionWest and/or the addresses listed did not match the addresses of VisionWest's clients. Upon submitting the delivery forms, Ms Wastney collected the food parcels from 0800 Hungry, but did not provide these to VisionWest clients. It was in dispute as to whether Ms Wastney prepared all 11 of these forms, or not. Ms Wastney's position was that some of the forms were prepared by other staff members of VisionWest, and then she submitted them.
25. Whether Ms Wastney acted dishonestly in obtaining the 0800 Hungry food parcels was in dispute. Her position was that she provided the food parcels obtained to those in need, albeit to individuals who were not clients of VisionWest. She acknowledged that

¹⁷ Accepted and disputed facts document, above fn.3.

she failed to follow the required processes as to paperwork and the procedures required by 0800 Hungry.

26. In or around November 2018, 0800 Hungry carried out an internal audit of delivery forms that Ms Wastney had submitted to 0800 Hungry. 0800 Hungry discovered multiple discrepancies in the delivery forms, including changes in the names and ages of clients and their children, and issues with the listed addresses. When contacted by 0800 Hungry as part of its internal audit, some of the intended recipients of the food parcels advised that they had not received any food parcels.
27. On 19 November 2018, Kerry Bensemman, the CEO of 0800 Hungry, wrote to the CEO of VisionWest to alert VisionWest to the outcome of 0800 Hungry's internal audit, and requesting information from VisionWest regarding the delivery forms submitted by Ms Wastney.
28. On 21 November 2018, after reviewing the information provided from 0800 Hungry, Ms Wastney's manager, Nathan Beale, contacted 0800 Hungry via email and advised that the names on the 11 delivery forms identified by 0800 Hungry related to individuals that were not VisionWest clients. Further, some of the properties in the forms were not VisionWest properties, and for the properties in the forms that were VisionWest properties, none of the names on the forms matched the names of VisionWest clients living at those properties at the relevant time.

Supermarket vouchers obtained from Fast Connect

29. Fast Connect Limited (Fast Connect) is a utilities connection company that assists people moving houses by arranging for the connection of utilities on the customer's behalf. Fast Connect works with third parties who refer customers to Fast Connect for a commission in some cases, including social housing agencies. Fast Connect worked with VisionWest by helping its clients get their utilities connected when they moved into transitional housing. Fast Connect had an arrangement with VisionWest, whereby Fast Connect would provide VisionWest with \$20 vouchers, including in the form of supermarket vouchers, in exchange for referrals for VisionWest's clients. VisionWest would provide vouchers received from Fast Connect to its clients. Ms Wastney was the key liaison between VisionWest's Christchurch office and Fast Connect.
30. On 10 October 2018, Fast Connect purchased 16 PAK'nSAVE supermarket vouchers worth \$20 each (with a total value of \$320) from PAK'nSAVE Royal Oak in Auckland (the

original supermarket vouchers). Fast Connect couriered the original supermarket vouchers to Ms Wastney at VisionWest, and they were received on or about 12 October 2018. It was intended that the original supermarket vouchers would be used by clients of VisionWest.

31. Ms Wastney was told to hold onto the supermarket vouchers by her manager at VisionWest (Mr Beale) until a decision was made about how to use them (though, it was made clear that the vouchers would ultimately be provided to clients of VisionWest).
32. Between 12 October 2018 and 20 October 2018 (inclusive), the supermarket vouchers were spent in three different Christchurch Central PAK'nSAVE stores located in Riccarton, Hornby, and Moorhouse Avenue.
33. What happened to the supermarket vouchers received from VisionWest was in dispute. Whether Ms Wastney acted dishonestly in respect of those vouchers was in dispute, specifically whether she dishonestly took the supermarket vouchers for her own purposes.
34. Concerns were raised internally at VisionWest about the supermarket vouchers and what had happened to them, at a staff meeting on or about 12 November 2018. Ms Wastney claimed that the vouchers had been sent back to the supplier to be replaced because some of them were not working. When contacted subsequently as part of VisionWest's investigation, Fast Connect advised that the supermarket vouchers had never been returned, that it had no records of communications from Ms Wastney indicating that she would be returning the vouchers to be replaced, and that the supermarket vouchers had been loaded correctly.
35. On 13 November 2018, Ms Wastney provided 16 replacement supermarket vouchers, each loaded with \$20 (for a total amount of \$320) from PAK'nSAVE Riccarton and presented these to VisionWest the following day as if they were the original supermarket vouchers that had been received from FastConnect on 12 October 2018.

Disputed Facts

36. **Evidence called by the PCC:** The PCC called evidence in respect of the disputed facts as follows.
37. **Nicola Caroll Bensemman:** Mrs Bensemman is the Warehouse Supervisor at 0800 Hungry. She has responsibility for around 120 volunteers who come in to assist on a weekly basis. Mrs Bensemman interacts with the agency workers and church volunteers

who deliver food parcels to people. Mrs Bensemenn explained that 0800 Hungry relies on donations and grants from charities and foundations to ensure the food parcel service can operate. Mrs Bensemenn confirmed she knew Ms Wastney from when she came to 0800 Hungry to collect food parcels for VisionWest clients¹⁸. She explained the process around the collection of food parcels and stated that 0800 Hungry places trust in the person who is coming in to collect the parcels to deal with them honestly (including about why the parcel is being sought).

38. Mrs Bensemenn explained that 0800 Hungry asks those seeking to obtain food parcels, for a name, address, and contact phone number, and requests they specify the number of adults living at the house, the number of children and their ages, and the number of any pets (as pet food can be provided). This information is then entered onto a disclaimer form provided by 0800 Hungry and the recipient is asked to sign it. Mrs Bensemenn stated that often agencies fill out and sign the forms on behalf of their clients and they are then asked to return the form after the parcel is delivered and the form has been signed by the recipient. A \$5 donation per food parcel is requested which Mrs Bensemenn said is often paid by agencies for whose clients they are collecting the parcels (the average value of which is around \$145).
39. Mrs Bensemenn's evidence was that in the case of agency workers collecting food parcels on behalf of recipients, the usual process is for the agency worker to first provide 0800 Hungry with the details relevant to the order. This is then entered onto the computer system and onto an original yellow form. When the agency worker collects the food parcel from 0800 Hungry, they are asked to sign the form with the date, and their own name and the agency they work for. At that point, 0800 Hungry takes a photocopy of the form which is printed on white paper. The agency worker is asked to take the original yellow form to the recipient of the food parcel for their signature and then to return that form to 0800 Hungry. When the yellow form is returned with the recipient's signature, the white photocopied form is destroyed.
40. Mrs Bensemenn stated that towards the end of 2018 she received a phone call from a man (who gave his name) on the 0800 line, to request a food parcel. She recognised his

¹⁸ When she was cross-examined Mrs Bensemenn estimated she had spoken to or dealt with Ms Wastney about 40 to 50 times since she had been working at VisionWest (she stated she did not know Ms Wastney prior to her employment at VisionWest) – Transcript, page 16 L 24-33.

name as she said she had seen it before on a form for a food parcel that had been filled out by Ms Wastney. An address in Bromley, Christchurch was given. Mrs Bensemann said she said to the man “I understand you’re working with Jacqui [Wastney]” but the man told her “no, I don’t know who that is”. Mrs Bensemann stated that the man was single and living on his own and yet the forms submitted by Ms Wastney had always said there were two adults and four children in the household at the address on the forms.

41. Mrs Bensemann’s evidence was that when she later spoke to Ms Wastney and asked her whether she was working with the man and told her his address, Ms Wastney said she was not working with him and that the food parcel was not meant for that address, but for another address (which she gave as a Halswell address). Mrs Bensemann said she searched the Halswell address on Google Maps and was surprised to see that it was a semi-rural property with a large section and a lot of trees surrounding the house, multiple outbuildings and what looked like a fenced pool. She then searched the property’s rateable value which was \$1,010,000 in 2015. Mrs Bensemann stated that she was surprised that a food parcel recipient would be living at that address (when she was cross-examined, Mrs Bensemann accepted that there could simply have been people living at that property, even temporarily who may have needed food parcels¹⁹). She said this raised her suspicions and she started collating the forms for food parcels submitted by Ms Wastney on behalf of her clients. The forms were dated between 13 October 2017 and 2 December 2018 and not all the original yellow forms had been returned with the recipients’ signatures.
42. Mrs Bensemann stated that when she reviewed the forms previously submitted by Ms Wastney she noticed the names “Richard” or “Richards” were common on the forms for first and last names. She also noticed that between two forms, the address was the same, but the couple’s names were different, there was a different phone number and the children’s ages had been changed across the forms. 19 of the forms were produced to the Tribunal and when she was cross-examined Mrs Bensemann referred to these as a “good sample” of the forms she had concerns about²⁰.

¹⁹ Transcript at page 17 L 5-8.

²⁰ Transcript at page 19 L17-33 and page 20 L 1-2.

43. Mrs Bensemman stated she also noticed that for all the households moving into Housing New Zealand properties it was stated they had dogs, however Mrs Bensemman's understanding was that dogs are not usually permitted in Housing New Zealand properties (when she was cross examined Mrs Bensemman conceded she was aware Housing New Zealand allow pets if consent is obtained²¹). Mrs Bensemman told the Tribunal she then rang some of the people named on the forms and asked whether they had received a food parcel from Ms Wastney. She said that about 15 of the 20 or 30 people she rang²² told her they did not know what she was talking about (they had not heard of 0800 Hungry²³). She then went and spoke to her husband (CEO Kerry Bensemman) and showed him the discrepancies she had identified in the forms she had examined. They then took their concerns to Nathan Beale, VisionWest Regional Manager for Canterbury who advised them he had conducted an audit and confirmed that the people named on the forms were not VisionWest clients. The transcript of Mrs Bensemman's interview with the PCC was produced along with a summary of the concerns that she emailed to the PCC in September 2020 when supplying the relevant food parcel forms to the PCC.
44. **Kerry John Bensemman:** Mr Bensemman is the founder, trustee, and CEO of 0800 Hungry. He confirmed he knew Ms Wastney from when she came to the 0800 Hungry premises in Christchurch to collect food parcels on behalf of VisionWest clients. His account of the food parcel process and having been alerted to discrepancies in food parcel forms that had been submitted by Ms Wastney, corroborated Mrs Bensemman's account. Mr Bensemman confirmed that he wrote to the CEO of VisionWest, Ms Woolley, on 19 November 2018 setting out his concerns and providing her with 11 forms that he and his wife had identified as "suspicious" during their audit. Prior to that he had met with Mr Beale. He said that at a meeting he attended with the CEO of VisionWest after he had sent her his letter, he learned that Ms Wastney had resigned. Mr Bensemman produced the transcript of his interview with the PCC on 3 September 2020.

²¹ Transcript at page 18 L 14-19.

²² Transcript at page 15.

²³ Transcript at page 15, L7-33.

45. **Nathan Timothy Beale:** Mr Beale is a Regional Manager for community housing at VisionWest in Christchurch. As stated, he was Ms Wastney's manager when she worked for VisionWest. Mr Beale provided a brief of evidence and a reply brief of evidence annexing comments in response to Ms Wastney's affidavit²⁴. He also produced a transcript of his interview with the PCC.
46. In relation to the issue of the food parcels, Mr Beale confirmed that 0800 Hungry raised concerns with the VisionWest CEO on 19 November 2018 pertaining to 11 food parcel forms which were requests by Ms Wastney for a food parcel intended for the person named on the form (provided by Ms Wastney when she phoned the 0800 Hungry service). He confirmed he undertook an audit of the forms in relation to Vision West's records and clients on their database as well as Ms Wastney's appointments in her calendar. Mr Beale produced a spreadsheet he made as part of the audit and stated that none of the clients named on the forms were VisionWest clients or in any client database, no consent forms as to the sharing of personal information with other agencies were ever located or provided by Ms Wastney, and Ms Wastney later confirmed to him that she had altered the names and addresses of recipients and had signed some of the forms herself.
47. In his brief of evidence, Mr Beale set out the key timings in relation to the matter of the 16 PAK'nSAVE vouchers, which he said were intended for donation to clients (and that it was made clear to staff they were not to be used for their personal benefit²⁵) discussed further below. Significantly, Mr Beale stated that on 23 November 2018 he had received an email from Foodstuffs that the 16 PAK'nSAVE vouchers Ms Wastney had provided him with on 14 November 2018 were purchased from PAK'nSAVE Riccarton which Ms Wastney had denied when questioned on 11 December 2018. Mr Beale said that on 12 December 2018 he took all 16 vouchers to PAK'nSAVE Riccarton and obtained a replacement receipt from the store manager to confirm the correct expiry date and the amount recorded on each voucher. Mr Beale stated that the replacement receipt showed that the vouchers were purchased by someone at 5.27pm on 13 November 2018 at PAK'nSAVE Riccarton and they were the same vouchers Ms Wastney had provided to him on 14 November 2018. The voucher numbers were

²⁴ Dated 3 June 2022.

²⁵ BOE Nathan Beale at [2.2(b)].

confirmed in an email with Foodstuffs and the receipt also showed several other grocery items purchased.

48. In his reply brief, Mr Beale drew attention to what he stated were omissions from Ms Wastney's affidavit in these proceedings, referring to a statement she had previously provided to VisionWest and discrepancies between that and what she had deposed in her affidavit. Some of Ms Wastney's statements in her affidavit were stated by Mr Beale to be information that she had not previously provided (for example to VisionWest when it was investigating matters in late 2018) or was information that contradicted "the numerous occasions & opportunities we gave Ms Wastney to provide information to us".
49. **Michael John van Brink:** The Tribunal received a brief of evidence from Michael John van Brink, store manager at PAK'nSAVE Royal Oak Supermarket in Auckland, on behalf of Foodstuffs North Island and the Royal Oak Store.²⁶ Mr van Brink's evidence covered the purchasing and redeeming of PAK'nSAVE gift cards generally, and the gifts cards that were purchased by Fast Connect. Mr van Brink produced an epay transaction report which identified the original purchase of 16 vouchers worth \$20 each, each uniquely identified by a different sequence code; and records detailing when each gift card had been redeemed with corresponding "sequence codes/card numbers" to differentiate the different cards in the set. Mr van Brink confirmed that the epay records he was provided with show when each of the 16 cards had been redeemed – all at PAK'nSAVE stores in Christchurch – the first two on 12 October 2018 at 4.13pm at PAK'nSAVE Moorhouse Avenue, and the final gift card redeemed on 20 October 2018 at 2.21pm from the same supermarket. Nine of the cards were redeemed at PAK'nSAVE Riccarton (in three transactions) and four (in one transaction) at PAK'nSAVE Hornby.
50. In addition, the Tribunal received an affidavit from **Phyllis Margaret Huitema** who was the presiding member of the PCC²⁷, as well as a supplementary affidavit from her²⁸. Ms Huitema deposed as to the PCC's investigation process, and Ms Wastney's engagement

²⁶ The Tribunal indicated to the parties that it did not wish to question Mr van Brink and that his attendance at the hearing was not required.

²⁷ Affidavit of Phyllis Margaret Huitema sworn on 15 February 2022.

²⁸ Supplementary affidavit of Phyllis Margaret Huitema sworn on 8 April 2022.

with and responses during the investigation. Ms Huitema produced key documents from the PCC's investigation file to the extent those were relevant.

51. **Evidence for Ms Wastney: Ms Wastney** made an affidavit, gave oral evidence, and was cross-examined and questioned by members of the Tribunal. Her attendance at the hearing and preparedness to give evidence and be questioned was appreciated by the Tribunal. Ms Wastney spoke of her background and work history culminating in her gaining her Social Work degree from ARA in 2016, and about her time working at VisionWest as a social work navigator.
52. As to the factual matters in issue relevant to liability, in her evidence in chief, Ms Wastney stated that because of the lack of orientation processes she was never formally taken through the process required to secure 0800 Hungry parcels for clients and that she learnt about these from observing a colleague. She maintained that she observed her colleague providing an 0800 Hungry food parcel to an "unregistered client" (a person who was not a client of VisionWest) and that "this did not seem to matter". She also maintained she had watched other staff not handing in 0800 Hungry forms when collecting food parcels, that these would pile up at the office and on occasions a staff member would offer to hand in the forms (which were sometimes unsigned and she and others would sign, on behalf of others). Ms Wastney apologised for neglecting to follow the 0800 Hungry process but maintained most staff members were not following it correctly and she was simply doing what she had observed others doing. Ms Wastney denied ever signing forms for clients and said that she always handed the parcels to those needing them (clients, or their friends, or their extended family). Ms Wastney vehemently denied misappropriating "a single parcel or grocery item". However, she admitted to returning forms for other staff members and accepted she was wrong to do so. Ms Wastney stated that VisionWest worked with people in need, often on an informal basis, when the people being assisted were "not always technically VisionWest clients" but "we still assisted them". She said she never really questioned getting food parcels for people who VisionWest did not have contracts for and that she "just wanted to assist people as best I could".
53. In respect of the PAK'nSAVE vouchers, Ms Wastney stated that when the vouchers first arrived, they sat around a bit in an unlocked drawer in her desk. She said it was not clear how the vouchers would be allocated to clients, and they were not given out

immediately. Ms Wastney gave an account that she and a colleague visited a family that had connections with the Mongrel Mob and had been long term clients of VisionWest. She maintained her colleague had mentioned the PAK'nSAVE vouchers to them during a home visit and had alerted the family to her (Ms Wastney) having the vouchers "which, as it turned out, put me in a vulnerable position". Ms Wastney stated that on two subsequent occasions, the family stood over her and demanded ("bullied her") that she give them some of the vouchers – and because she was frightened of what might happen if she did not, she gave them some of the vouchers. Ms Wastney described feeling conflicted about telling Mr Beale as she did not want to admit what she had allowed to occur, when she was a senior social worker. Ms Wastney stated that the only person she confided in about this was her mother, who was concerned she would get into trouble for not having any vouchers to hand over. Ms Wastney's evidence was that her mother went and purchased 16 new vouchers and gave them to her so she could produce them to Mr Beale. Ms Wastney strongly denied that any of the original vouchers were used for her personal gain and maintained that she in "no way misappropriated" them. She stated, "I was intimidated and stood over for those vouchers. I have regrets now, about not telling others at VisionWest about what had occurred. It seemed like a good decision, to keep things quiet. Looking back now I absolutely should have gone straight to Nathan and told him."

54. In short, Ms Wastney denied she ever used the food vouchers for her own benefit. Relevant evidence Ms Wastney gave about these matters when she was cross-examined, is outlined below.
55. Ms Wastney referred to some issues she maintained she had with the workplace culture at VisionWest and pushback she received from colleagues who had worked there for a longer period of time than her, when she (Ms Wastney) tried to make some changes to procedures. Ms Wastney stated she believes that two of her colleagues, one of whom was dismissed, were trying to make her look unprofessional "out of jealousy and spite" at the prospect of her being promoted to team leader. Ms Wastney stated she discussed some of these matters with Mr Beale. When he was cross examined, Mr Beale accepted there were toxic relationships in the office between Ms Wastney and two other staff members which involved allegations of bullying of Ms Wastney. He confirmed that one of those staff members was let go primarily for her actions in taking

steps to see Ms Wastney lose her job at VisionWest. However, he did not accept there was a toxic team culture. Mr Beale stated that he and Ms Wastney had “a very mutual respect” for each other and he said he provided more support for her than most managers would provide. He said the culture was that if there was an issue to be addressed this would be discussed openly and attempts would be made to get to the bottom of the issue.

56. In addition, Ms Wastney filed an affidavit sworn by **Marion Elizabeth Tizzard** who is the Operations Manager, Special Services at Odyssey House Trust in Christchurch where Ms Wastney is currently employed. Ms Tizzard is Ms Wastney’s direct manager. Her evidence included character evidence and details of Ms Wastney’s current role at Odyssey House and is outlined in more detail in the penalty section of this decision.

Tribunal’s findings of fact on disputed matters:

57. To determine the disputed facts, which were in essence whether there was dishonesty or not, the Tribunal was required to make a credibility assessment of some of the evidence that was given, in particular by Ms Wastney. To determine any conflicts or inconsistencies in the statements made by the witnesses and by Ms Wastney the Tribunal considered credibility factors such as potential bias and to what extent a witness may be giving evidence from a position of self-interest, whether the evidence given by a witness was consistent with other aspects of their own evidence (internal consistency), whether the evidence given by a witness was consistent with evidence given by other witnesses and/or with contemporaneous documents (external consistency), whether a witness made non-advantageous concessions, and the manner and demeanour of the witness when they gave their evidence.

Particular 2(a) – Food parcels

58. It was alleged that between October 2017 and November 2018, Ms Wastney dishonestly took food parcels obtained from the 0800 Hungry service which were intended for VisionWest clients.
59. The relevant date range was derived from the 11 0800 Hungry forms which were produced to the Tribunal by Mrs Bensemman, which forms were summarised in the spreadsheet Mr Beale produced from his internal audit.

60. The Tribunal was satisfied on the balance of probabilities that there were 11 0800 Hungry forms that were the subject of this particular of the charge and its finding is limited to those 11 forms.
61. As above, it was accepted, and the Tribunal found that Ms Wastney was the person who submitted each of the 11 forms. However, she denied she ever took the food parcels for her own purpose and maintained they were provided to “non-registered” clients of VisionWest.
62. The Tribunal accepted the submission for the PCC that part of Ms Wastney’s account of the steps that were taken to obtain those parcels for those “non-registered” clients, if they did exist, lacked plausibility. That is because steps were taken to provide specific details on the forms as to the clients’ names, addresses, number of children and number of pets which did not marry up with the evidence of the people that were actually residing at the addresses mentioned on the forms. If those were in fact who the food parcels were being provided to, it seemed rather a lot of effort to go to the lengths of making up those details. It did not sit consistently with the evidence of Mr and Mrs Bensemann about the food parcels being available for anyone who asked for them. Further, the Tribunal found it difficult to reconcile some of the details on the forms with the records held by VisionWest as set out in Mr Beale’s spreadsheet.²⁹
63. Further, Mr Beale referred in his evidence to admissions from Ms Wastney early on in the process, about falsifying some of the details on some of the forms (an admission in respect of one of the forms that she had made up the address, name and phone number and had signed for the food parcel herself). Although Ms Wastney contested in her evidence that she had had such a conversation with Mr Beale, Mr Beale was not challenged specifically about that conversation having occurred. In one of the preliminary letters Ms Wastney had sent as part of her employment process, which was produced to the Tribunal³⁰, Mr Beale referred to this conversation. In any event, the Tribunal considered that Mr Beale had no reason to make up this conversation where Ms Wastney supposedly made these admissions.
64. There was a lack of any real documentation or attempt by Ms Wastney to record contemporaneously that this level of non-client engagement was occurring. Ms

²⁹ Transcript page 113.

³⁰ Hearing Bundle at pages 138 and 139.

Wastney's evidence was that there were difficulties associated with recording those details in the Excess system, however, there were no other records made of engagement or contact outside Excess.³¹ Further, the Tribunal noted that in the diary note Ms Wastney sought to rely on in terms the 0800 Hungry induction process³², this did not reflect the practice Ms Wastney alleged she was shown by her colleague. There was no reflection in her diary note that the process when one is attempting to get additional food parcels for other clients was to simply make up details to obtain those food parcels. In short, the Tribunal was not satisfied that Ms Wastney's diary note supported her account of what she claimed she was shown as part of that induction process. Further, it was only when Ms Wastney was challenged about her practice as part of the employment process that she raised issues about her colleague's practice.

65. The Tribunal accepted Counsel for the PCC's submission that the evidence supports that the effort that Ms Wastney had gone to in terms of the forms were taken to conceal what was truly happening which was that the food parcels were not going where they should have been going (that is, to clients of VisionWest).
66. In short, the Tribunal was satisfied it was established that there was dishonesty associated with obtaining the food parcels that were the subject of the 11 forms it reviewed; because of the falsification of details on the forms and the lack of clarity with 0800 Hungry. The Tribunal considered there would have been ways of going about that without Ms Wastney having to falsify details. Put another way, Ms Wastney did not need to be dishonest if she wanted to obtain food parcels for people in need who were not VisionWest clients. Accordingly, the Tribunal was satisfied that the conduct in Particular 2(a) was proved.
67. The Tribunal did not reach the point of being satisfied on the balance of probabilities that Ms Wastney took the food parcels for herself or her family, rather than providing them to people in need who were not part of VisionWest's contracts. That is, the Tribunal was not satisfied there was a sufficient evidential basis for a finding that Ms Wastney personally gained or benefitted from her actions. In this regard, the Tribunal accepted the submission made for Ms Wastney that there was no evidence of any personal gain or benefit, or from which to draw that inference. In any event, it is noted

³¹ See email in Hearing Bundle at Tab 7, page 132.

³² Hearing Bundle, page 249.

that Particular 2(a), as it was framed, did not hinge on whether the food parcels were taken for personal gain or benefit on Ms Wastney's part. The Tribunal needed only to be satisfied the food parcels were dishonestly obtained and for the reasons given, it was satisfied they were.

Particular 2(b) – supermarket vouchers

68. As to the PAK'nSAVE vouchers which were intended for clients of VisionWest, the Tribunal drew reasonable and logical inferences from the facts, on the available evidence. The Tribunal had regard to the following matters, all of which were raised by Counsel in her submissions for the PCC:

- a. The timing of when the vouchers were sent and received: it was clear from the epay receipt that was produced to the Tribunal, that the original vouchers were sent on 10 October 2018 – they were purchased in Royal Oak and then couriered to VisionWest in Christchurch. Ms Wastney acknowledged the vouchers were received (that they had arrived on the afternoon of Friday, 12 October 2018), in an email she sent to Ms Munro on 14 October 2018.
- b. The transactional history of when the vouchers were redeemed: the evidence before the Tribunal from Mr van Brink was that the vouchers were all redeemed within a short space of time. Two were redeemed the day they were received (12 October 2018). The Tribunal considered that it was not feasible for there to have been decisions made about who the vouchers were going to by the time the first two vouchers were spent. The vouchers were spent the day they were received and then in the week following.
- c. Ms Wastney was the recipient of the vouchers: she acknowledged this. The Tribunal accepted her evidence that the vouchers went into her drawer, and she was responsible for holding on to them until the decision was made as to what was to happen with the vouchers. Ms Wastney accepted the vouchers were intended for clients of VisionWest. The Tribunal found that it was always clear to Ms Wastney that there was that expectation.
- d. What occurred afterwards with the replacement vouchers: the Tribunal accepted the submission that what happened afterwards with the replacement vouchers was directly relevant to its assessment of what happened to the original vouchers. The

Tribunal asked why a person would need to go out and purchase replacement vouchers and present them to their manager as if they were the originals (which was Ms Wastney's evidence), if they were not trying to conceal that the original vouchers had been spent. The Tribunal formed the view that Ms Wastney did so because she was attempting to conceal what had happened. The Tribunal noted and accepted Ms Wastney's evidence that she was not honest in her dealings with Mr Beale about the replacement vouchers and, as above, that she presented them to him as if they were the originals, and only then after issues were being raised by other staff members.

69. From that chain of events, the Tribunal drew an inference that it considered was reasonably available to it, that Ms Wastney dishonestly took and spent the vouchers in the interim, and then tried to present the replacement vouchers to conceal her actions.
70. The Tribunal rejected the evidence that Ms Wastney gave in her affidavit and in her oral evidence about her visits to the family with Mongrel Mob connections. The Tribunal considered her accounts about those visits were not credible or plausible. Her account was inconsistent with the objective evidence that was available to the Tribunal, particularly the transactional reports about when the vouchers were spent compared to the timeline as Ms Wastney described it with the various visits to the family. Ms Wastney was cross examined about the timing of those visits, as she had recounted them in her affidavit. New details were inserted into the narrative by Ms Wastney to explain away when those propositions were put to her; for example, her evidence when she was cross examined that she was pressured by two of her colleagues to check out the vouchers to make sure they were working, was not referred to in her affidavit (although it was a feature of one her earlier responses). Further, when she was cross examined Ms Wastney stated that she received threatening phone calls from the family, however this was not mentioned in her affidavit. The account she gave before the Tribunal as to her fear of reprisal differed from the account she had provided earlier to Mr Beale, and to the PCC. The Tribunal accepted the submission for the PCC that this was a clear case of Ms Wastney attempting to change her story to fit with the other evidence that was available, which has led to a changing story over time.
71. For those reasons the Tribunal was not satisfied that Ms Wastney's explanation about her fear of reprisal, was plausible. Likewise, the details Ms Wastney gave in her evidence

about two of the vouchers not working and those being replaced by someone to make up the original 16 vouchers, did not make any sense. On Ms Wastney's account before the Tribunal, there were many things supposedly happening to the vouchers in a very short space of time and the Tribunal accepted the submission of Counsel for the PCC that it was a series of very unfortunate circumstances for Ms Wastney if that was what had happened to this one set of vouchers.

72. For those reasons the Tribunal rejected Ms Wastney's account that she gave in her oral evidence and in her affidavit. The Tribunal was satisfied that it was established on the balance of probabilities, that Ms Wastney dishonestly took the 16 PAK'nSAVE vouchers, and that the conduct in particular 2(b) was proved.
73. In summary, the Tribunal was satisfied that Ms Wastney's conduct as alleged in particulars 2(a) and 2(b) of the charge had been proved.

Tribunal's consideration of the established conduct:

Relevant standards

Code of Conduct

74. 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.
75. The standards which should apply in situations such as the present are evident from the Board's Code of Conduct. 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 October 2017 and November 2018.
76. The Code of Conduct extends beyond professional practice to personal conduct and integrity.³³ It does not prescribe, in detail, every behaviour expected of a social worker.
77. 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.
78. Relevantly, the Code of Conduct (2016) provides:

³³ 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".

- 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.³⁴
 - b. **Principle 6 (Strive to maintain the trust and confidence of clients)** requires social workers to treat clients with respect and dignity, behave in a professional manner, to never abuse the client's trust, and to never encourage or ask clients or former clients to give, lend, or bequeath money or gifts that will benefit them (the social worker) or those close to them.³⁵
 - c. **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.³⁶ Principle 9.2 requires social workers to refrain from acting in ways that can be interpreted as, or actually result in them (or those close to them) gaining personal benefit from their social work position.
 - d. **Principle 10 (Keep accurate records and use technology effectively and safely)** requires social workers to, among other things, keep clear and accurate records, take special care to protect client's privacy and client information when using technologies and/or electronic records³⁷.
79. The Tribunal considered that if it formed the view that a registered social worker's professional or personal behaviour would be considered by members of the profession and the public as unacceptable, or inappropriate, or in breach of the Code, then it was conduct which puts at risk the practitioner's professional integrity and the public's trust and confidence in the social work profession.
80. The Tribunal was satisfied that Ms Wastney, by her conduct as established, breached these Principles of the Code of Conduct.

³⁴ Code of Conduct at [1.1]- [1.3], [1.4], [1.5] and [1.7].

³⁵ Code of Conduct at [6.1], [6.2], [6.3], and [6.4].

³⁶ Code of Conduct [1.1], Bundle at p 67.

³⁷ Code of Conduct at [10].

Findings as to professional misconduct:

81. The conduct was alleged to amount to professional misconduct under section 82(1)(a), or alternatively 'conduct unbecoming' for the purposes of section 82(1)(b).
82. As discussed, Ms Wastney accepted that some of her conduct in dealing with the matters of the food parcels and the supermarket vouchers was not at the level it should have been and was not with the candour which she should have shown. She accepted that her dealings with her employer in relation to the vouchers should have been more open and clearer, and that she should have been "straight up from the beginning". As such, she accepted she is to blame in relation to that. Likewise, Ms Wastney accepted that in relation to her dealings with 0800 Hungry she was not as transparent as she should have been. It was submitted that her admitted conduct was conduct unbecoming, rather than professional misconduct. That submission was made on the basis that Ms Wastney did not accept that she had acted dishonestly, with the intention of obtaining any personal benefit, or any benefit for anyone other than people who were clients or with whom she was working,
83. It was submitted for the PCC that were the Tribunal to find there was dishonesty involved in obtaining the food parcels and the vouchers, that plainly would involve a breach of the Code. As above, the Tribunal has found there was dishonesty in relation to both matters and in view of that, the Tribunal accepted that submission. Principle 1, for example, requires social workers to act honestly, with integrity. Any dishonesty connected with a social work role will engage that Principle. Further, Ms Wastney's dishonest conduct risked her professional integrity and the public's trust and confidence in the social work profession, for the purposes of Principle 9.
84. In the Tribunal's opinion, the conduct considered individually and taken cumulatively and viewed objectively, was conduct that reflects adversely on Ms Wastney's reputation and the reputation of the social work profession in breach of the relevant principles of the Code of Conduct. It was conduct that the Tribunal considered endangered the reputation of the social work profession because the essence of the profession is that its members conduct themselves honestly and with integrity at all times and this is necessary because the profession works to protect and enhance clients who are in vulnerable social and economic positions.

85. Social workers are expected not to put themselves in a position where they may act to the detriment of clients. While there was no evidence of actual loss or detriment to clients because of Ms Wastney's behaviour, she did misappropriate vouchers and food parcels that were meant for clients. Viewed objectively, the Tribunal considered that a reasonable member of the public would consider the conduct was unacceptable for a social worker in a position of trust and working with vulnerable members of the community. For that reason, the Tribunal considered that the conduct represented a significant departure from standards reasonably to be expected of a social worker.
86. The Tribunal was satisfied that when the Ms Wastney's dishonest acts are considered objectively against the standards which the public and the profession expect of social workers, the conduct was a serious departure from those standards and without doubt brings discredit to the social work profession³⁸.
87. As to threshold, dishonesty connected with social work practice inherently is conduct that warrants discipline for the purposes of protecting the safety of the public and maintaining the standards of the social work profession, in the Tribunal's opinion.
88. For those reasons, the Tribunal had no difficulty in finding the Charge established as it was brought under section 82(1)(a) and for the purposes of section 82(2)(a) and (c) of the Act. Ms Wastney's conduct both in respect of the food parcels and the supermarket vouchers, was professional misconduct. This conclusion was announced at the hearing.

Conclusions: Liability

89. The Tribunal considered particulars 2(a) and 2(b) of the charge both individually and together. The established particulars each and together amounted to breaches of the relevant principles of the Code of Conduct (referred to) and were acts that brought or would likely bring discredit to the social work profession. The threshold for discipline is met, given the nature and gravity of Ms Wastney's conduct.
90. The charge of professional misconduct is established.
91. Having made that finding, the Tribunal was not required to go on and consider the Charge as it was laid in the alternative, and it did not do so.

³⁸ Section 82(1)(a) and section 32 (2)(d) of the definition of professional misconduct, SWR Act.

Penalty

92. 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.
93. Section 83(2) provides that the Tribunal must not make an order cancelling a social worker's registration unless it has first considered suspension or the imposition of conditions on the person's registration or practising certificate.
94. Any penalty to be imposed must fulfil the functions connected to the purposes of the Act - protecting the public and enhancing the professionalism of social workers (section 3(a) and (d) of the Act). The imposition of disciplinary penalties has a purpose in the maintenance (and/or setting) of professional standards and there is also a punitive element.
95. Counsel for both parties referred to the relevant penalty principles identified by His Honour Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*³⁹, which this Tribunal has adopted previously as relevant to the sentencing exercise here:
 - 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 the maintenance of professional standards are the most important factors.
 - d. Where appropriate, the rehabilitation of the social worker involved.
 - e. That any penalty imposed is comparable to other penalties imposed on social workers in similar circumstances.
 - f. Assessing the social worker's behaviour against the spectrum of sentencing options available and trying to ensure that the maximum penalties are reserved for the worst offenders.
 - g. An endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
 - h. Whether the penalty proposed is fair, reasonable, and proportionate in the circumstances presented.

³⁹ [2012] NZHC 3354, at [44]-[55].

96. 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”.
97. In *Singh v Director of Proceedings* ⁴⁰ at [62] Ellis J made the point that in terms of the general approach to be taken and principles to be applied, care must be taken not to analogise too far with the criminal sentencing process as the relevant societal interests are different.

Comparable Cases

98. The PCC’s submissions referred to previous Tribunal decisions which were said to demonstrate that conduct on the part of a social worker involving dishonesty will typically attract penalties at the upper end of the hierarchy of orders in terms of seriousness (for example, cancellation or suspension). The cases referred to are not directly comparable, but the Tribunal accepted they demonstrate this point.
99. *Surowiez-Lepper* ⁴¹ involved a social worker employed at the Wellington City Mission. Mrs G was elderly and had been specifically referred to the Wellington City Mission because she lived alone and needed support. Ms Surowiez-Lepper’s role as Mrs G’s social worker was to assist her to maintain a social role in her community and to access health services. She also assisted Mrs G resolve a dispute with a second-hand shop selling some of Mrs G’s goods. When she ceased being Mrs G’s social worker, over the course of the following year, Mrs G gifted Ms Surowiez-Lepper several valuable gifts, which she did not declare to her employer. She also facilitated Mrs G making payments to individuals who Mrs G incorrectly believed were Ms Surowiez-Lepper’s clients. The Tribunal found Ms Surowiez-Lepper guilty of a charge of professional misconduct (having found her conduct was “gross misconduct”), in that her actions breached the Code of Conduct. The Tribunal considered that the conduct involved a breach of trust, a failure to manage professional and personal boundaries appropriately, and involved her placing her own interests over the best interests of her vulnerable client. Having regard to the nature and gravity of the offending the Tribunal considered that cancellation was the only appropriate outcome and prohibited Ms Surowiez-Lepper

⁴⁰ [2014] NZHC 2848.

⁴¹ RSW3/D3/SWDT/2015, 3 September 2015.

from reapplying for registration for three years. Ms Surowiez-Lepper was also censured, and conditions were imposed in the event she sought to reapply for registration.

100. *Alazay Noble*⁴² was the subject of two separate proceedings before this Tribunal, involving allegations of dishonesty. The first proceeding related to her conviction for a charge of theft from her employer at the time (theft of \$11,000 from a liquor store, with her young daughter). Her registration was cancelled. The second proceeding related to Ms Noble's conduct in dishonestly obtaining \$500 from a contractor to the charitable organisation where she was working and providing services to the community at the time. Because her registration had already been cancelled, the Tribunal ordered a censure. The Tribunal held it would have ordered cancellation of registration had this not already been ordered. In both proceedings, Ms Noble did not engage.
101. *Kathleen Noble*⁴³ accepted a loan of \$1,000 from a client. The client had offered up the funds after Ms Noble spoke to her about her personal problems. Ms Noble drove her client to the bank so the client could withdraw the funds and did not repay the loan until her employer deducted it from her pay. The Tribunal found Ms Noble guilty of professional misconduct. Ms Noble had accepted during the PCC investigation that she had taken the loan from her client; however, she did not engage in the Tribunal hearing. The Tribunal considered it could step back from cancellation in the circumstances. In that case, Ms Noble's conduct did not involve outright dishonesty, unlike this case involving Ms Wastney. The Tribunal ordered censure, six months' suspension from practice, and required Ms Noble to undertake a professional development programme on her ethical obligations under the Code of Conduct, with a particular focus on professional boundaries.
102. Counsel for Ms Wastney submitted that the level of misconduct in the *Alazay Noble* and *Kathleen Noble* cases was substantially more serious than in this case. Counsel rightly pointed to the fact that the amount of money lost by Alazay Noble's employer was a "sizeable sum", and criminal charges were laid, and Ms Noble was found guilty and convicted. In relation to Kathleen Noble, it was submitted that there were features which made her offending more serious including that it involved an elderly client, who was vulnerable, there was a power imbalance, and her employer was compelled to

⁴² RSW12/D2/SWDT/2020, 4 June 2021 and RSW16/D1/2021, 11 October 2021.

⁴³ RSW13/D1/SWDT/2020, 21 May 2021.

reimburse the client. In respect of Surowiez-Lepper, it was submitted that the features of that case place it in a more serious category and it was pointed out that Ms Wastney has not faced criminal charges and her conduct did not directly involve the abuse of vulnerable clients. As discussed below, the fact that Ms Wastney was not the subject of any criminal charges was not material to the Tribunal's assessment of the seriousness of her conduct in the disciplinary context.

103. Counsel for Ms Wastney also referred to three decisions of the New Zealand Teachers Disciplinary Tribunal⁴⁴. These cases involved teachers keeping cash intended for their employer (an early childhood educator employed by an early learning centre), taking school fundraising money, school fees, gift money and purchasing food for a school event and keeping grocery items for personal use (resulting in a criminal conviction), and taking student fees (early childhood teacher). In each of these cases the Tribunal ordered penalties less than cancellation or suspension. The teachers were censured, and conditions were placed on their practising certificates, including conditions that the teacher does not handle money or manages finances for a period of three-years.

Evidence for Ms Wastney relevant to penalty:

104. **Ms Wastney:** In her affidavit, Ms Wastney stated that after she left VisionWest she was self-employed for a period and she then obtained a job with Odyssey House in May 2019, where she currently works as the Clinical Coordinator for Te Whare and is responsible for several social workers. Ms Wastney stated she has been running Te Whare for a year and prior to that she was second in charge at He Kete. Ms Wastney stated that her manager, Ms Tizzard, asked her to apply for the Clinical Coordinator role.
105. Ms Wastney stated that Odyssey House has a financial team and processes that need to be followed for everything they do.
106. Ms Wastney described loving the whānau environment at Odyssey House and how she feels part of an extended family there. She stated there is a high degree of loyalty towards staff, the nature of the work is rewarding, and she takes pride in her job. Ms Wastney stated she has found her calling in alcohol and drug rehabilitation work; she

⁴⁴ *CAC v Theresa Coldstream* NZTDT 2019/18, 28 May 2019, *CAC v Teacher E* NZTDT, 2020-52, 30 August 2021 and *CAC v Niuiia-Tofa* NZTDT 2019/136, 28 July 2020.

feels like her colleagues have her back and the environment means that when challenging matters arise, they are resolved in a professional way.

107. Ms Wastney expressed concern about the prospect of losing her registration and her career when she has worked so hard over a period of years to gain her degree and her registration. She stated that if she loses her registration she could no longer work as the Clinical Coordinator at Odyssey House (a senior role requiring registration) and losing her job would have flow on effects for her family for whom she is currently the only breadwinner. Ms Wastney referred to health issues her partner suffers from, and the financial assistance she provides to her widowed mother and the circumstances surrounding that. Further, Ms Wastney deposed that were she to lose her registration this would be devastating for her, and she is in no doubt that this would affect her mental health. Ms Wastney provided information about her current financial means, as discussed below in the relation to costs.
108. **Marion Tizzard:** Ms Tizzard, in her affidavit⁴⁵, provided helpful information about Odyssey House and Ms Wastney's current role as Clinical Coordinator responsible for managing He Kete. Ms Tizzard stated that Odyssey House prefers to employ social workers in roles such as Clinical Coordinator (and team leader), as the role can involve direct work with clients in the context of day-to-day activities. She deposed as to the challenging nature of the Clinical Coordinator role of Ms Wastney's and confirmed the process driven nature of Odyssey House and the auditing that occurs by the Ministry of Social Development and the Ministry of Health. Ms Tizzard confirmed that Ms Wastney was employed initially as an after-care worker at He Kete in early 2019, and then stepped into a temporary role which she shared as the team leader at He Kete. Ms Tizzard stated that Ms Wastney did very well in the role and, at her (Ms Tizzard's) encouragement, after a permanent team leader was appointed, she applied for and gained a permanent role as second in charge (which she remained in until February 2021). As to her current role as Clinical Coordinator, Ms Tizzard confirmed that Ms Wastney manages just under three full time employees and is responsible for overseeing the running of the unit; further, that Ms Wastney liaises with other stakeholders including the Community Probation Service, the bail support team, and

⁴⁵ Affidavit of Marion Elizabeth Tizzard, sworn on 13 June 2022.

she also works directly with clients if they do not have an aftercare worker from another service.

109. Ms Tizzard deposed as to Ms Wastney's strengths including her willingness and ability to advocate for her clients and to network, her passion about the wahine she works with (including as demonstrated by her willingness to make herself available for weekend work in addition to her regular hours), and of her knowledge of what is available in the community. Ms Tizzard stated "Overall, I have always found Jacqui to be very professional and a committed team member. I trust Jacqui. This is important, given the intense nature of the work we undertake".
110. Ms Tizzard confirmed that she meets with Ms Wastney on a fortnightly basis for supervision and Ms Wastney also attends external professional supervision monthly (with no concerning matters of an ethical nature having been raised with her (Ms Tizzard) by the external supervisor). Ms Tizzard confirmed that robust policies and procedures are in place at Odyssey House, which Ms Wastney is required to follow, and she stated that Ms Wastney is accountable for everything she does.
111. Ms Tizzard's evidence also related to what the consequences would be if Ms Wastney were to lose her registration, including the possibility that her employment contract may be cancelled. Ms Tizzard referred to the struggle Odyssey House has experienced and continues to experience securing adequately trained and skilled staff, the reasons for that, and the efforts that are required in this regard. Ms Tizzard stated that because of the difficulties in employing alcohol and drug clinicians, losing Ms Wastney would be very difficult for Odyssey House: "she is an asset to our team and is a great support and advocate to our wahine staying at Te Whare. It would [require] a lot of time and effort to replace her and I would not want to see her go": she is "an asset to our organisation".

Submissions as to penalty - PCC

112. It was submitted for the PCC that having regard to the nature and gravity of Ms Wastney's course of dishonest conduct, which was directly connected with her role as a social worker, and the limited mitigating circumstances, orders of censure and cancellation of Ms Wastney's registration as a social worker were the only appropriate orders to make (together with costs orders). It was submitted that a penalty short of cancellation would not adequately ensure public protection, given the nature and

extent of the conduct and Ms Wastney's lack of insight into the seriousness of her actions. Further, a lesser penalty would not adequately ensure the maintenance of professional standards, through deterrence (both individual and general). It was submitted that the imposition of conditions or a period of supervision would not be outcomes that would adequately reflect the seriousness of the conduct, nor would they mitigate the risk of Ms Wastney engaging in similar conduct in the future taking account that her dishonesty was not one-off, her lack of acceptance of the conduct, and her lack of insight into or remorse for her conduct.

113. It was submitted that if the Tribunal considered it could properly step back from cancellation, a lengthy period of suspension (at the upper end of the maximum of three years), combined with an order for further professional development, should be imposed.

Submissions as to penalty – Ms Wastney

114. For Ms Wastney it was submitted that orders of censure and a period of supervision should be imposed.
115. The following submissions were made as to the *Roberts* factors:

Public protection

- a. The proved misconduct did not directly involve clients. No loss was incurred by clients, members of the public, or the organisation which Ms Wastney was involved with.
- b. It has been almost four years since the misconduct occurred. Since then, Ms Wastney has worked for several organisations, including Odyssey House and there have been no complaints about her conduct.
- c. Ms Wastney has worked at Odyssey House, a large and well-respected organisation, without issue, for three years. She is a reliable and trusted staff member who goes above and beyond to advocate for and assist her clients.
- d. One of Ms Wastney's direct reports has provided a reference in which Ms Wastney is described as one of the best managers she has ever had, that Ms Wastney has excellent relationships with other services and has valuable knowledge within the work field and is a valued Odyssey staff member and is highly respected in her position.

- e. An additional reference speaks of Ms Wastney being a trustworthy, caring, and reliable manager.
- f. Her record of no disciplinary action or admonishment while at Odyssey House speaks against the public requiring protection from Ms Wastney. In fact, they have expressed concern about losing her.
- g. Managers at Odyssey House are aware of these proceedings and measures such as a censure and a period of mandated supervision would provide a level of protection to the public.
- h. Ms Wastney poses no ongoing risk to the public

Uphold professional standards

- i. Professional social work standards can be upheld by way of a censure and mandating a period of supervision. Such measures will send a clear message to other social workers and the public that the standards in the profession remain high and practitioners who fall short, will be held to account.

Punitive measure

- j. A censure will have a punitive effect and Ms Wastney will need to accept she has a black mark against her name, which will be permanent.
- k. Ms Wastney will be answerable to her colleagues and peers in Christchurch. Her name will not be suppressed (Ms Wastney did not seek permanent name suppression), and she accepts publication is part of accepting responsibility for her behaviour.
- l. Costs will have a punitive effect given her relatively modest income and obligations to support herself and her family.

Rehabilitation

- m. Ms Wastney, by her continuing successful employment at Odyssey House, has experienced significant professional growth and this has been part of her rehabilitation. A period of supervision would enable her to continue in her rehabilitation.
- n. Cancellation would result in Ms Wastney's social work career "grinding to a halt".

Comparative penalties

- o. The decisions of the New Zealand Teachers Disciplinary Tribunal in respect of similar conduct involving dishonesty by teachers which is not at the most serious

end of the spectrum, has been dealt with adequately by measures which fall short of the cancellation of the professional's registration.

Behaviour assessed against others

- p. The misconduct here is not the worst of its kind. Cancellation should not be ordered here and should be reserved for the most serious cases involving misappropriation and dishonesty.

Least restrictive outcome

- q. With reference to there being a range of penalties available to be imposed for a finding of professional misconduct, in the exercise of the Tribunal's discretion under section 83, Parliament did not intend for every instance of professional misconduct involving dishonesty, to be dealt with by way of cancellation of registration. The least restrictive outcome in this case, which fulfils the considerations outlined in *Roberts* would be censure and supervision.

What is fair, proportionate, and reasonable

- r. Ms Wastney has worked hard over a period of more than two decades, to complete studies and advance her social work career and assist the most vulnerable in the community. She is now a well-respected senior staff member at Odyssey House. Cancellation would spell the end to her professional career and would be devastating to both her and her immediate family in terms of financial stability. Cancellation would be a disproportionate and unreasonable penalty. While not acceptable, Ms Wastney's misconduct was not the worst of its kind.

Aggravating features

116. The PCC submitted that Ms Wastney's course of conduct was highly serious having regard to the following factors:

- a. *Repeated instances of dishonesty over time*; her conduct was not isolated or a one-off instance of dishonesty. Dishonesty was provided both in respect of the supermarket vouchers and the food parcels
- b. *Dishonesty directly connected with Ms Wastney's work as a social worker*: rather than taking place outside her professional life. Further, the clients she dealt with and who potentially faced consequences from her dishonesty, were particularly vulnerable, requiring assistance obtaining housing and food.

- c. *Ms Wastney was in a position of significant trust:* in terms of her clients, VisionWest, Fast Connect and 0800 Hungry. In relation to the vouchers, Ms Wastney was the person responsible for arranging, receiving, and holding onto the vouchers until they were allocated. Instead, she dishonestly took them. 0800 Hungry relied on Ms Wastney to provide correct information on the forms for the recipients of the food parcels but instead she provided false information on at least some of the forms she provided to the service. This would not have been necessary if she had been up front about why the food parcels were being obtained. Further, Ms Wastney was not transparent with VisionWest about what was happening with the food parcels and did not take steps to record or document what was happening with them. By acting as she did, Ms Wastney breached her position of trust and responsibility. Mr Beale, in his evidence, referred to the reputational impact of Ms Wastney's conduct on the organisation's dealings with both Fast Connect and 0800 Hungry.
- d. *In respect of the food parcels there was repeated conduct over a period of time:* the manner in which details were made up on the 0800 Hungry forms was indicative of some of the conduct having been intentionally planned.

Mitigating features

117. The following mitigating factors were advanced for Ms Wastney:

- a. No loss was incurred by VisionWest as a result of her conduct in respect of the supermarket vouchers. She presented 16 vouchers when asked for them and clients were not directly impacted.
- b. Ms Wastney has cooperated with the PCC's investigation and did reach agreement on some of the background facts relating to her conduct, in these proceedings. At the hearing she admitted that her conduct had not been perfect and that she failed in some respects by failing to follow specific processes and procedures.
- c. Ms Wastney had been working in the social work field for some time however for much of that time she was studying towards her social work degree. She was a recent graduate at the time of her employment at VisionWest.

- d. There was a degree of dysfunction within the team at VisionWest at the time of her conduct such that the environment was difficult for a newly qualified social worker and little supervision appears to have been provided.
- e. The misconduct occurred in the context of an unhappy and stressful employment situation, although this did not excuse Ms Wastney's behaviour.
- f. It is almost four years since Ms Wastney worked for VisionWest. Since that time, she has gone on to work in a senior role for Odyssey House without incident. Her conduct has been beyond reproach, and she has been promoted into a senior role. Ms Tizzard has deposed as to Ms Wastney and her work in very positive terms. Odyssey House is a large and well-respected organisation with clear policies and procedures and a positive team culture.
- g. Ms Wastney has never been found guilty of any misconduct before the Tribunal previously. Until this time, her professional record has remained unblemished.

118. In her submissions in reply, Counsel for the PCC sought to distinguish the Teachers Disciplinary Tribunal decisions relied on by Ms Wastney. It was submitted that in those cases, the teacher had admitted the conduct and that as Ms Wastney did not, nor expressed any remorse for, or insight into her actions, that raises concerns as to the risk of Ms Wastney engaging in similar dishonest conduct in the future. Further, Counsel submitted that Ms Wastney's continuing work in a social work role at Odyssey House cannot be characterised as part of a "rehabilitation journey". It was submitted there is no suggestion she has taken steps to reflect on and address the factors contributing to her dishonest behaviour while working for VisionWest, and that it was significant until recently, she maintained she had not behaved dishonestly.

119. As to the points made for Ms Wastney as to the seriousness of her conduct, it was submitted for the PCC that:

- a. The fact that criminal proceedings were not brought against Ms Wastney is not relevant to the Tribunal's assessment of the seriousness of her conduct. Dishonest conduct, particularly in the context of a social worker's professional role, is inherently conduct of a kind that sits at the upper end of the spectrum of seriousness as it is fundamentally incompatible with the professional standards expected of a registered social worker. Further, Mr Beale referred to the

reputational impact of Ms Wastney's actions on VisionWest's working relationships with other organisations and such impact was also evidence given by Mr and Mrs Bensemann.

- b. The lack of harm to clients is the absence of an aggravating factor, rather than a mitigating factor.
- c. Ms Wastney's working relationship with her colleagues at the time of the conduct is not a mitigating factor. This factor has no evident link or causative connection to Ms Wastney's choice to engage in repeated dishonesty over time while working for VisionWest.
- d. The key question for the Tribunal is which penalty orders are necessary in response to Ms Wastney's conduct to meet the principles and purposes of disciplinary proceedings. The impact of publication of her name and having to contribute to costs are not separate matters.

Discussion

120. The Tribunal considered it was significant that all the conduct was carried out in the context of Ms Wastney's role as a social worker.
121. The Tribunal accepted the features of Ms Wastney's conduct that added to its gravity were those identified by the PCC, as outlined above. The Tribunal did not accept the submission that was made for Ms Wastney that client vulnerability was not relevant in this case because it did not directly involve or affect her clients. While it was not established there were any direct consequences for any client of VisionWest or for 0800 Hungry clients, the Tribunal considered there was at least the potential for this to have occurred. The Tribunal acknowledges that there was minimal evidence of reputational damage to VisionWest because of Ms Wastney's conduct, however when considered objectively the Tribunal was of the view that her actions did have the potential to reflect adversely on VisionWest as a community services provider that has relationships with external charitable organisations like 0800 Hungry.
122. It was submitted for the PCC that the fact that no client of VisionWest in fact suffered loss did not mitigate the conduct. The Tribunal accepted the submission that this factor should properly be regarded as the absence of an aggravating factor (that is, actual loss or harm), rather than as a mitigating feature of the offending. In addition, the Tribunal

did not consider that Ms Wastney's actions in replacing the supermarket vouchers that had been spent was a mitigating factor because this involved her engaging in further dishonesty to her then manager to whom she presented the replacement vouchers as if they were the originals.

123. The Tribunal did not place any weight on the contention that Ms Wastney's culpability is reduced because of the work environment at VisionWest at the relevant times or because of the conduct of other employees. Having regard to the nature of the conduct Ms Wastney engaged in despite her considerable experience in social work at the time, the Tribunal did not consider this factor was a mitigating feature.
124. As to Ms Wastney's engagement in these proceedings, she did not plead guilty to the charge, although she accepted some of the background facts. In her various written responses and in her evidence at the defended hearing, Ms Wastney sought to blame several other individuals, including a client of VisionWest in respect of the supermarket vouchers, for what happened, taking no responsibility for her role in what occurred.
125. The Tribunal accepted the submissions of Counsel for the PCC as to the points that were made for Ms Wastney about the seriousness of her conduct (at paragraph 119 above).
126. Ultimately, the Tribunal must balance the nature and gravity of the offences and the offending and their bearing on the social worker's fitness to practise against the need for cancellation or suspension and its consequences to the individual. As was said by the Privy Council in *Dad v General Dental Council*⁴⁶ 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.”
127. Taking all factors into account the Tribunal considered that Ms Wastney's offending was not at the most serious end of the spectrum in terms of conduct on the part of a registered social worker that has involved dishonesty, and which requires disciplinary sanction.

⁴⁶ Referred to in *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02, 8 October 2002, Randerson J) at [31]

128. The Tribunal carefully considered whether there were any alternatives to cancellation of registration in circumstances where there has been dishonesty, which would achieve the objectives of protecting the public and maintaining the standards of the social work profession. The Tribunal concluded that there are alternatives to cancellation of Ms Wastney's registration.
129. The Tribunal considered whether suspension of registration or Ms Wastney's practising certificate, or the imposition of conditions on her registration or practising certificate would be a fair and proportionate disciplinary response, as an alternative to cancellation.
130. The Tribunal concluded that had it not received the evidence of Ms Tizzard as to Ms Wastney's ongoing employment at Odyssey House, which appears to be stable and positive, combined with the length of time since the offending, it would have made an order suspending Ms Wastney's registration for a period of 12 months.
131. That is because, under no circumstances can conduct of the nature Ms Wastney has engaged in, be tolerated in the social work profession. The public requires protection from dishonest social workers and a strong message must be sent to other social workers that engaging in dishonest conduct will not be countenanced. The combination of conduct the Tribunal has reviewed in respect of Ms Wastney has implications for public safety and it has eroded the mana of the social work profession. The Tribunal had little difficulty concluding that it was conduct that is deserving of disciplinary sanction and that such conduct typically necessitates the imposition of penalty orders at the more serious end of the spectrum.
132. In terms of rehabilitation, and when deciding whether a period of suspension would be appropriate and necessary, the Tribunal placed significant weight on the fact that Ms Wastney has been in the employ of Odyssey House for several years and there have been no issues raised about her or her practice. The environment at Odyssey House appears to be supportive of Ms Wastney's social work practice, and the Tribunal considered that to some extent it can support her 'rehabilitation'. The Tribunal also placed weight on the fact that Ms Wastney's offending occurred almost four years ago.
133. That said, the Tribunal also placed weight on the fact that there has been a lack of acknowledgement on Ms Wastney's part of any significant wrongdoing and there is a lack of remorse. One of the core competencies of ethical social work practice is the

ability to be deeply reflective of the grey areas of practice. The Tribunal did not consider Ms Wastney had shown any indication that she has reflected about her actions and the seriousness of them. It considered that the penalty orders to be imposed needed to reflect these matters.

134. On balance, the Tribunal considered that it could fulfil its obligation to impose a penalty that protects the public and maintains the standards of the profession, and which is fair, reasonable, and proportionate, by making the following orders:
- a. An order that Ms Wastney is censured as a record of the Tribunal's serious disquiet about, and disapproval of, her conduct which led to the Tribunal's findings, and the seriousness of that conduct (section 83(1)(b)).
 - b. An order that Ms Wastney is to practise as a social worker only in accordance with the following conditions on her individual scope of practice as to her employment and supervision (section 83(1)(a)(ii)):
 - i. Ms Wastney must not be employed in a social work position (current or future) where she has any responsibility for the management or oversight of financial matters, money or related matters which have a financial element (for example, vouchers or food parcels for clients), for a period of two years.
 - ii. Ms Wastney is required to undergo monthly external supervision, at her cost, for a period of 12 months. The external supervisor must provide a written supervision report quarterly to the Board, to the satisfaction of the Board. The initial focus of the external supervision is to be on the conduct which led to the charges and Ms Wastney is to provide a reflective statement about how she would approach similar matters in the future. The reflective statement is to be provided to the Board as part of the external supervisor's first quarterly report. The particular focus of the remainder of the supervision is to be on ethical practice and the Code of Conduct requirements as to honesty and integrity.
 - iii. Ms Wastney is required to provide a copy of the Tribunal's decision to any current, prospective, and future employers, for a period of two years.
135. The Tribunal is hopeful that Ms Wastney will have learnt from this disciplinary process and the Tribunal's findings and outcomes, and that she will ensure that she always

conducts herself appropriately, including honestly and with integrity, going forward. Should she find herself before the Tribunal again, the outcome of any proven offending may be much less favourable to her.

Costs

136. The PCC sought an order of costs. As has been said in previous decisions the relevant principles⁴⁷ are that
- a. The full cost of investigating and prosecuting a social worker should not fall on the social work profession (as a whole).
 - b. Members of the profession who appear on disciplinary charges should make a proper contribution towards the costs of the investigation, prosecution, and the hearing.
 - c. Costs are not punitive.
 - d. A social worker's means, if known, are to be considered.
 - e. A social worker has a right to defend himself or herself and should not be deterred by the risk of a costs order; and
 - f. In a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.
137. The PCC indicated that the reasonable costs and expenses incurred for its investigation and prosecution of the Charge totalled \$44,083.40 (excluding GST). The costs and expenses for the Tribunal were estimated to be \$28,009.00 (excluding GST). That total included \$9,384.00 of cancellation fees (venue/catering and stenographer). When considering whether Ms Wastney should be ordered to contribute to costs, the Tribunal decided the cancellation fees should be deducted by 50% and any costs imposed ordered on the sum of \$23,317.00 (which reflects that deduction). Not all the cancellation fees were incurred because of matters within Ms Wastney's control, hence the deduction.
138. The PCC submitted that as to the factors relevant to costs here:
- a. Ms Wastney did not plead guilty to the charge.

⁴⁷ *Cooray v Preliminary Proceedings Committee* AP23/94, 14 September 1995, Doogue J; *Vatsyayann v PCC* [2012] NZHC 1138, Priestley J at [34].

- b. While she has cooperated to an extent (by agreeing some of the underlying facts thereby reducing the amount of time required for a hearing), a defended hearing was still required, necessitating the PCC having to call several witnesses to give evidence. The PCC was also required to file reply evidence after Ms Wastney filed an affidavit before the hearing detailing several factual matters not previously raise (in relation to the supermarket vouchers).
 - c. A previous hearing date had to be adjourned at short notice, resulting in additional costs.
 - d. For those reasons the starting point should be in the vicinity of 45 to 50 per cent of the PCC's costs.
139. The PCC acknowledged that the Tribunal may consider it appropriate to reduce the level of costs imposed from the usual start point of 50 percent based on Ms Wastney's financial circumstances including her evidence as to her limited financial means and the financial effects on her and her family were her registration to be cancelled and/or were she to lose her job. The PCC pointed out Ms Wastney does have the means to pay some level of costs, provided this occurred by way of instalment over time. It was submitted that because there was still the need for a defended hearing, any reduction in costs from the usual start point should be limited, and less than the discount afforded to practitioners who fully accept their conduct from the outset of the proceedings. As to the financial information Ms Wastney filed, including with her Counsels' submissions, it was submitted for the PCC that this did not provide sufficient support for the proposition that she is of limited financial means such as to warrant a significant discount to the level of costs ordered. It was noted that while Ms Wastney had provided the balance from her mortgage account showing regular repayment towards an outstanding loan balance, no other bank statements to support the information in her affidavit about her weekly income and expenses, or other assets, was provided.
140. Ms Wastney accepted that it was appropriate that she be ordered to contribute to the PCC's costs. The reduced hearing time associated with Ms Wastney having agreed some of the facts was submitted to be a factor that should be taken account of. It was submitted that Ms Wastney should not be penalised for the original hearing having to be cancelled at short notice, because issues about who would meet the costs of her representation were largely outside Ms Wastney's control. As to her current means,

Counsel referred to Ms Wastney's evidence that she is the main income earner for her immediate family (her husband has ongoing health issues), she financially assists her widowed mother, she and her husband have ongoing mortgage repayment obligations and the household balance sheet is consistently in the red. On that basis it was submitted that an order for costs should be kept to a minimum. It was highlighted that in other cases the Tribunal has ordered a deduction where the practitioner has cooperated with aspects of the investigation and Tribunal processes.⁴⁸ It was submitted that a maximum of 20% contribution would be appropriate.

141. All matters considered, the Tribunal is of the view that Ms Wastney should be ordered to pay a contribution towards the costs and expenses that have been incurred both by the PCC and the Tribunal. Having regard to her current financial circumstances in particular, the Tribunal considered that she should be ordered to pay 30% of the PCC's total reasonable costs and expenses and 30% of the Tribunal's costs and expenses (subject to the costs that related to cancellation fees, being deducted by 50% to reflect that the need for the hearing to be adjourned was not entirely within Ms Wastney's control). Accordingly, the Tribunal orders Ms Wastney to pay the sum of \$13,225.00 towards the PCC's costs and \$6,995.00 towards the Tribunal's costs. If Ms Wastney wishes to approach the Board to negotiate a payment arrangement, then she may do so, but that is not a matter for the Tribunal.
142. It is noted that when making these costs orders the Tribunal took account of the fact that the Tribunal is not cancelling or suspending Ms Wastney's registration (or practising certificate), and she will be able to continue to practise. It is anticipated she will have ongoing financial means to meet the costs orders, in those circumstances.

Non-publication orders

143. Ms Wastney did not seek permanent name suppression. Her name may be published in connection with these proceedings.
144. There are no other non-publication orders in effect.

⁴⁸ For example, in *Kathleen Noble* (above) a deduction was given because of Ms Noble's cooperation with aspects of the PCC investigation process and a 35% contribution was ordered.

Result and Orders

145. The Charge against Ms Wastney is made out under section 82(1)(a) of the Social Workers Registration Act 2003. Ms Wastney is guilty of professional misconduct.
146. Ms Wastney is censured (section 83(1)(b)).
147. Ms Wastney is to practise as a social worker only in accordance with the following conditions on her individual scope of practice as to her employment and supervision (section 83(1)(a)(ii)):
 - a. Ms Wastney must not be employed in a social work position (current or future) where she has any responsibility for the management or oversight of financial matters, money or related matters which have a financial element (for example, vouchers or food parcels for clients), for a period of two years.
 - b. Ms Wastney is required to undergo monthly external supervision, at her cost, for a period of 12 months. The external supervisor must provide a written supervision report quarterly to the Board, to the satisfaction of the Board. The initial focus of the external supervision is to be on the conduct which led to the charges and Ms Wastney is to provide a reflective statement about how she would approach similar matters in the future. The reflective statement is to be provided to the Board as part of the external supervisor's first quarterly report. The particular focus of the remainder of the supervision is to be on ethical practice and the Code of Conduct requirements as to honesty and integrity.
 - c. Ms Wastney is required to provide a copy of the Tribunal's decision to any current, prospective, and future employers, for a period of two years.
148. Ms Wastney is to pay the sum of \$13,225.00 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 Wastney is to pay the sum of \$6,995.00 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. The Tribunal directs the Hearing Officer to request the Board Registrar to publish this decision on the Board's website and to publish a summary of the Tribunal's decision in its professional publication to members of the social work profession.

DATED at Wellington this 13th day of September 2022



Jo Hughson

Chairperson

Social Workers Complaints and Disciplinary Tribunal