

# Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

## BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

**SWCDT No: 01/SWCDT24/23P**

**UNDER**

the Social Workers Registration Act  
("the Act")

**IN THE MATTER**

of a disciplinary charge laid against a  
social worker under Part 4 of the Act.

**BETWEEN**

**A PROFESSIONAL CONDUCT  
COMMITTEE appointed by the  
SOCIAL WORKERS REGISTRATION  
BOARD**

**Applicant**

**AND**

██████████ of ██████████,  
registered social worker

**Social Worker**

## **DECISION ON LIABILITY, PENALTY AND NON-PUBLICATION ORDERS 16 September 2024**

**TRIBUNAL**

C Garvey (Chair), Dr S Hunt, A McKenzie, J Pearse, F  
Wilson  
E Mok, M Purcell and B Boles for the Professional Conduct  
Committee (PCC)

██████████, self-represented (no appearance)

## Introduction

- [1] ██████████ (the respondent)<sup>1</sup> is an experienced social worker. He registered in 2013 and prior to the allegations that this decision addresses, appears to have been a well-regarded and dedicated social worker.
- [2] The respondent was employed by Oranga Tamariki in a team working primarily with tamariki and rangatahi under custodial orders. In July 2022 the respondent's site manager made a mandatory report to the Social Workers Registration Board (the Board). The report outlined allegations that the respondent was in an inappropriate relationship with the mother (Ms X) of three of his clients and that he had fathered a child with her. The respondent denied the allegations to his employer.
- [3] The respondent allowed his practising certificate to lapse in mid 2022, and his registration was suspended by the Board in May 2023.<sup>2</sup> A Professional Conduct Committee (PCC) investigated the allegations and laid a notice of charge.<sup>3</sup> The Tribunal considered the charge on 19 and 20 August 2024 and found the respondent guilty of professional misconduct.<sup>4</sup> The Tribunal directed that the respondent be provided with a Minute indicating its decision on liability and penalty, and attaching the costs schedule filed by the PCC. The respondent was directed to file evidence or submissions on costs by 13 September, if he wished to be heard on that matter. Efforts to serve these documents on the respondent were unsuccessful.

## The Notice of Disciplinary Charge

- [4] The PCC referred the respondent to the Tribunal pursuant to s71(1)(c) of the Social Workers Registration Act 2003 (the Act). The charge pleads in the alternative, professional misconduct under s82(1)(a) or conduct unbecoming that

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<sup>1</sup> ██████████ will be referred to as the respondent throughout this decision, and likewise other witnesses will be referred to using pseudonyms given the extensive non-publication orders in place. This is intended to avoid the need for extensive redactions on publication of the decision.

<sup>2</sup> Section 57A of the Social Workers Registration Act 2003.

<sup>3</sup> Notice of Disciplinary Charge 15 January 2024.

<sup>4</sup> The matter was intended to be heard on an earlier date but was required to be adjourned to enable the reappointment of social worker members of the Tribunal.

reflects adversely on the respondent's fitness to practise as a social worker, under s82(1)(b). Paragraphs 2 and 3 of the charge set out its particulars as follows:

- (a) In or around 2021, while working as a social worker at Oranga Tamariki, [the respondent] engaged in an inappropriate relationship with the mother of his clients (her three children), resulting in her becoming pregnant; and/or
  - (b) During Oranga Tamariki's investigation of concerns about the relationship between October 2021 and July 2022, [the respondent] was dishonest about the nature of the relationship and the pregnancy; and/or
  - (c) Following Oranga Tamariki's mandatory report about [the respondent] to the Board, between 22 August 2022 and 6 November 2023 [the respondent] deliberately failed to engage with the Board and the PCC's investigation.
  - (d) By engaging in the conduct above at paragraph 2(a) to 2(c), [the respondent] breached any or all of Principles 5.8, 5.9, 5.10, 9.6 and 9.7 of the Code, and in doing so, he engaged in conduct that has brought, or was likely to bring, discredit to the social work profession.
3. The nature of [the respondent's] conduct, as set out above at paragraphs 2(a) to (c), also reflects adversely on his fitness to practice as a social worker.

### **Proceeding in the absence of a Respondent**

[5] The PCC must provide a social worker information about a complaint regarding them and give the social worker a reasonable opportunity to provide a written response. The PCC may also give the social worker an opportunity to appear before it. The respondent did not engage with the Board over the mandatory report, and did not respond to the PCC's attempts to contact him. He did not make a statement or meet with the PCC. Details of the attempts to contact the Respondent and his lack of engagement are set out in the affidavit of Stacey Muir, Presiding Member.<sup>5</sup>

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<sup>5</sup> Affidavit of Stacey Muir on behalf of the Professional Conduct Committee dated 3 May 2024.

[6] When the Tribunal receives a notice of charge, a hearing must be convened as soon as reasonably practicable. The Tribunal has attempted to ensure that the respondent was served with correspondence and documents relevant to the proceedings. The respondent did not attend pre-hearing conferences, nor comply with the timetable directions put in place to bring this matter to hearing.

[7] The PCC sought to proceed by way of formal proof. The ability to dispose of a charge in the absence of a respondent in disciplinary proceedings relies on the established principles in criminal cases, as articulated in *Hart v Auckland Standards Committee No 1 of the New Zealand Law Society*.<sup>6</sup> Having considered these principles (not all of which are readily translated to disciplinary proceedings) the Tribunal was satisfied that we could hear and determine the charge in the respondent's absence. The key points are:

- (a) The respondent has a right to be present and/or legally represented. The respondent was made aware of the proceedings and chose not to engage representation or communicate with the Tribunal. (The Tribunal was reassured by evidence provided during the hearing that the respondent was aware of and deliberately avoiding the proceedings)<sup>7</sup>.
- (b) Stacey Muir outlines the steps taken to provide the respondent with notice of the complaint and evidence gathered, and to respond. The Tribunal also admitted evidence from the Tribunal's coordinator outlining the efforts made to serve the respondent with material relating to these proceedings<sup>8</sup>. Counsel for the PCC advised that they likewise had no communication from the respondent.
- (c) The proceedings were adjourned from the original hearing date, which had the effect of allowing the respondent additional time to engage. He

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<sup>6</sup> *Hart v Auckland Standards Committee No 1 of the New Zealand Law Society* [2013] NZHC 83. Leave to appeal was declined by both the High Court and the Court of Appeal [2013] NZHC 1331, and [2013] NZCA 673. This decision adopts the principles in *R v Haywood* [2001] EWCA Crim 168, [2001] 3 WLR 125.

<sup>7</sup> Transcript of evidence 19 August 2024, witness R, pp58-9.

<sup>8</sup> Document 1 "Timeline of correspondence with [REDACTED]" produced to the Tribunal at the commencement of the hearing. The Tribunal subsequently received an affidavit dated 16 September 2024 attesting to unsuccessful attempts to serve the respondent with the Tribunal's Minute dated 22 August 2024 and the PCC Schedule of Costs.

did not, and the Tribunal had no basis to consider that further delay would lead to the respondent's participation. In the circumstances, it was not unfair to the respondent to continue, and further delay had the potential to cause harm to those involved. There is also a public interest in the expedient disposition of proceedings, and the PCC witnesses share that interest.

- (d) The respondent's involvement was desirable from the Tribunal's perspective, to ensure that any defence and/or relevant penalty factors were raised. However, as there was no engagement, any disadvantage to the respondent arises from his choice to avoid the proceedings.

[8] The Tribunal may regulate its own procedures. Clause 5 of Schedule 2 of the Act provides that the Tribunal must observe the rules of natural justice and may regulate its procedure in any manner that it thinks fit.

#### **The Evidence: Admissibility and Exclusion of PCC evidence.**

[9] The PCC filed affidavits from the following witnesses:

- (a) [REDACTED], Site Manager at the [REDACTED] Oranga Tamariki site (witness J).
- (b) [REDACTED], Team Leader and supervisor to the respondent's (witness R).
- (c) [REDACTED], Oranga Tamariki social worker and colleague of the respondent who took over responsibility as the social worker for Ms X's children (witness A).
- (d) [REDACTED], Pou Tautoko within [REDACTED] Womens Refuge (witness P).
- (e) [REDACTED], social work supervisor to the respondent (witness M).
- (f) Stacey Muir, social worker and Presiding Member of the PCC.

[10] The PCC sought to admit hearsay evidence in two categories:

(a) Hearsay evidence based on statements made by Ms X to others regarding a relationship with the respondent, and that he is the father of her child born in July 2022. This proposed evidence includes an affidavit sworn by Ms X for the purposes of an application in the Family Court to discharge a custody order under s101 of the Oranga Tamariki Act 1989. Ms X was not a witness in these proceedings and the Tribunal was required to consider whether she was unavailable as defined by s16 of the Evidence Act 2006.

(b) Statements made by the respondent to others, in particular witnesses R and J.

[11] The Tribunal may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it. This is so whether or not that evidence would be admissible in a court of law.<sup>9</sup> This power is not unfettered and must be approached in a principled way. The equivalent provision under the Health Practitioners Competence Assurance Act 2003 was considered by the High Court in *W v Health Practitioners Disciplinary Tribunal*<sup>10</sup> and set out the relevant test:

(a) The Tribunal should assess whether the evidence would be admissible under the Evidence Act 2006; and

(b) If the evidence would not be admissible under the Evidence Act the Tribunal may, in its discretion, admit the evidence if it may assist the Tribunal to deal effectively with the matters before it.

[12] The Tribunal should exercise its discretion judicially, and the Court noted that “*just because the scope of cl 6(1) is wide, does not mean that the Tribunal should exercise its discretion to admit evidence in all cases.*” The discretion should take into account the principles and purposes of the Act, the particular circumstances of the case and the importance of the principles underlying the rules in the

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<sup>9</sup> Schedule 2, cl 6.

<sup>10</sup> [2019] NZHC 420.

Evidence Act.<sup>11</sup>

- [13] Section 18 of the Evidence Act provides that a hearsay statement is generally only admissible if the circumstances relating to the statement provide reasonable assurance that it is reliable, and, the maker of the statement is unavailable as a witness, or the Judge considers that undue expense or delay would be caused if the maker was required to be a witness.<sup>12</sup> The Tribunal should still exclude evidence that may be relevant if its probative value is outweighed by the risk that the evidence will have an unfairly prejudicial effect on the proceeding or will needlessly prolong the proceedings.
- [14] The PCC submits that Ms X is unavailable as a witness on the basis that she has not been located, despite reasonable diligence to do so. The PCC also refers to the possibility that Ms X may now reside overseas, based on statements to others that this was within her plans.<sup>13</sup>
- [15] We accept for the purposes of attending the proceedings as a witness and/or providing a statement, the PCC undertook reasonable steps to locate Ms X. There is no certainty that she has left New Zealand but the evidence establishes that Ms X was not able to be found at her last known address and had vacated that when the PCC last attempted to contact her.
- [16] The PCC submits that there can be reasonable assurance as to the reliability of the hearsay evidence. We accept that is the case with respect to Ms X's affidavit and her statements to others who are witnesses in the proceedings.
- [17] The PCC further submits that the evidence is of clear probative value and acknowledges that as it supports the allegations in the charge it will be prejudicial to the respondent. The respondent denied the allegations to Oranga Tamariki on several occasions. However, he did not offer any response to the PCC or Tribunal and has not taken any steps to defend the allegations.

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<sup>11</sup> Above n10 at [106].

<sup>12</sup> Section 18.

<sup>13</sup> This includes to Ms X's former lawyers, who stated in a letter to the PCC dated 23 February 2023 that Ms X was "due to relocate to Australia" at the time of their last contact in 2022. The evidence also supports Ms X stating this to service providers. Exhibit SM-22.

[18] We are satisfied that we should admit the evidence of statements made by Ms X to Oranga Tamariki staff who documented these statements and have sworn affidavits and are available to give evidence in these proceedings. We are less satisfied that the affidavit evidence of Ms X, which was provided for the purpose of Family Court proceedings, is admissible under the Evidence Act or that we should exercise our residual discretion to admit this.

[19] Oranga Tamariki received a copy of the affidavit as a party to the proceedings by Ms X to discharge the s101 custody orders. This was prepared solely for use in those proceedings. The affidavit was disclosed by Oranga Tamariki on the basis that it contained information that was relevant to the PCC's investigation. There is no evidence that Ms X was consulted about the dissemination of her affidavit in this way. Counsel for the PCC did notify the Family Court of the intention to rely on the affidavit in a memorandum dated 22 March 2024. Counsel advised the Tribunal that no response was received from the Court.<sup>14</sup>

[20] After considering the above matters the Tribunal declined to admit the affidavit (and necessarily to omit references to the content of the affidavit in the evidence of the PCC's witnesses) for the following reasons:

- (a) it was prepared and filed by Ms X for a specific purpose, being to seek the discharge of s101 custody orders. It contains details that would ordinarily not be published under s11B of the Family Court Act 1989 and information that is not relevant to the current disciplinary proceedings.
- (b) Subsection 11B(3) allows sharing of a report of proceedings with relevant professionals, redacting the names of children under 18 years and vulnerable people. Publication to this Tribunal does not sit readily within that provision.
- (c) While the PCC had the affidavit in its possession and submit therefore that a request for access was not necessary, we consider that the use of the document warranted further consideration by the Family Court. As noted no response to the PCC's memorandum was received. Rules 427-

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<sup>14</sup> The memorandum is directed to the Family Court at [REDACTED]. Counsel advised that because this is a satellite court a copy was also lodged with the Family Court registry in [REDACTED].



428 of the Family Court Rules 2002 deal with access to Family Court documents. In reliance on those Rules access is to be considered either by the Registrar or by a Family Court Associate or Judge, and may or may not be granted, with or without terms.

- (d) Family Court proceedings are generally of a sensitive and/or confidential nature. There are limitations on who may attend proceedings, which are more stringent than proceedings in other courts and tribunals, including this one, where the principle of open justice and public hearings is clearly set out in the Act. It is important that parties and witnesses in Family Court proceedings are confident that the evidence they provide will be dealt with in accordance with the Family Court Act and the Family Court Rules.
- (e) The PCC was able to provide other evidence in support of the serious allegations in the charge.

[21] With regard to the relevant statements made by the respondent to his colleagues including senior leaders at Oranga Tamariki, these people provided affidavit evidence and available as witnesses. The Tribunal heard oral evidence from witnesses J and R. The PCC rely on s27 of the Evidence Act which allows that evidence offered by the prosecution of a statement made by a defendant is admissible against a defendant, and the rules against hearsay do not apply.

### **The Evidence – the facts underlying the disciplinary charge**

[22] The Tribunal received the affidavit evidence referred to at [9] above and required the attendance of Stacey Muir and witnesses J and R to answer questions from the Tribunal.

[23] In 2021 the respondent worked within a team led by witness R, and received supervision from witness R, as well as from witness M at various times from 2016. Additionally, the respondent had external supervision, the cost of which was borne by Oranga Tamariki. Details of that supervision was not available.

[24] Witness M described the respondent as overall “*a very good social worker when working with families, rangatahi and tamariki*” and described him as articulate, persuasive and empathetic, but said he was also known to become frustrated

with certain rules and bureaucracy, which led to inappropriate conduct with colleagues and occasional disregard for Oranga Tamariki policies.<sup>15</sup> Witness J explained that this was the reason for external supervision being offered.

[25] In 2021 the respondent's role involved working with tamariki and rangatahi in the custody of the Chief Executive of Oranga Tamariki, to implement, monitor and review court-ordered plans as well as maintain regular contact with his clients and their whānau.<sup>16</sup> The respondent was assigned as the social worker for Ms X's children in early 2021 when the children were under a custody order in favour of the Chief Executive, but two were living with Ms X.<sup>17</sup> Witness J stated that:

...he was responsible for ensuring that the children were safe and well in their placement, options for reviewing their progress, for working alongside the whānau around the possibility that the children might be discharged from [Oranga Tamariki] custody...<sup>18</sup>

[26] The respondent's role meant he could influence the maintenance of the s101 custody order.<sup>19</sup> Witness R said the respondent supported the discharge of that order in 2021, when other parties did not. The respondent visited the children regularly as well as driving a third child to Ms X for visits. Weekly visits were not considered unusual and when witness R took over as social worker for the children, he continued initially with weekly visits. Witness M's affidavit does however state that she spoke with the respondent about the amount of time he was spending with Ms X after work hours.<sup>20</sup>

[27] Witness R stated that in or about October 2021 he heard rumours of a possible relationship between the respondent and Ms X and broached this with him. The respondent disclosed that he had developed romantic feelings for Ms X. Witness R directed him to discuss this with the site manager, which the respondent did, and witness J wrote a detailed letter inviting formal discussion. This letter highlighted that if the respondent was to engage in a relationship with Ms X it

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<sup>15</sup> Affidavit of witness M at [2.3] to [2.9].

<sup>16</sup> Affidavit of witness J, at [2.1].

<sup>17</sup> Above n 16 at [3.1]-[3.2].

<sup>18</sup> Bove n7 19 August 2024 at 25/17.

<sup>19</sup> Above n7 at 26/19.

<sup>20</sup> Above n15 at [3.3].

would be contrary to Oranga Tamariki Values and the Code of Conduct and would warrant reporting to the Board.<sup>21</sup> Witness J convened a meeting with the respondent, witness R and a Human Resources manager. The respondent confirmed that he had developed romantic feelings for Ms X during a period of providing intense support to her children, and that he had disclosed these feelings which Ms X said she reciprocated. The respondent denied acting on those feelings and told the meeting that he had decided not to pursue a relationship “*due to the potential impact on his career, and the possible impact on his own children.*” He agreed that a new social worker would be assigned. The fact that the respondent’s attachment to Ms X created a conflict of interest and potential breach of professional boundaries was discussed at the meeting and clearly outlined in a follow-up letter by Witness J. No further action was taken at the time by Oranga Tamariki.<sup>22</sup>

[28] After taking over as the assigned social worker to the children, witness R was not aware if the respondent continued to see the whānau. Evidence from other sources strongly suggests that he did. Ms X was living in transitional housing with strict rules around conduct and visitors. Referring to early 2022 witness P deposed:

4.2 The one time that Ms [X] referred to the relationship to me (much later on, around February or March 2022) was when it was time for her to move out of transitional housing and into a permanent home. Ms [X] told me that she had a plan in place, that [the respondent] was going to sell his house and that they were going to move in together. My impression from that conversation was that Ms [X] thought [the respondent] was going to give her a better life. Ms [X’s] comments to me confirmed that the relationship existed.

4.3 I was aware that Ms [X] was staying at [the respondent’s] house for a night or two around this time. I told her that under no circumstances was [the respondent] to stay in the transitional

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<sup>21</sup> Letter witness J to the respondent dated 18 October 2021, exhibit SM-4.

<sup>22</sup> Above n16 at [4.1]-[4.3]. See also letter witness J to the respondent dated 4 November 2021, exhibit SM-5.

housing. I went as far as to say to Ms [X] that she should not be with [the respondent], but she did not want to hear anything about that. These conversations caused Ms [X] to become emotional but she did not deny being in a relationship with [the respondent].

[29] Ms X disclosed her pregnancy to witness R in February 2022, but did not wish to name the father at that time<sup>23</sup>. Witness R became aware of further “*rumours circulating about the nature of [the respondent’s] relationship with Ms [X] ...*”<sup>24</sup> A complaint was made in March 2022 by a professional within another service about the respondent’s involvement with Ms X, and a second meeting was convened by witness J to discuss this with the respondent. He maintained his denial of an inappropriate relationship with Ms X, but acknowledged he was aware that she was pregnant because their children attended the same school and he had seen her there. He tendered a letter of resignation at the meeting due to “*personal reasons*” and finished his employment with Oranga Tamariki in April 2022.<sup>25</sup>

[30] After the respondent’s resignation a further complaint was received in May 2022 from another agency which provided services to Ms X, alleging that the respondent was in a romantic relationship with Ms X and that she was pregnant with their child.<sup>26</sup>

[31] A third social worker, witness A was assigned as a co-worker to assist witness R and took over as the key worker for the children in July 2022. Witness A was present when witness R visited their school and home in May 2022. The social workers asked the children about their mother’s pregnancy. Although witness R’s affidavit states that this was at the behest of lawyer for the child, in oral evidence he made clear that the information was important for him and witness A to assess safety for the children, the unborn child and from the perspective of providing supports as needed for Ms X.<sup>27</sup> Both A and R say the children disclosed that they were told by Ms X that the respondent was the father and that Ms X readily

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<sup>23</sup> Affidavit of witness R, at [4.1].

<sup>24</sup> Above n23 at [4.2].

<sup>25</sup> Above n16 at [5.1]-[5.4].

<sup>26</sup> Above n16 at [5.7].

<sup>27</sup> Above n7 at 55/19 and 57/3.

confirmed this when asked.<sup>28</sup> Records of these conversations were made in Oranga Tamariki case notes.<sup>29</sup> Witness R also told the Tribunal that in a report to the Family Court supporting the discharge of the s101 custody order, he referred to the respondent being the father of Ms X's child.<sup>30</sup>

[32] The mandatory report was made to the Board on 18 July 2022, on notice to the respondent.<sup>31</sup>

[33] The respondent maintained contact with some of his former colleagues after resigning, including witness R who gave evidence that he saw the respondent socially and maintained contact on social media up until April 2024. Witness R said the respondent acknowledged that he was the father of Ms X's child born in July 2022, bringing the child with him to a social gathering and posting a photo of himself and the child online.<sup>32</sup> The affidavit of witness A also refers to the respondent's ongoing parenting relationship with his child with Ms X.<sup>33</sup>

[34] Several witnesses expressed concern for Ms X and her children when the relationship with the respondent was not going well or temporarily ended (some of the evidence suggested at least an on-off relationship that has persisted into 2024). The affidavits of witness P and witness A refer to observing Ms X in distress and concern for her well-being.<sup>34</sup>

## LIABILITY

[35] The burden of proof rests with the PCC, and the standard of proof is the balance of probabilities. The cogency of evidence required to establish a charge is influenced by the seriousness of the allegations in that the Tribunal must make a factual assessment and that assessment must have regard to the consequences of the facts to be proved.<sup>35</sup>

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<sup>28</sup> Affidavit of [REDACTED], witness A at [3.2]-[3.3]. Above n 23 at [4.3]-[4.4].

<sup>29</sup> Above n5, exhibits SM-6 and SM-11.

<sup>30</sup> Above n7 at 57/25.

<sup>31</sup> Above n 16 at [5.11].

<sup>32</sup> Above n7 at 59/28, 60/5.

<sup>33</sup> Affidavit of [REDACTED] at [7.1].

<sup>34</sup> Affidavit of [REDACTED] at [6.1] and [6.2]; n33 at [6.1].

<sup>35</sup> *Z v Dental Complaints Assessment Committee* SC 22/2007; [2008] NZSC 55 at [103] – [105].

[36] Based on the evidence that has been summarised above, we find that on the balance of probabilities the respondent entered into a relationship with Ms X while he was providing social work services to her children, and he persisted with this relationship after he was removed as their social worker. This was done in the knowledge that the relationship was inappropriate, was a breach of his professional responsibilities, and in the face of a clear statement by his employer that a relationship with Ms X would be inappropriate. The letters written by witness J make plain that the respondent was on notice of the relevant principles of the Code of Conduct, and the possibility of disciplinary action.

[37] It follows that we find the respondent was dishonest in his dealings with his employer over the nature of the relationship in October 2021 when the matter was first raised with him, and in the intervening period until his resignation. We accept the submission for the PCC that it can be inferred that the respondent lied to witness J (and witness R) to conceal the relationship and avoid potentially adverse consequences.

[38] Social workers are expected to maintain professional relationships with the Board as the regulatory body. The PCC undertakes a role on behalf of the Board and the same expectation exists that a social worker is to act professionally in any dealings with a PCC. The respondent has failed to engage with the PCC or Tribunal in any way, including even simple acknowledgement of correspondence.

[39] We deal first with the allegation of professional misconduct based on a breach of one or more provisions of the Code. The Tribunal adopts a two-step approach:

(a) an objective analysis of whether the acts or omissions can reasonably be regarded as constituting a breach of the Code; and

(b) whether the Tribunal is satisfied that the acts or omissions reach the threshold to warrant a disciplinary sanction for the purposes of protecting the safety of the public or maintaining professional standards.

[40] Principle 1 of the Code expects that social workers will act with integrity and honesty. This is not limited to interactions with clients. Of particular note are the

expectations that a social worker will:

- (a) cl 1.1 - act honestly and ethically in all personal and professional behaviour.
- (b) cl 1.2 – comply with all legal, professional, and ethical obligations and any other relevant standards, including those in the Act.
- (c) cl 1.5 – communicate in an appropriate, open, accurate and straightforward way.
- (d) cl 1.7 – not work in a situation where there is a conflict of interest:
  - Discuss potential or actual conflicts of interest (both professional and personal) with your client and take all reasonable steps to protect their interests as much as possible
  - Tell a supervisor or employer about any potential or actual conflicts of interest and if they cannot be resolved then end the relationship and refer your client appropriately.

[41] The relationship between the respondent and Ms X only came about because of the professional relationship between the respondent and his clients, Ms X's children. The Code is a guide and is to be interpreted in the context of each circumstance. While Ms X was not the respondent's client, the same expectations of compliance with legal, ethical and professional standards apply in his dealings with her.

[42] Principle 5 requires a social worker to protect the rights and promote the interests of clients. In this case the following are highly relevant expectations that a social worker will:

- (a) cl 5.8 - maintain personal and professional boundaries and not form inappropriate relationships with clients or those close to them.
- (b) cl 5.9 - abstain from sexual relationships or any form of sexual interaction with clients or with those close to them – including any

behaviours or comments which might reasonably be interpreted as being a sexual advance or sexually demeaning.

- (c) cl 5.10 – not form a sexual relationship or have any form of sexual interaction with former clients or those close to them, where you have (or it could appear that you have), used any power imbalance, knowledge or influence obtained while you were their social worker to exploit, coerce, or manipulate, intentionally or unintentionally, the person with whom the sexual relationship or interaction occurs.

[43] Principle 9 requires social workers to maintain public trust and confidence in the profession, which includes being honest in their dealings with managers, employers and those responsible for making formal inquiries. This includes the PCC and the Tribunal.

[44] The respondent's actions were in breach of principles 1, 5 and 9 of the Code and this is aggravated by the fact that he had the opportunity to take a different approach at several junctures. When he developed personal feelings for Ms X, rather than disclose those to her while he remained the social worker to her children the respondent should have sought supervision and advice. The respondent should also have removed himself earlier from having direct professional responsibility for the children. The respondent had the opportunity to speak honestly about the relationship in October 2021 and again in March 2022 (and during the intervening period) and did not.

[45] Furthermore the respondent's actions had the potential to cause harm including:

- (a) his conduct undermined the trust and confidence the children could have in him as a professional with their best interests as his primary concern. There was also the potential for confusion about the scope of his role when the respondent breached professional boundaries and developed a relationship with their mother.
- (b) an adverse impact on the respondent's ability to act impartially and professionally on behalf of the children because of his relationship with Ms X.



- (c) a risk of harm to Ms X, who was reliant on the respondent to report on the safety and well-being of the children in her care. This was particularly important given the s101 custody order and the importance to her of regaining custody of her children.
- (d) risk to Ms X's relationship with other professionals and service providers. Ms X faced the burden of being secretive to protect the respondent, and conceivably, out of a need to protect herself.
- (e) an adverse impact on the respondent's professional relationship with his colleagues at Oranga Tamariki and other service providers. This is borne out by the complaints made about his relationship with Ms X and the concerns expressed by witnesses A, J, P and R about his conduct.
- (f) a foreseeable risk of harm to the children and Ms X if the relationship ended. There is evidence that experienced professionals providing services to Ms X and who regarded her parenting skills well, were concerned about the impact of the relationship on her and her children.

[46] For the reasons outlined the Tribunal considers that the respondent's conduct meets the threshold to warrant a disciplinary sanction for professional misconduct and is at the higher end of seriousness. Particular 3 of the charge pleads that the conduct reflects adversely on the respondent's fitness to practice as a social worker. We agree. The respondent acted in breach of the Code in several respects and over a period of several months; he had opportunities to address the situation ethically, and in accord with his professional obligations, but instead he failed to take any steps to engage with the Board, the PCC or the Tribunal. All of these reflect adversely on his professional conduct.

[47] In the circumstances we do not consider it necessary to determine the charge on the alternative plea of the PCC, namely conduct unbecoming: s82(1)(b).

## PENALTY

- [48] Having found the disciplinary charge is proved, the Tribunal may make orders under s83 of the Act. The principles relevant to the imposition of penalty in disciplinary proceedings are well established and are to protect the public and to set and maintain professional standards and public confidence in the profession.
- [49] A range of penalties is available. The Tribunal should impose the least restrictive penalty suitable to the circumstances of each case, and one that is fair, reasonable and proportionate and comparable to those imposed in similar cases. Cancellation is the most serious penalty the Tribunal must first consider whether suspension might be imposed (s83(2)). Cancellation will be appropriate where the social worker's conduct is such that it is the only appropriate response to reflect the seriousness of the conduct and its impact on fitness and the reputation of the profession. A penalty short of cancellation may be appropriate even in serious cases, if the social worker has shown insight and taken steps which provide reassurance that the risk of further misconduct can be addressed with a lesser penalty.
- [50] The PCC refers to previous cases involving a breach of professional boundaries. These include *RSW Y*<sup>36</sup> where the social worker was found to have entered a relationship with a former, vulnerable client and to have hidden the relationship from their employer, as well as inappropriately accessing information about the client. The Tribunal found this constituted gross misconduct and ordered cancellation, censure and costs. Conditions were imposed to ensure that the social worker was safe to practice before being re-registered in the future.
- [51] In *CAC v Austin*<sup>37</sup> the social worker entered in a close friendship with a former client who they knew to be vulnerable, having assisted them in an outpatient mental health service. The social worker provided help and support to the client including with accommodation in her personal capacity. The Tribunal imposed censure and conditions; but for the fact that the social worker was not practicing a period of suspension would have been imposed.

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<sup>36</sup> *CAC v RSW Y* RSW2/D2/SWDT/2015, 23 June 2015.

<sup>37</sup> *CAC v Austin* RSW2/D2/SWDT/2016, 9 September 2016.

[52] In this case, the PCC submits that the respondent's conduct was highly serious and taking into account his failure to engage with the disciplinary process, warrants censure and cancellation of registration. The PCC submit several aggravating factors, in summary:

- (a) that the respondent met Ms X only through his professional role, and was aware of her vulnerability and that of the children.
- (b) there was a significant power imbalance between the respondent and Ms X.
- (c) the adverse impact on the children including some confusion about the relationship and fall-out when it appeared to have ended.
- (d) ongoing misconduct rather than a single isolated incident.
- (e) that the respondent acted in breach of ethical principles that he was familiar with having received training and guidance on professional boundaries through his employer.
- (f) the respondent was dishonest about the relationship to his employer and colleagues.

[53] The Tribunal has found that the respondent acted in a highly inappropriate manner by entering a personal relationship with Ms X while he was the social worker assigned to her children. We also consider that the potential to cause significant harm to Ms X and her children ought to have been readily foreseeable. The respondent did not meet important ethical duties and professional standards over a prolonged period, notwithstanding his knowledge of his responsibilities as an experienced social worker, and the availability of supportive colleagues and supervision. His dishonesty has led to more serious consequences than may otherwise have been the outcome.

[54] In the absence of any engagement by the respondent the Tribunal has no evidence to consider mitigating factors, and the adequacy of any penalty short of cancellation. We have specifically considered suspension, but given the fact the

respondent is not practicing and the seriousness of the conduct this is not a reasonable penalty, leaving only cancellation of registration. A censure is also appropriate in the circumstances of this case.

## **NON-PUBLICATION APPLICATIONS**

[55] The Tribunal is required to hold hearings in public, and in line with the principles of open justice and transparency of proceedings, to publish decisions and the identities of those who appear before us. However, the Tribunal may make orders for non-publication under s79 of the Act, whether on application by a party to the hearing or of its own motion. The Tribunal must have regard to the interests of any person (who might be affected by the order) and the public interest, and may make an order if it is satisfied to do so including to prohibit publication:

(a) of the whole or part of any books, papers or documents produced at a hearing: s79(2)(b);

(b) of the name or any particulars of the affairs of any person: s79(2)(d).

[56] The PCC submit that it is appropriate to make permanent orders in favour of Ms X and her children given the vulnerability and ages of the children, their involvement with Oranga Tamariki and the circumstances of the relationship between Ms X and the respondent. The PCC also seeks orders on behalf of the witnesses, other than Stacey Muir, and supports an order in favour of the respondent on the grounds that publication of his name may lead to the identification of Ms X and/or any of her children. Counsel for the PCC agreed with the Tribunal's suggestion that suppression of the location-specific services that Ms X was engaged with at the relevant time, and the location of the Oranga Tamariki site where the respondent was employed is also appropriate. Ms X's children were transferred to a second site which is also identified in the documents before the Tribunal and may be considered an identifying particular.

[57] The threshold for a non-publication order does not require exceptional circumstances and matches the requirement that it be desirable or proper to

make an order applied in other professional disciplinary tribunals.<sup>38</sup> In the absence of direct evidence from the respondent or Ms X, we can only speculate on the nature of harm that is likely to arise from publication, but consider that some adverse impact is readily foreseeable. There is conflicting evidence before the Tribunal about any persisting relationship between the respondent and Ms X, but we received clear evidence from witness R that the respondent has a parenting relationship with Ms X's child. We are satisfied that this parenting relationship alone provides a basis to make non-publication orders. We are satisfied that the privacy interests of Ms X and her children outweigh any public interest in the respondent being named. We also have a clear obligation to protect the identities of children and otherwise vulnerable people who are witnesses or otherwise the subject of evidence in disciplinary proceedings.

[58] For completeness and in reliance on s79(1)(b) we are satisfied that it is desirable to prohibit publication of the following documents that were included with affidavit evidence produced at the hearing:

(a) the affidavit of Ms X provided as exhibit SM-14.

(b) paragraph 5.9 of the affidavit of witness J.

(c) the redacted Oranga Tamariki case notes relating to the children of Ms X, exhibits SM-6, SM-11 and SM-12.

## **COSTS**

[59] The Tribunal may make an order for payment of part or whole of the costs of the PCC in relation to its inquiry, and in relation to the prosecution of the charge: ss83(1)(e)(ii) and (iii). The PCC seeks an order that the respondent contributes 50% of the costs incurred by the PCC investigation and in the prosecution of the proceedings. The costs scheduled filed by the PCC outline costs in the sum of \$45,321.50.

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<sup>38</sup> Under s95(2) of *the Health Practitioners Competence Assurance Act 2003* the Health Practitioners Disciplinary Tribunal may make non-publication orders if it is satisfied that it is "desirable" to do so, balancing the public interest against the interests of any person. In the Teacher's Disciplinary Tribunal, the threshold is whether it is "proper" to make an order pursuant to s501 of *the Education and Training Act 2020*.

- [60] An order for costs is not intended to be punitive but to ensure that the profession as a whole does not bear the full costs of disciplinary proceedings, which is covered through the payment of a disciplinary levy. A contribution of 50% of the PCC's reasonable costs is the accepted starting point in circumstances where there has been a successful prosecution. A 10% discount is typically given (to order a 40% contribution) in cases where a practitioner has cooperated with the PCC and Tribunal to dispose of proceedings expediently. This reflects that cooperation may substantially reduce the evidence that is required (for example if there is an agreed summary of facts), and the length and mode of the hearing.
- [61] It is important that social workers understand that even if they choose not to engage with the disciplinary process, they are still liable for costs. The PCC was required to prepare detailed evidence to proceed by way of formal proof. The Tribunal required the attendance of three witnesses to ensure that we could be satisfied that in the respondent's absence, the burden of proof was met.
- [62] The Tribunal was concerned to provide the respondent with the opportunity to address his ability to meet a costs order and attempted to facilitate this. The Tribunal always considers it relevant to receive evidence of circumstances which might affect a social worker's ability to meet a costs order, and will treat any such evidence in confidence. Unfortunately, the complete lack of response or evidence from the respondent means that we must determine costs without his input. There is no apparent basis to depart from an order reflecting a 50% contribution to the PCC's costs.

## **ORDERS**

- [63] The Tribunal makes the following orders pursuant to s83 of the Act:
- (a) The respondent is censured pursuant to s83(1)(b).
  - (b) The respondent's registration is cancelled pursuant to s83(1)(a)(i).
  - (c) The respondent is to pay a contribution to the costs of the PCC in the sum of \$22,660.75.
- [63] The Tribunal confirms the following permanent non-publication orders pursuant

to s79 of the Act:

- (a) the respondent's name.
- (b) the name and identifying particulars of [REDACTED] [Ms X], including the name of her late partner [REDACTED] (who is identified in material before the Tribunal).
- (c) the name and identifying particulars of the children of [REDACTED] [Ms X], including their ages.
- (d) the names of the PCC witnesses with the exception of Stacy Muir.
- (e) the [REDACTED] and [REDACTED] Oranga Tamariki sites.
- (f) the specific name and location of the Women's Refuge ([REDACTED] [REDACTED]) that assisted Ms X.
- (g) the name of [REDACTED] and the complainants who approached witness J regarding the respondent's conduct with Ms X.
- (g) the name of [REDACTED].

**DATED** at Auckland this 16<sup>th</sup> day of September 2024.



**C Garvey**  
**Chairperson**  
**Social Workers Complaints and Disciplinary Tribunal**