

Social Workers Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS DISCIPLINARY TRIBUNAL

REF

SWCDT27/25P

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

[REDACTED], registered social worker

[REDACTED]

Practitioner

HEARING

15 December 2025 (by AVL)

TRIBUNAL

C Garvey (Chair), Dr S Hunt, A McKenzie, J Pearse, F Wilson

REPRESENTATIVES

Ms E Mok for the Professional Conduct Committee (PCC)

Ms K Wallace/Ms G Baird – for the practitioner.

HEARING OFFICER

Ms D Latchman

DECISION ON LIABILITY, PENALTY AND NON-PUBLICATION
10 FEBRUARY 2026

Introduction

1. [REDACTED] (the respondent)¹ is an experienced social worker, having practised in a variety of community settings for approximately 20 years, prior to and following her registration in 2010. The respondent faced a disciplinary charge of professional misconduct relating to inappropriate communications with a Year 12 student at a school at which she was employed.
2. The parties reached an Agreed Summary of Facts (summary of facts)² and by consent the matter was dealt with on the papers on 15 December 2025.³
3. For the reasons set out below, the Tribunal found the charge of professional misconduct proved and determined to cancel the respondent's registration and to impose conditions pursuant to s 84 of the Social Workers Registration Act 2003 (the Act). The Tribunal made permanent non-publication orders in favour of the respondent, the student to whom the charge relates, and the name and location of the school. A costs order is made in favour of the Professional Conduct Committee (PCC).

The disciplinary charge

4. In 2023 the respondent was employed part time as a social worker at [REDACTED] [REDACTED] (the school). The principal of the school lodged a mandatory report with the Social Workers Registration Board (the Board) on 27 September 2023, following which the Board suspended the respondent's registration. A PCC was appointed to investigate allegations of inappropriate conduct by the respondent with a male Year 12 student, then aged 16 years.
5. The PCC determined to lay a disciplinary charge.⁴ The particulars of the charge read as follows:

¹ Given permanent non-publication orders we refer to 'the respondent' throughout to avoid unnecessary redactions in the published version of this decision.

² Agreed Summary of Facts dated 29 October 2025.

³ The Tribunal met by AVL, but the parties were not required to be present. Both parties requested that the hearing be conducted in this manner. See Memorandum of Counsel on behalf of [REDACTED] in Respect of Plea and Mode of Hearing dated 20 November 2025, confirming that the matter could be held on the papers.

⁴ Notice of Disciplinary Charge dated 20 August 2025.

Particulars of charge

- 1 Pursuant to s 72(3) of the Act, the PCC charges [REDACTED], a registered social worker, with:
 - a. professional misconduct pursuant to s 82(1)(a) of the Act, in that she engaged in conduct which breached the Code of Conduct issued by the Board pursuant to s 105 of the Act (Code) and/or conduct which brought, or was likely to bring, discredit to the social work profession; or
 - b. in the alternative, conduct unbecoming of a social worker that reflects adversely on her fitness to practise as a social worker pursuant to s 82(1)(b) of the Act.
- 2 In particular, between June and August 2023, while working as a social worker at [REDACTED] [the school] and [REDACTED], [REDACTED] [the respondent]:
 - a. engaged in inappropriate communications, including of a sexual nature, with a Year 12 student at [REDACTED] [the school], Student A, on Facebook and Snapchat; and/or
 - b. on two or three occasions, sent inappropriate, intimate photographs of herself to Student A via Snapchat.
- 3 By engaging in the conduct above at paragraphs 2(a) and (b), [REDACTED] [the respondent] breached any or all of Standards 1.1, 1.2, 4.12, and 9.1 of the Code, and in doing so, she engaged in conduct that has brought, or is likely to bring discredit to the social work profession.
- 4 The nature of [REDACTED] conduct, as set out above in paragraphs 2(a) and (b), also reflects adversely on her fitness to practise as a social worker.

Agreed Summary of Facts

6. The summary of facts is lengthy and not reproduced here in full. Some of the matters covered are pertinent to penalty and discussed under that heading.
7. The respondent was employed in a part time fixed term social work role at the school in 2023. Her role included but was not limited to working with students and their families on attendance, and counselling students who were dealing with mental health concerns.

8. The respondent was not involved in counselling Student A but knew of him from within the school. Student A sent the respondent a friend request on Facebook in or around June 2023.⁵ The respondent was initially unsure whether this request was a way of Student A seeking help but accepted the request after a couple of days. The common and accepted means of contact between staff and students at the school was Microsoft Teams, but the respondent believed that some colleagues did use social media on the basis that students were responsive to this. The respondent was unaware of any school policy on social media use.⁶
9. The summary of facts goes on to describe the relevant interactions on social media between the respondent and Student A as follows:

[11] After [REDACTED] [the respondent] had accepted the friend request, Student A messaged [REDACTED] [the respondent] on Facebook Messenger saying “hey” and sending a ‘wave’ and ‘thumbs up’ icon. [REDACTED] [the respondent] did not reply at first. He messaged her again saying he was looking for people to chat with, to which she asked him if he was seeking help (given her position as a social worker at school). Student A responded saying that he masturbated too much and that he thought about [REDACTED] [the respondent] when he did so. [REDACTED] [the respondent] told him that this was not a topic he should speak to her about and that the conversation had to stop. [REDACTED] [the respondent] did not notify anyone at [REDACTED] [the school] about this contact.

[12] Despite having told Student A not to contact her, the contact between Student A and [REDACTED] [the respondent] continued, with conversations usually occurring in the evening after 8pm. Student A would message [REDACTED] telling her that he was “horny” or similar. The conversations were flirtatious and contained sexually explicit details, with the pair fantasising about what they desired to do with each other sexually if they were to meet in person.

[13] At one point Student A asked [REDACTED] [the respondent] for her Snapchat details, which she gave him. Some messages which the pair exchanged on Snapchat included intimate photographs such as images of [REDACTED] [the respondent] naked but with her private parts strategically covered with a sheet and images of Student A’s bare chest. [REDACTED] [the respondent] sent around two or three photographs to Student A of this nature.

⁵ Agreed Summary of Facts at [8].

⁶ Agreed Summary of Facts at [10]. No evidence of a policy was produced to the Tribunal however such would be common and expected at schools in New Zealand.

[14] [redacted] [the respondent] would later describe that she 'gave in' and responded to Student A's messages because in her own "vulnerable state, it felt easier to give in to his advances than it was to continue resisting and deterring him." [redacted] [the respondent] discouraged and stopped the communications on several occasions. She blocked Student A on Facebook and Snapchat at one point but then resumed contact. Student A temporarily blocked [redacted] [the respondent] too. They also agreed on occasion to delete the messages.

[15] The aforementioned messaging occurred over a period of two to three weeks in mid-2023, during which time Student A and [redacted] engaged in relatively brief conversations on four to five separate occasions.

[16] Approximately a month after the initial conversations, Student A attempted to contact [redacted] [the respondent] again, seeking to engage in similar messaging. However, Student A then became uncomfortable and told [redacted] [the respondent]. The pair agreed to discontinue their interactions after [redacted] [the respondent] told Student A the potential consequences of their interactions for him and her. They blocked each other on all social media platforms, as well as deleting the messages and photographs.

10. In or about September 2023 some of Student A's friends became aware of his interactions with the respondent, and this also reached the principal at the school. Student A disclosed to the principal what had occurred and expressed feelings of guilt and discomfort about this.⁷ An employment investigation was commenced, and the respondent promptly resigned from her position at the school. The summary of facts records that the respondent:⁸

...said that she was not the "*predator*" in the interactions, that she had been vulnerable and low at the time [redacted] and that Student A had made her feel good about herself.

11. During the subsequent PCC investigation, the respondent admitted her conduct including that she had engaged in inappropriate communications with Student A and had sent him "*provocative*" photographs.⁹

⁷ Agreed Summary of Facts at [19].

⁸ Agreed Summary of Facts at [21].

⁹ Agreed Summary of Facts at [27].

Liability

12. On 20 November 2025 the respondent filed a memorandum confirming her acceptance of the charge of professional misconduct, or alternatively, conduct unbecoming. Nonetheless, the Tribunal must reach its own view on whether the conduct outlined reaches the threshold for a disciplinary sanction under s 82 of the Act.

13. The Tribunal may only impose penalties under the Act if a social worker is found guilty on one (or more) of the grounds set out under s 82. Section 82(2) defines professional misconduct as follows:

- (2) A social worker is guilty of professional misconduct if the social worker –
 - (a) breaches the code of conduct; or
 - (b) while practising as a social worker, claims or holds themselves out to be registered while not holding a current practising certificate; or
 - (c) fails to report to the Board as required by section 51(1A); or
 - (d) 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.

14. Counsel for the PCC filed written submissions outlining the established principles relevant to determining professional misconduct and conduct unbecoming under the Act. The Tribunal adopts a two-step approach to determining professional misconduct pursuant to s 82(2)(a) of the Act:

- a. first, an objective analysis of whether or not the social worker's acts or omissions can reasonably be regarded by the Tribunal as constituting a breach of the Code of Conduct;¹⁰ and
- b. secondly, the Tribunal must be satisfied that the acts or omissions require a disciplinary sanction for the purposes of protecting the safety of the public or enhancing the professionalism of the social work profession.

¹⁰ Being the Code of Conduct issued by the Board pursuant to s105 of the Act.

15. Any personal factors that are relevant to the social worker are to be considered at the penalty stage.¹¹
16. The Code of Conduct sets out the minimum standards of integrity and conduct that apply to registered social workers and to the social work profession in general. The Code also lets members of the public know the standards of conduct that they can expect from social workers. The Code contains 11 overarching principles and includes a discussion on each of the principles for guidance.¹² As set out above, the notice of charge pleads a breach of principles 1.1, 1.2, 4.12 and 9.1 of the Code.
17. In summary, principles 1.1 and 1.2 expect a social worker to act with integrity and honesty in all personal and professional behaviour and to comply with their legal, professional and ethical obligations. The PCC submits that the respondent's conduct did not meet these standards, in particular, by communicating 'after hours' with a student on a social media platform on topics that were sensitive to the student, and by engaging in sexualised exchanges including sharing intimate photographs. The PCC also points to the respondent's failure to disclose the communications to the school.
18. Principle 4.12 expects that social workers will *"take responsibility for your own emotional, mental, and physical health, and practice appropriate self-care – seeking help if your performance, practice, or judgment is affected by health concerns."* The PCC submitted that the respondent was in breach of this principle when she failed to seek supervision or communicate with colleagues at the school regarding her interactions with Student A. The summary of facts and respondent's affidavit outlines that significant personal difficulties were impacting her at the relevant time.
19. Principle 9.1 of the Code provides that social workers are expected to:

Maintain a high standard of professional and personal behaviour - avoid activities, work, or non-work that may in any way bring the social work profession into disrepute; the same standards of conduct are expected when using social media and electronic forms of communication.

¹¹ *PCC v Esera* RSW1/SWDT/2017 at [14].

¹² Social Workers Registration Board Code of Conduct 14 March 2016.

20. The PCC, noting the age disparity and power imbalance between the respondent and Student A, and the position of trust which the respondent held at the school, submitted that the respondent's conduct was plainly unprofessional and inappropriate. In reference to s 82(2)(d), the PCC submitted that, for the same reasons, the respondent's conduct brought or was likely to bring discredit to the profession, by undermining public confidence in the professionalism of social workers.

21. Counsel for the PCC submitted that the threshold for disciplinary sanction is met by virtue of the nature and gravity of the respondent's conduct, as follows:

Her conduct demonstrated a sustained lack of professional judgment in circumstances where she understood that sending a student sexual messages and photos was entirely inappropriate. [The respondent] also failed to appreciate the need to seek help where her judgement was impaired. Given the conduct occurred over a period of time (albeit a short one), there were various points at which [REDACTED] [REDACTED] could have taken the opportunity to seek professional support and guidance to ensure she was practising self-care and acting appropriately when engaging with the student. Instead, the messages persisted.

22. With respect to the alternative pleading of conduct unbecoming that reflects adversely on the respondent's fitness to practise as a social worker, the PCC outlined the relevant test by reference to *B v Medical Council* [2005] 3 NZLR 810 (HC) and as adopted by this Tribunal.¹³ Counsel submitted that the respondent's conduct was an unacceptable breach of expected professional standards, being more than minor in nature and having implications for Student A's welfare. Counsel points to the respondent's awareness that the messages with Student A were inappropriate but persisted, and that this reflects adversely on her fitness to practise.

Liability Findings

23. The respondent's conduct as pleaded and as described in the summary of facts amounts to professional misconduct, being a significant breach of the Code and conduct that brings the profession into disrepute. That Student A was not formally a client of the respondent is of

¹³ See for example Harrison RSW3/D1/SWDT/2019, 29 February 2020.
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note, but irrelevant in the circumstances of this case. The connection between the pair was the school. The respondent had an obligation to act ethically and professionally when Student A initially contacted her, and in her subsequent communications with him. An initial response on social media without accepting the friend request would have been acceptable had it been limited to the respondent clarifying Student A's purpose in reaching out. The respondent then should have advised Student A of the appropriate channels of communication within the school. The Tribunal considers that any contact by social media should have raised a flag for the respondent that care was required. It was inappropriate to persist with the communications once it was clear that Student A was not contacting her in a professional capacity.

24. The Code provides relevant guidance beyond the principles pleaded in the notice of charge.

Principle 10 outlines the expectation that social workers will keep accurate records and use technology effectively and safely. Principle 10.6 cautions social workers on the *"dynamics, advantages and limitations of technology-based interactions"* and highlights the importance of setting and maintaining clear and appropriate personal and professional boundaries including in online communications. The guidance discussion on principle 10 is directed at the relationship between social workers and their clients but is apt in the present situation, where the respondent was using social media to communicate with a young person whom she met through her social work position. Under a discussion of boundaries, it provides:

Social media is informal and can encourage inadvertent and unintended boundary violations. Maintaining the boundary between you and your client is your responsibility.

Never make a 'friend request' to a client to become friends on a personal, non-work- related social media site. It is strongly advised that you politely decline any requests from clients and former clients if they wish to be 'friends' on a personal, non-work-related site. Consider changing privacy settings so it is not possible for clients to request this.

25. Turning to the content of the respondent's communications with Student A, under no circumstances is it appropriate for a social worker to share sexualised and intimate content with a young person whom they are in contact with by virtue of their professional position regardless of whether the young person is a client. Counsel for the respondent emphasised

that Student A was aged 16, the legal age of consent. An activity may be legal but nonetheless unprofessional and unethical, as cases before this Tribunal and analogous charges before the Teachers Disciplinary Tribunal involving inappropriate relationships show.

- 26.** The Code expects high standards of conduct from social workers in personal and professional contexts. Principle 5 outlines the need to recognise and use responsibly the power that comes from any social work role (5.4); and to never engage in any sexual exploitation of clients (5.6). The importance of maintaining professional boundaries and not forming inappropriate relationships with clients or those close to them as set out in principle 5.8 is also pertinent.
- 27.** The Tribunal also accepts the PCC's submission that the respondent ought to have sought supervision or approached a colleague within the school when Student A communicated with her about his thoughts, and when she found herself reciprocating with sexual messages. Supervision was also indicated when the respondent's personal circumstances began to impact on her professional judgment.
- 28.** The Tribunal accepts that the personal difficulties the respondent faced at the relevant time were significant and her evidence that her judgment was impaired by these. Social workers often practice in challenging situations, and like any other person, may face difficult personal or health challenges which impact on their work. The Code reinforces the importance of professional supervision.¹⁴ In the Tribunal's view, supervision is not solely for discussion of casework and in-practice issues but should also address matters of wellbeing and stressors that may impact on a social worker's practise.
- 29.** For the reasons set out above, the Tribunal finds the charge of professional misconduct met under s 82(2)(a). The respondent's conduct also meets the threshold for an adverse finding under s 82(2)(d). Objectively, members of the public expect social workers to understand, recognise and respect vulnerability and to act in a manner consistent with professional standards.

¹⁴ Principle 4 'Be competent and responsible for your professional development', principles 4.8 and 4.10.
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- 30.** It is not necessary to go on to determine the alternative allegation of conduct unbecoming pursuant to s 82(1)(b).

Penalty - Submissions

- 31.** Having found the charge of professional misconduct proved the Tribunal is required to consider the penalties available under s 83 of the Act. The penalties reflect that disciplinary matters range in severity and context and require differing disciplinary responses. The principles of penalty in disciplinary proceedings are well-established and in summary are intended to meet the purposes of the Act, by focussing on the protection of the public and the maintenance of professional standards. The Tribunal should impose a penalty that is the least restrictive available in the circumstances, and one that is fair, reasonable and proportionate – this includes having regard to similar cases where possible.
- 32.** The PCC seeks cancellation of the respondent’s registration under s 83(1)(a). The respondent accepts that this is appropriate. Before making an order for cancellation the Tribunal is required to first consider suspension of the social worker’s registration or practising certificate, or the imposition of conditions: s 83(2).
- 33.** Both parties filed helpful written submissions on penalty and referred to comparator cases which the Tribunal has considered. Because of the respondent’s stated intention to permanently withdraw from social work practise¹⁵ the Tribunal has not received evidence that would support a decision to step back from cancellation and take a more rehabilitative approach. To do so we would need to be satisfied that there are sufficient rehabilitative prospects to ensure that the respondent is safe to practise and that appropriate conditions could be placed on her practice.
- 34.** The PCC submitted that the respondent’s conduct was “highly serious” for reasons including that:

¹⁵ The respondent initially advised that while she had stopped practising for a period of time in light of the events and her personal circumstances she did wish to return to social work in the future: respondent’s letter 2 November 2023 at [50]-[54]. However, by letter dated 22 April 2025 counsel for the respondent offered an undertaking on behalf of the respondent that she would not practise social work, reflecting her perception of what would be important to Student A and seeking the Board cancel her registration immediately. This offer of an undertaking was repeated in later correspondence.

- a. the respondent came into contact with Student A due to her professional role as a social worker at the school and was aware of a disclosure of a sexual nature prior to the sexual messaging commencing.
- b. the significant age disparity, with the respondent in her 40s and the student aged 16.
- c. the respondent exploited the situation for her own purposes.
- d. the conduct was not a single incident but spanned several weeks and involved sending intimate photographs and messages via social media and outside of school hours.
- e. the respondent was aware that her conduct was inappropriate.
- f. the conduct had an adverse impact on Student A.
- g. the respondent's failure to notify a colleague about the student's initial contact and subsequent failure to self-report until confronted by a senior staff member.
- h. the respondent's failure to practise self-care when her mental state was impacting adversely on her professionalism.

35. The PCC submits that there are no mitigating circumstances, and that the respondent's personal difficulties cannot be considered as such.

36. Referring to *PCC v Moeke*¹⁶ and *CAC v Teacher J*¹⁷ counsel submitted that cancellation and censure are the only appropriate response in this case. In *Moeke* the social worker sent inappropriate and over-familiar messages to a 14-year-old client over a two-month period. He kept no formal record of the communications and breached the privacy of another young client. The Tribunal was not satisfied with Mr Moeke's level of insight into his conduct, and considered it had no evidence of any rehabilitative steps. Cancellation was imposed.

¹⁶ *Professional Conduct Committee v Moeke* RSW11/D3/SWDT/2020, 1 March 2021.

¹⁷ *Complaints Assessment Committee v Teacher J* NZTDT 2018/28, 20 December 2018.

37. In *Teacher J* the teacher, aged in her 50s, engaged in messaging with a former student (aged 15) on social media apps, including sending nude photographs over the course of one weekend. With some parallels to the present, the teacher attributed this conduct to personal difficulties relating to her divorce. She acknowledged her conduct was unprofessional and expressed remorse and shame, and had no intention to return to teaching. The Tribunal found serious misconduct and a breach of the Teaching Council’s Code of Professional Responsibility and imposed cancellation, noting the respondent’s remorse and psychological distress at the time of the misconduct.

38. The PCC did not ask the Tribunal to impose a fixed date before which the respondent may not reapply for registration as it may do under s 84(1)(a), noting that the Board will inevitably be required to assess whether she is fit to re-register, and will have the Tribunal’s decision available as part of its consideration. Section 84(2) does however empower the Tribunal to impose conditions before the restoration of registration and the PCC submitted that conditions would be appropriate:

- a. that the respondent complete further education or training on ethical practice and maintenance of proper professional boundaries, to be approved by the Board; and
- b. that the respondent undergoes a psychological or psychiatric examination confirming her fitness to resume practising as a social worker, with a copy of the Tribunal’s decision to be provided to the medical examiner. Such an examination would require the respondent’s consent.¹⁸

39. The submissions filed on behalf of the respondent confirmed no objection to the penalty proposed by the PCC *“subject only to censure implications given the application for permanent name suppression, censure otherwise not objected to”*. Counsel highlighted the respondent’s remorse, and commitment to addressing the circumstances that contributed to her misconduct. Counsel emphasised the respondent’s actions to resolve this matter expeditiously by reference to her comprehensive responses to the Board, willingness to

¹⁸ Section 84(3).

provide an undertaking not to practise, signing of the agreed summary of facts, and formal provision of a guilty plea and request that this matter be resolved on the papers.

- 40.** In her affidavit the respondent stated that she accepts full responsibility for her “mistakes” and that she is “deeply sorry for the hurt that I have already caused to Student A (as well as his whanau)...”. In detailed replies to the PCC the respondent described career ‘highlights’ with examples from her time working at the school and in other roles, describing herself as providing “top level expert care which complied with the SWRB Code of Conduct and the ANZASW Code of Ethics.” The respondent outlined the nature of her work at the school, a heavy caseload and the daily challenges faced by students which she was responsible for assisting with and stated:

....these events that have been complained about (that I have acknowledged) are not something I would ever engage in normally. I hope that my otherwise good record over twenty years’ service as a social worker goes some way to demonstrating this.

- 41.** The respondent confirmed that she had access to external supervision at the relevant time and that this was utilised to discuss the “risky” cases that she was involved with, but that she did not speak to her supervisor at any time about Student A. She did not raise what had happened with Student A after ending contact because:

I thought I had put this behind me and looked back on it as a huge mistake that I’d learnt from. I say this not because I was trying to get away with doing something I knew to be wrong but more because, as I said, I had acknowledged it had been a mistake, had made significant changes and was already seeking a lot of the support that I should have put in place in the first instance.

- 42.** The Tribunal understands that the support the respondent refers to is [REDACTED] and more attention to self-care.

- 43.** The Tribunal considered the penalties under s 83 including the imposition of a period of suspension and/or conditions on the respondent’s registration. We accept the parties’ submissions that cancellation is the appropriate outcome in the circumstances. The key determining factors in reaching this conclusion are the sexual nature of the conduct and age

of Student A; the serious lack of judgment and professionalism from an experienced social worker to engage in the described conduct and in viewing it as resolved by blocking the student and acknowledging to him that their contact was a mistake, and the respondent's intention to not practise social work in the future.

44. The Tribunal considers it appropriate to impose conditions on the respondent's re-registration, should she choose to apply to the Board in the future. If the respondent does in future wish to return to practice this should be supported by professional development addressing the Code and the maintenance of appropriate professional boundaries, with consideration given to this being addressed in the context of a period of mandatory supervision. The respondent was working within a school. There are many cases in the Teachers Disciplinary Tribunal involving inappropriate relationships with learners, and that Tribunal has emphasised the importance of professionals exercising self-discipline and restraint, and being responsible for ensuring professional boundaries are maintained.¹⁹ These expectations apply equally to a social worker working within a school or in any other settings with young people. The Tribunal also observes that the respondent's recount of clients with whom she worked closely over the years gave rise to some concern about her enforcement of boundaries more generally.

45. It will be for the Board to assess the respondent's fitness to practise on any future application for re-registration. The Tribunal agrees that a suitable assessment of the respondent's fitness by a health professional would provide reassurance, noting that the respondent must consent to this. (That is, such an assessment cannot be imposed).

46. The Tribunal also considers that censure is appropriate. With respect to the respondent's concern that a censure may affect the non-publication orders, the Tribunal understands that censure is not recorded on the public register but is information that is available to the Board.

¹⁹ See e.g. *Complaints Assessment Committee v Luff* NZTDT 2016/70, 14 September 2017
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Costs

- 47.** Costs are at the discretion of the Tribunal. An order for costs may be made pursuant to s 83(e)(ii) in respect of any inquiry by the PCC into the subject matter of a charge and further, in relation to the prosecution of the charge under s 83(e)(iii). The PCC sought a 40% contribution to the costs incurred in the investigation and prosecution. The PCC's prosecution costs total \$14,203.50 (of which 40% is \$5,681.40) and the costs of the PCC investigation are \$5,990.00 (of which 40% is \$2,396.00).
- 48.** A contribution of 40% reflects the usual starting point of a 50% contribution upon a successful prosecution, reduced to recognise the respondent's cooperation in resolving the matter expeditiously. A further reduction may be considered reasonable, for example if the prosecution has acted in a manner that unnecessarily increased costs, or by reference to the practitioner's financial means, evidence of which is important.
- 49.** The respondent submits that any order for a contribution to costs should be limited to the PCC investigation and exclude the costs of prosecuting the charge. This submission is made on the grounds that the respondent indicated her willingness to cease practise and her proposal that a disciplinary charge be avoided on this basis. The respondent further submitted that the Board had the power to cancel her registration without recourse to the Tribunal, such as through a voluntary undertaking not to practise (as was offered). The respondent submitted:

While this route cannot be used once disciplinary proceedings have commenced, the PCC retains discretion to either request the SWRB to review a social worker's fitness to practise or alternatively, to take no further action and thereby conclude the disciplinary process. The PCC also holds the power to regulate its own procedures as it deems appropriate provided it adheres to the principles of natural justice.

- 50.** Counsel acknowledged that the approach contended for is "*unconventional*" but that it is a "*valid and lawful mechanism under the relevant legislation.*"

51. The Tribunal does not consider it appropriate to order costs only in relation to the PCC's investigation. In our view, where a PCC considers a matter may warrant cancellation of a social worker's registration, the only available route is referral to the Tribunal. The PCC's powers upon completing an investigation into a complaint are set out under s 71(1) which provides:

- (1) As soon as is reasonably practicable after a complaint or notice of conviction is referred to a professional conduct committee, the committee must make 1 or more of the following determinations –
 - a. The Board should review the competence or fitness of the social worker concerned to practise as a social worker (or both);
 - ab. The Board should review the social worker's individual scope of practise; or
 - b. In the case of a complaint the committee should –
 - i. Submit it to conciliation or mediation; or
 - ii. Recommend that the board direct the social worker to apologise to the complainant; or
 - iii. Recommend that the Board censure the social worker; or
 - iv. Recommend that the Board refer the allegations to the Police for investigation; or
 - v. Recommend that the Board direct the social worker to undertake 1 of more of the following:
 - A. Training;
 - B. Mentoring;
 - C. Counselling; or
 - c. The committee should submit the complaint or conviction to the Tribunal; or
 - d. No further steps should be taken under this Act in relation to the complaint or conviction.

52. The PCC may, under s 74, recommend to the Board that a social worker's registration be suspended, but this is only after the laying of a disciplinary charge.

53. In the Tribunal's view the submission that the Board could cancel a social worker's registration if the PCC refer them for an assessment of fitness or determine to take no further action, on the basis of a voluntary undertaking by a social worker, is inconsistent with the statutory intent. It goes beyond the PCC regulating its own procedure. Further, if the PCC does refer a matter back to the Board for an assessment of fitness, the steps open to the Board under s 49 of the Act do not include cancellation.

54. The Act reserves the power to cancel for disciplinary matters to the Tribunal. The PCC submitted, and the Tribunal agrees, that:

More fundamentally, the disciplinary process is the appropriate mechanism for ensuring the maintenance of professional standards through deterrence (general and individual) and public protection, as well as ensuring public confidence in the regulation of the profession. [The respondent's] approach, if accepted, would render the important standards-setting function that the Tribunal carries out in cases involving conduct allegations that are serious in character and severity, as here, redundant. That is particularly so given the open justice requirements that apply to the Tribunal process, as compared to the PCC process (which is confidential), and given the Tribunal is the disciplinary body best-placed to assess where the conduct sits in terms of seriousness and the appropriate penalty response that ought to follow.

55. Finally, when determining the appropriate level of costs, the Tribunal has considered the approach to costs by similar professional disciplinary bodies and guidance from the High Court. In *Brown v Professional Conduct Committee*²⁰ La Hood J considered a cross-appeal against an award of costs by the Health Practitioners Disciplinary Tribunal (HPDT). The court emphasised the discretionary nature of costs, and while considering the Health Practitioners Competence Assurance Act 2003 made the observation that is apposite here, that the Tribunal has “*a wide power with no statutory guidance and in relation to which a wide range of factors may be taken into account.*”²¹ Discussing the approach to a reduction in costs, the Court confirmed that the starting point is a 50% contribution, and while a reduction may be ordered the mitigating factors relevant to penalty are irrelevant to a reduction in costs.²² His Honour went on to say:

However, care also needs to be taken to avoid double accounting because the practitioner's level of cooperation will already be reflected in the quantum of costs against which the 50% starting point is taken. I agree, therefore, that if a practitioner has admitted a charge and fully cooperated in bringing the matter to an end in an expedient way, the appropriate reduction will be in the region of 10 percent in most cases...

²⁰ *Professional Conduct Committee appointed by the Medical Council of New Zealand v Brown* [2024] NZHC 990 (1 May 2024).

²¹ Above n 20 at [87].

²² At [92].

56. The Tribunal accepts that the PCC's only available avenue in light of its view of the gravity of the respondent's conduct was a referral to the Tribunal. Given that, and in the absence of evidence of financial impecuniosity, there is no reason to depart from an order for a 40% contribution to the reasonable costs incurred in the investigation and prosecution of the charge.

57. The Tribunal may also make an order for a contribution to the costs of the Tribunal in conducting the proceedings and consider it appropriate to do so in this case. These costs should not be wholly borne by the profession. Significant costs were spared by the parties' joint request that the matter be dealt with by the Tribunal on the papers, and the Tribunal's willingness to proceed in that manner. The schedule of costs for the Tribunal totals \$6,493.05. An order reflecting 40% of the Tribunal's costs will be made (\$2,597.22).

Permanent Non-Publication Applications and Orders

58. The starting point is that hearings of the Tribunal are public in the interests of open justice, and transparency for the profession and for the public. From that starting point s 79 provides that the Tribunal may make orders for non-publication if it is satisfied that it is "*desirable*" to do so, after having regard to the interests of any person and to the public interest.

59. Where non-publication orders are sought for a social worker who has been found guilty of a disciplinary charge, the Tribunal will consider whether the adverse consequences relied on as a basis for the order are likely to occur. It is well accepted (across professional disciplinary regimes) that there are adverse consequences that may ordinarily result from publication of an adverse disciplinary finding, and that this may impact those close to the person charged. This reflects that there is a robust degree of tolerance for discomfort and upset, embarrassment or reputational concerns when details of the charge and findings are made public. The term "*desirable*" requires something less than the exceptional circumstances required for non-publication to be granted in criminal proceedings. Considerations are often nuanced and may - as in this case - require the Tribunal to consider the position of complainants and/or young people associated with the proceedings.

60. In *Y v Attorney-General*²³ the Court of Appeal considered applications for name suppression in proceedings involving abuse allegations against employees of the Ministry of Social Development. The court addressed the principles associated with suppression orders in civil proceedings, and held:²⁴

[31] The correct approach requires the court to “strike a balance between open justice considerations and the interests of the party who seeks suppression.” We have drawn that passage from the Supreme Court’s judgment in *Hart v Standards Committee (no 1) of the New Zealand Law Society*. The Supreme Court had earlier supported the same balancing approach in *Rowley v Commissioner of Inland Revenue*. As this Court observed in *McIntosh v Fisk*, in the context of this balancing, “the open justice principle is not an article of faith, never to be departed from”.

[32] Given the almost limitless variety of civil cases and the fact that every case is different, the balancing exercise must necessarily be case dependent. Sometimes the legitimate public interest in knowing the names of those involved in the case (either as parties or witnesses or both), or in knowing the detail of the case, will be high. *Hart v Standards Committee (N0 1) of the New Zealand Law Society* was such a case. As this Court observed:

The public interest and open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make informed choices about who is to represent them. That principle is well established in the disciplinary context and has been recently confirmed in *Rowley*.

Consequently, a professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure.

[33] But in other cases there may be little or no legitimate public interest in knowing the name or identifying particulars of the parties, or those of a witness, or in knowing particular details of the case. That is likely to be the position in cases involving information that is intensely private or personal, or information that is confidential, or commercially sensitive. In a case of that sort the balance between open justice considerations and the interests of the party seeking suppression may well tip in favour of suppression...

²³ *Y v Attorney General* [2016] NZCA 474 at [32].

²⁴ Above n 23 at [31] to [33], internal footnotes omitted.

61. The respondent applied for permanent non-publication of her name, her place of residence and former workplace (the school); sensitive health information disclosed in her affidavit and statements to the PCC, and any details that might identify [REDACTED] or Student A. The respondent submits that her primary motivation is *“to prevent further disruption to the lives of those affected especially Student A [REDACTED]”* and sets out the following grounds:

- a. publication will risk causing undue stress, harm and reputational damage to Student A and the respondent’s children within their small community, which would be adverse and unwarranted in the circumstances.
- b. the interests of Student A and his whānau and the interests of the respondent’s children outweigh the public interest in identification given:
 - i. likely unfair undue and unnecessary adverse consequences.
 - ii. the respondent accepts responsibility and intends to not practise social work again.
 - iii. the matters involved are intensely private and personal, of a sexual nature and the case also involves highly sensitive personal health information.
 - iv. to safeguard the student [REDACTED] from identification which is otherwise *“almost certain”*.

62. The respondent’s affidavit refers to being the recipient of negative judgments from others, some of whom have *“shunned”* her, and that [REDACTED]. The respondent asserts that formal publication will do greater damage and would *“reinforce and resurface past events in a way that is inappropriate, unnecessary and harmful.”* [REDACTED]
[REDACTED].

63. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

64. The respondent provided a report from her psychotherapist.²⁵ This confirms the respondent's regular engagement in therapy, addressing her conduct as outlined in the charge and the underlying circumstances, and recording the respondent's acceptance of responsibility, and remorse. With respect to publication the report concludes:

The grief and loss of losing her professional identity as a registered social worker has also been significant. In my professional opinion I believe [the respondent] should be granted permanent name suppression as she has completed significant therapeutic work to ensure she will not engage in concerning sexual behaviour in the future. Finally, I would highlight consideration for her children that they should be protected by the name suppression due to their ages and stages of vulnerability.

65. The PCC supports permanent orders in relation to the name and identifying particulars of Student A. We agree that the privacy interests of Student A clearly outweigh any interest in the publication of his name. The Act contains a clear intention to protect witnesses including complainants who are aged under 18 years and any witnesses where the evidence relates to or involves a sexual matter.²⁶ In the Tribunal's view the same need for protection of privacy arises where a complainant aged under 18 and in sexual matters is not a witness but where nonetheless the evidence addresses their involvement in the events the subject of the disciplinary charge.²⁷

66. The PCC opposed the respondent's application for non-publication of her name. Counsel submitted that it is speculative to assume that Student A will be identified if the respondent is named, noting that they did not meet in person, have no ongoing contact, and [REDACTED].

67. As for the respondent's concern that the consequences of publication will be particularly harsh in a small town, the PCC submits that this in and of itself is not a factor that favours suppression and would undermine the principle of open justice. The PCC points to the

²⁵ [REDACTED]

²⁶ Section 80(1)(a) and (b)(i).

²⁷ A witness is defined under s 4 of the Evidence Act 2006 as a person who gives evidence and is able to be cross-examined in a proceeding.

respondent's evidence that the incident is known already to some in the community and that this cannot be elevated to a likelihood that Student A will be identified and further that they are *"not aware of any concern from Student A and his family that naming the respondent in connection with this proceeding would identify Student A"*.

- 68.** The PCC submits that the risk of harm to the respondent's children is to some extent inevitable because of her conduct, essentially a consequence to be borne, and notes a lack of direct evidence from the children. The Tribunal was referred to the High Court's commentary in *Anderson*²⁸ where (in the HPDT context) the court on appeal declined to make orders notwithstanding assertions that the practitioner's family had suffered significant distress as a consequence of bullying related to publication of Dr Anderson's misconduct. The PCC also referred to the Teacher's Disciplinary Tribunal decision in *Luff*²⁹ in which the teacher was part of a school in a small community and the conduct involved meeting and communicating on social media with a year 13 student from another school in an inappropriate manner. The Tribunal there considered that small-town living is common in New Zealand and said that:

Although there is a risk that some people in the community might speculate about the identity of student A, this is something that student A and her mother have already taken this into account. We do not see that the publication of the respondent's name will lead to student A's being identified. It is already known that the respondent stopped teaching because of an incident with an unnamed pupil. If this decision is published with the respondent's name, the public will know what the conduct was, and that it was with a student from School B.

- 69.** The Tribunal carefully considered the submissions from both parties and the respondent's evidence. As above, we are satisfied that it is desirable in the interests of Student A to suppress his name and any identifying particulars. The absence of information as to Student A's position is a neutral matter, in that there was no evidence from the PCC (or the respondent) that his views or those of his whānau were sought or indeed that he is aware of the disciplinary proceedings.

²⁸*Anderson v Professional Conduct Committee* HC Willington CIV-2008-485-1646, 14 November 2008. The PCC also refer to *Bhatia* HPDT 77/Med06/39D 21 February 2007 to emphasise the same point.

²⁹ Above n 19.

70. In relation to the respondent's children, we consider that their privacy interests in this case tip the balance in favour of an order suppressing the name and location of the respondent, and consider that the risk of harm to them is more than the ordinary consequences of publication given their age, [REDACTED] and the nature of the respondent's conduct. That the respondent lives in a small community is relevant here, not least because of the lack of alternatives for her children's schooling. That some members of the community are already aware of the conduct does not negate the protection that non-publication orders may provide, as the purpose of orders is directed at inhibiting further and public dissemination of the parties' identities in relation to the proven allegations.

71. We note that had the respondent still been practising as a social worker then a condition that she disclose the Tribunal's decision to her current and any future employer would have been imposed.

ORDERS

72. For the reasons set out above the Tribunal makes the following orders:

a. Pursuant to s 83 of the Act:

- i. Cancellation of the respondent's registration.
- ii. Censure.
- iii. Costs in favour of the PCC in the sum of \$8,077.40.
- iv. Costs in favour of the Tribunal in the sum of \$2,597.22.

b. Pursuant to s 79(2) of the Act, permanent orders for non-publication as follows:

- i. the name and identifying particulars of Student A.
- ii. the name of the respondent.
- iii. [REDACTED] in which the respondent resides.

iv.

[REDACTED]

v. the names of the respondent's children.

vi. sensitive personal and health information contained in the respondent's affidavit and submissions concerning her personal circumstances in 2023.

73. The parties' attention is drawn to s 88 of the Act and the right of appeal from this decision to the District Court within 20 working days' of notice of the decision, or further time as allowed by the court.



C Garvey
Chairperson
Social Workers Complaints and Disciplinary Tribunal