

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER The Education Act 1989

IN THE MATTER a charge of serious misconduct referred by the
Complaints Assessment Committee to the
New Zealand Teachers Disciplinary Tribunal

BETWEEN **THE COMPLAINTS ASSESSMENT
COMMITTEE**

Referrer

AND **TAEMANUOLO FAAE-SEMEATU (aka
AIONO MANU FA'AEA)**

Respondent

DECISION OF THE TRIBUNAL

Tribunal: Hannah Cheeseman (Deputy Chair)
Rose McLnerney and Nichola Coe (Members)

Hearing: 20 December 2021

Representation: C Best for the Referrer
T Cunningham-Adams for the Respondent

Introduction

- [1] The Complaints Assessment Committee ("CAC") has charged the respondent with one charge of engaging in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.
- [2] The CAC alleges that the Respondent, between 2012 and 2018 while employed at CORE Education Limited, issued fraudulent invoices, and as a result personally received \$19,200 which should have been paid to CORE Education Limited. The CAC alleges that this conduct amounts to serious misconduct pursuant to Section 378 of the Education Act 1989 (the Act), and rules 9(1)(H) and/or (n) and/or (o) of the Education Council Rules 2016 (as drafted prior to the amendments on 19 May 2018). Alternatively, the CAC submits that this amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to Section 404 of the Education Act 1989.

Procedural History

- [3] The matter was heard on the papers.
- [4] An agreed summary of facts was filed and the parties agreed that the matter could be heard on the papers.
- [5] The CAC filed submissions on penalty and costs.
- [6] The Respondent filed submissions on penalty and costs, and in support of her application for name suppression.
- [7] The CAC opposes the application for name suppression.

Evidence

Agreed Summaries of Fact (ASoF)

- [8] The ASoF for the charge is set out in full as it forms the majority of the evidence available to the Tribunal:

Introduction

1. Ms Fa'aea was granted full registration on 8 February 2006. Her "Subject to Confirmation" practising certificate expired on 10 July 2018.
2. In November 2012, Ms Fa'aea was employed by CORE Education (**CORE**) as a Consultant in Pasifika Education. CORE provides professional learning development services to schools and support teachers.
3. On 14 March 2018, Ms Fa'aea was dismissed from CORE.
4. A mandatory report was lodged with the Teaching Council on 23 March 2018, following Ms Fa'aea 's dismissal from CORE.

Allegation: That between 2012 and 2018, while employed at CORE Education Limited, Ms Faaea-Semeatu issued fraudulent invoices, and as a result personally received \$19,200 which should have been paid to CORE Education Limited.

5. On 13 July 2018, Ms Fa'aea was charged with the offence of "obtaining by deception" under s 240 of the Crimes Act 1961, which is punishable by a maximum penalty of 7 years' imprisonment.
6. The offending was described in the Police summary of facts (which Ms Fa'aea accepted as part of her guilty plea) as follows:

INTRODUCTION

The defendant was employed by the victim, CORE Education (CORE), from November 2012 until the discovery of this offending in February 2018.

The defendant was employed to deliver training packages, developed by CORE, to education providers.

The expected process was that the defendant would invoice the education providers on behalf of CORE for the cost of the training, the payment would then be made directly to CORE, and, in turn, they would pay the defendant a salary for her work.

CIRCUMSTANCES

Between March 2015 and February 2018 the defendant delivered training to twenty three [23] education providers.

At the completion of this training the defendant submitted invoices to the trainee organisations, which were identical in appearance to those used by CORE but deviated in that the "Billing Information" listed the defendant's name and address, and the bank account for the payment to be made into was the defendant's personal bank account.

CORE only became aware of the situation in February 2018 after one of the education providers, that the defendant had just delivered training to, queried the invoice with CORE because it noticed the billing address disparity.

This triggered an internal investigation which located 23 other instances of incorrect invoices being issued.

As a result of this offending the defendant obtained \$19,950 which should have been paid to CORE on top of receiving her salary from CORE.

DEFENDANT COMMENTS

In explanation the defendant stated that between May of 2013 and November of 2016 she had been through a number of family and cultural events which all put her under immense financial pressure.

The defendant admitted all of her offending and has taken full responsibility.

The defendant has not previously appeared before the Court.

REPARATION

During the internal investigation the defendant presented CORE with \$750.00 cash which she had received for the latest work carried out and had obtained using an incorrect invoice.

This left an outstanding amount of loss of \$19,200.

The defendant is currently repaying this back to CORE at a rate of \$150 per fortnight.

This agreement was arranged upon the defendant's employment ending, before the commencement of these criminal proceedings, and entirely of the defendant's volition.

To date the defendant has paid \$4,800 back to CORE leaving an outstanding loss amount of \$14,400.

7. Between 1 May 2018 and 11 December 2019, Ms Fa'aea repaid the remaining \$19,200 to CORE.
8. On 22 October 2019, Ms Fa'aea appeared in the Manukau District Court and pleaded guilty to the charge of "obtaining by deception".
9. On 16 December 2019, Ms Fa'aea appeared before Judge Blackie in the Manukau District Court and was discharged without conviction.

Teacher's response

10. On 28 February 2018, Ms Fa'aea attended an investigatory meeting with CORE staff and three support people. At that meeting, Ms Fa'aea read a statement she had written. In that statement, she said:

My actions.

Nobody directed me to do this. I acted alone. Nobody at work was aware of my dishonest actions. What I did was wrong, and although was not motivated by personal benefit in the sense that legal jargon implies, but out of a sense of desperation to provide for the wellbeing of my parents and extended family.

...

I understand that CORE Education may never trust me again, nor wish to keep me as an employee, because I have eroded their confidence in me with my actions. I apologise for this. I am sincerely sorry.

...

The suspension period has allowed me the time to reflect on my actions.

It has also allowed me to have honest conversations with my parents about how constant financial pressure and demands placed on me to fulfil obligations is no longer sustainable in its current state.

The suspension period has allowed me to think about CORE Education's reputation in the sector and the relationship with schools and organisations. I understand that I have jeopardised that connection with my actions.

The suspension period has also allowed me to have distance from work colleagues. It has been sobering to receive message from Tamaki whānau members saying that they have missed me at the noho marae last week. I want to be able to continue supporting my colleagues in their work and help to bring the Pasifika strategy and Ki Te Raki strategy to fruition.

I have also thought about how to face staff in the head office who have been involved in the investigation. The professional trust of CORE colleagues is important to me. I lost sight of this when I let my personal family issues overtake my professional judgment. My poor decision making and perceived lack of options lead me to breach my contract. The actions I did constitutes as serious misconduct and I do not dispute them. I pray that CORE Education keeps me in their employment.

I would like the opportunity to prove to CORE Education that these dishonest actions are not the sum total of my character. I apologise once again and I am sorry for the dishonest actions. Thank you for the opportunity to submit this written statement. This will not happen again.

11. On 12 February 2021, Ms Fa'aea was contacted by the CACs Investigator regarding the mandatory report.
12. In her written response, dated 22 February 2021, Ms Fa'aea said:

I do not dispute that CORE had every right to report me to the Teaching Council at the time of my offending. However, the intention of this written response, my humble plea before the Complaints Assessment Committee (CAC), is to dismiss CORE's request to deregister me, so that I can retain my teacher's registration.

Since the criminal trial (see 2. Affidavit) I believe that my track record and commitment to the teaching profession and education at large can be reflected in the four commitments of our code. I also believe that I have already paid my debt to CORE Education and to society through my past actions and my willingness to make amends (see 3. Judge's statement).

...

I believe that since my dismissal from CORE in 2018, I have learned from my actions, by using my time to reflect on being a better person for my people (see

7. Fa'aea & Enari) and for society as a whole (see 8. Fa'aea, Fonua, Chu-Fuluifaga & Ikiua-Pasi, 2021).

...

My current employer, Manukau Institute of Technology have no knowledge of this situation. If the Complaints Assessment Committee were to take this matter further, I would surely lose my job and being able to support my family financially both in Samoa and Aotearoa.

Conclusion

I have learned to become resilient and deal with the trauma I have had to endure, despite all of the challenges I have faced.

I regret the actions that lead me to be reported by CORE Education in 2018 to the Teaching Council. As I have said from the outset of this matter, these past mistakes do not define my current state of being.

I no longer want to be persecuted if it will continue to severely disadvantage

My teacher registration is not about me as an individual. It is about what the teacher registration can do for Pasifika peoples and to advance the elevation of Pasifika communities. It may not happen in my lifetime, but I would dearly love the opportunity to try. This is my mission; this is my service.

13. On 6 May 2021, the CACs investigator sent Ms Fa'aea a copy of the draft investigation report for her feedback.
14. On 14 May 2021, in an email response, Ms Fa'aea said she had nothing further to add to the investigation report.

CAC meeting

15. On 27 May 2021, the CAC met to consider the mandatory report. Ms Fa'aea did not attend the meeting.
16. The CAC considered that Ms Fa'aea 's conduct may possibly constitute serious misconduct (as defined in s 378 of the Education Act 1989). On that basis, the CAC had no option but to refer Ms Fa'aea 's conduct to the Tribunal under s 401(4) of the Education Act 1989.

[9] The Respondent was charged in the Criminal Court for obtains by deception for the conduct that gives rise to the charge before the Tribunal. The Respondent was sentenced by Judge Blackie on 16 December 2019. The sentencing notes record that the full amount outstanding, \$19,200, has been repaid to the victim of this offending. The Respondent was ultimately discharged without conviction in the Criminal Court.

The Law

[10] Section 278 of the Act defines, "Serious misconduct" as behaviour by a teacher that has one or more of three outcomes. Under Section 378(1)(a), it is conduct which:

- (i) *Adversely affects, or is likely to adversely affect, the wellbeing or learning of one or more children, and/or*
- (ii) *Reflects adversely on the teacher's fitness to be a teacher; and/or*
- (iii) *May bring the teaching profession into disrepute.*

[11] The Court of Appeal recently affirmed that test for serious misconduct in section 278 of the Education Act is conjunctive.¹ As well as having one or more of the three adverse professional effects or consequences described in section 378(1)(A)(i)-

¹ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

(iii), set out above, the conduct concerns must be of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct. The Teaching Council Rules 2016 ("the Rules") describes the types of behaviour that are of a prima facie character and severity that constitutes serious misconduct.²

[12] The criteria for reporting serious misconduct are at Rule 9 of the rules. Rule 9 provides that a teacher's employer must report serious breaches of the Code of Professional Responsibility ("the Code"). In the present case the CAC alleges that the Respondent conduct breaches Rule 9(1)(h), and/or 9(1)(n) and/or 9(1)(o).

[13] Rule 9(1)(h) relates to theft or fraud

[14] Rule 9(1)(n) relates to any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more, and

[15] Rule 9(1)(o) which relates to an act or omission that brings or is likely to bring discredit to the teaching profession.

[16] In addition to the Rules, the Code sets out the standards of expected conduct, and the criteria in section 378(1)(b) of the Act will be satisfied where the conduct alleged amounts to a serious breach of the Code, irrespective of whether the conduct fits into one of the examples in Rule 9.

[17] If the test for serious misconduct and section 378 of the Act are not met, it remains open to the Tribunal to find that the conduct alleged amounts to misconduct, provided there has been a breach of accepted professional standards. It is noted that not all departures from accepted professional standards will amount to misconduct.

[18] In the event of a finding of a serious misconduct or misconduct, the Tribunal may exercise its powers under section 404 of the Act.

Submissions

[19] CAC submits that the necessary criteria in section 38(1)(a) of the Act are met, and that the definition of serious misconduct is made out.

[20] In particular, the CAC submits that the Respondent's conduct is likely to reflect adversely on the Respondent's fitness to be a teacher, or that it may bring the teaching profession into disrepute. The CAC further submits that the offending is of such a character or severity that it meets the Teaching Council's criteria for reporting of serious misconduct.

² These came into force on 1 July 2016 and had a name change from the Education Council Rules 2016 to the Teaching Council Rules 2016, in September 2018.

- [21] The CAC notes that given the timeframe of the offending, the criteria for reporting serious misconduct is found in the Education Rules 2016 (as drafted prior to the amendments on 19 May 2018). The CAC alleges that the relevant rules for the present case are, as set out above, Rule 9(1)(h), 9(1)(n) and 9(1)(o). The CAC further submits that the "discredit" test referred to in Rule 9(1)(o) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the Respondent's behaviour.³
- [22] The CAC referred the Tribunal to two cases it sees as analogous, those being *CAC v Coldstream* NZTDT 2019/18, which related to the theft of \$4,735 from the Learning Adventure Centre between September 2017 and April 2018, when the Respondent in that case was working as a Centre Manager. The CAC outlined that the Tribunal made a finding of serious misconduct, but that it was satisfied that Ms Coldstream had reflected on her conduct and had taken steps to change her behaviour. It was also acknowledged that there were no previous disciplinary history and that the amount taken was repaid in full.
- [23] The CAC also referred the Tribunal to the decision of *CAC v Fletcher* NZTDT 2018/17, noting that in that case the Respondent was the principal of a rural school and over a period of nearly three years he had misused the school fuel card to purchase \$5,926.70 of fuel for his personal use, he had claimed reimbursements of \$330.60 for travel to professional development course he did not attend, and he failed to pay rent for the school house for a period of five weeks, totalling \$1,980. The conduct was admitted during investigations and the Tribunal considered that the conduct amounted to serious misconduct. There were no Respondent submissions on penalty and accordingly the Tribunal considered the only appropriate outcome for Mr Fletcher was one of cancellation.
- [24] The CAC submits that the following factors point to the Respondent's conduct meeting the criteria for serious misconduct:
- (a) The Respondent received a total of \$19,200 which should have been paid to CORE.
 - (b) The Respondent deliberately issued 23 fraudulent invoices which were identical in appearance to those used by CORE but listed the Respondent's name, address and personal bank account.
 - (c) The offending occurred over a period of several years.
 - (d) The Respondent's offending was only detected because one of the education providers the Respondent had delivered training to questioned an invoice with CORE, and

³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT 2016/43 24 March 2017.

(e) The Respondent was charged with obtaining by deception in section 240 of the Crimes Act 2016, noting that she was discharged without conviction after repaying the money taken in full.

[25] The CAC submits that the Respondent's conduct in the present case is more serious than both *Coldstream* and *Fletcher*, given the amount of money involved and the extended period over which the offending occurred.

[26] The CAC submits that the conduct breached the following aspects of the Code:

(a) *Clause 1.2, which requires teachers to maintain public trust and confidence in the teaching profession by engaging in professional, respectful relationships with colleagues.*

(b) *Clause 1.3, which requires that teachers demonstrate a high standard of professional behaviour and integrity.*

[27] The CAC submits that the offending clearly meets the definition of theft or fraud as set out in Rule 9(1)(h), that it breaches Rule 9(1)(n) as the conduct was the subject of a police prosecution for an offence punishable by more than three months imprisonment and falls outside the bounds of Rule 9(1)(o) in that it brought discredit to the teaching profession.

[28] On that basis, the CAC submits that the Tribunal can appropriately class this offending as "serious misconduct".

[29] The Respondent accepts the summary of facts relating to the charge before the Tribunal, and accepts that either a finding of misconduct or serious misconduct is available to the Tribunal. The Respondent notes that she will accept the finding of the Tribunal in this regard.

[30] Rather than disputing liability, the Respondent provided submissions in relation to the context in which the offending had arisen. The Respondent noted the following:

[5] ... [REDACTED] [REDACTED] [REDACTED]
[REDACTED].

[6] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[7] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[8] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[9]

- [31] The Respondent describes this as an emotional and confusing time at the bottom of a downward spiral. She acknowledges that she wrongly believed that culturally she could not ask for help due to her position as the family Matai. This is supported in large part by her brother, who acknowledges that the family should have turned their minds to the constant pressure being placed on the Respondent to serve as Matai. This is particularly given that New Zealand is a more expensive place to live, and that the Respondent cared for her parents. The Respondent submits that being a Matai can impose significant obligations on Pacifica people. There is a burden of expectation that Matai are selfless and faithfully practise tautua, the act of service. This is confirmed in an Affidavit from [REDACTED] provided to the Tribunal. The Respondent indicates that she was raised with this important principle in mind, to prepare her for her role as family Matai.
- [32] The Respondent submits that there are additional cultural challenges to fulfilling the obligations of Matai in New Zealand, and [REDACTED] gave evidence via Affidavit to note, "*I understand the cultural challenges of fulfilling obligations and expectations as a Pacifica person to my family. From time to time I have found myself under pressure and acknowledge how difficult it can be to reach out for help when there is a burden or expectation on you*".
- [33] These are offered by way of explanation rather than excuse for the offending, and the Respondent urges the Tribunal to take the cultural background and her personal circumstances into consideration when considering her conduct, and more importantly, when considering the appropriate penalty for her conduct.

Discussion

- [34] We have no hesitation in concluding that the behaviour of the Respondent meets the threshold for serious misconduct.
- [35] In relation to the criteria set out in section 378 of the Act, we are satisfied that the Respondent's conduct reflects adversely on her fitness to be a teacher, and that it may bring the teaching profession into disrepute.
- [36] Despite the offending not taking place in a classroom, it is very clearly connected to the Respondent's employment in an education role. Further, it is well established that a teacher's actions, even in his or her personal life, may reflect

adversely on a teacher's fitness to teach, and may bring the teaching profession into disrepute. It was noted by the Tribunal in *CAC v Teacher*⁴ that:

The legislation is simply not structured in a way as to draw a line between a teacher's private and professional life. The principal question is never whether some incident took place in a teacher's private or professional capacity. The principal question is always whether the teacher's actions, wherever and whenever they took place, reflect adversely on his or her fitness to be a teacher.

- [37] The guidance in the Code and the Rules refer specifically to the need for teachers to take steps to manage professional boundaries both in and beyond the professional environment. The Tribunal accepts the CAC submission that the Respondent's actions breached rules 9(1)(h), 9(1)(n) and 9(1)(o) of the Rules. It is entirely clear that this conduct meets the definition of theft or fraud, and that it is an act or omission that could be subject of a prosecution of an offence punishable by imprisonment for a term of three months or more. Further, we do consider that the Respondent's conduct is likely to bring discredit to the teaching profession.
- [38] The High Court in *Collie v Nursing Council of New Zealand* confirmed that the test is an objective one. In making its determination, the Tribunal must ask itself whether reasonable members of the public fully informed of the facts of the case could reasonably conclude that the reputation and good standing of the profession has been lowered by the Respondent's action.
- [39] We have no hesitation in concluding that the prolonged course of fraudulent conduct, and the amount of money taken, would cause significant concern to reasonable members of the public, and that even when informed and with the knowledge of all the factual circumstances of the offending and of the Respondent's background, would reasonably conclude that the reputation and standing of the profession is lowered by that behaviour. Accordingly we consider that this behaviour meets the definition of serious misconduct in section 378 of the Act, and further, that the Respondent's behaviour is of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct.

PENALTY

- [40] Having determined that this case is one in which we consider exercising our powers, we must now turn to consider what is an appropriate penalty in the circumstances.

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or*

⁴ *CAC v Teacher* NZTDT 2009/05 11 May 2009.

more of the following:

- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
 - (b) *censure the teacher:*
 - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
 - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
 - (e) *annotate the register or the list of authorised persons in a specified manner:*
 - (f) *impose a fine on the teacher not exceeding \$3,000:*
 - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
 - (h) *require any party to the hearing to pay costs to any other party:*
 - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
 - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

[41] The CAC submits that the starting point for penalty in this case must be cancellation. The CAC acknowledges that whether it is necessary to cancel a teacher's registration in order to discharge the Tribunal's disciplinary obligations will often turn on the teacher's rehabilitative prospects and the degree of insight he or she has demonstrated into the causes of the behaviour.⁵ The CAC then referred the Tribunal to the decision in *CAC v Fuli-Makaua*⁶, where the Tribunal said that cancellation is generally required in two over situations, which are:

- (a) Where the seriousness of the conduct is such that no outcome short of deregistration will sufficiently reflect its adverse effects on the teacher's fitness to teach, and/or its tendency to lower the reputation of the profession; and

⁵ *CAC v Adams* NZTDT 2018/11 13 September 2018 at para [25].

⁶ *CAC v Fuli-Makaua* NZTDT 2017/40, 5 June 2018.

- (b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. In this scenario, there is an apparent ongoing risk that leaves no alternative to deregistration.
- [42] In support of its submission that the starting point must be a cancellation for the present offending, the CAC refers to the duration or the extended period of time over which the offending occurred, and the significant amount of money involved.
- [43] However, the CAC does acknowledge the following mitigating features of this case:
- a) The Respondent had paid back all of the money by December 2019.
 - b) She pleaded guilty to the charge of obtaining by deception at an early stage, and
 - c) She has consistently expressed remorse for her conduct.
- [44] If the CAC submits, that if the Tribunal is satisfied the matter can be dealt with by way of a penalty short of cancellation, the appropriate outcome would include:
- a) Censure.
 - b) Annotation of the register for a period of two years, and
 - c) Conditions on the Respondent's practising certificate for two years, noting that she must
 - (i) Provide a copy of the decision to any teaching employer she is working for at that time, as well as any prospective teaching employer, and
 - (ii) Not to hold or undertake any teaching role involving the handling of money or the management of any finances.
- [45] In relation to penalty, the Respondent submits that while cancellation is an available remedy to the Tribunal, it would not be a proportionate outcome to this offending, noting the mitigating, rehabilitative and contextual features that apply.
- [46] The Respondent also refers the Tribunal to the case of *CAC v Teacher*⁷ and submits that an outcome of censor is sufficient to mark the seriousness of the offending.
- [47] The Respondent notes that her current employer, the Manukau Institute of Technology ("MIT") supports her continued employment. Evidence has been made available that the Respondent's current manager considers her to be trustworthy, despite being aware of her prior conduct. He acknowledges in his Affidavit that she manages a budget of \$448,000 at MIT, and "*presents no future risk to MIT or the teaching profession*".

⁷ *CAC v Teacher* NZTDT 2010/21, 13 August 2010.

- [48] The Respondent refers to the cultural and contextual matters set out above and relies on those when submitting that cancellation is not a proportionate outcome in the present case.
- [49] The Respondent further submits that while there may ordinarily arise a risk of recidivism due to the period over which this offending took place and the amount of money involved, the wider context and the subsequent conduct of the Respondent in the present case are also highly relevant to assessing the degree of risk that they pose going forward. The Respondent notes that this offending occurred during an exceptionally overwhelming time in her life, relating to [REDACTED]
- [50] The Respondent submits that she has had to change her role within her family and her culture and faced significant consequences of her actions as a result of this offending. Despite that however, the Respondent has forged a path back to employment and towards financial stability. The Respondent submits that she makes a valuable contribution to the teaching community, her work is referred to academically and is being used in initial teaching education.
- [51] In relation to rehabilitation, the Respondent notes the following points in her path to rehabilitation:
- a) Dealing with the shame caused to her family and parents and dealing with the harm caused in a Samoan way, and the Tribunal was referred to the Affidavit of [REDACTED] in support of this.
 - b) Facing the consequences of her actions, including criminal proceedings.
 - c) Disclosing her past to friends, family, and her current employer.
 - d) Undertaking restorative justice and making reparation to CORE by repaying the amounts taken by December 2019.
 - e) Working with budgeting services to become more financially stable.
 - f) Working with Pacifica people at Springhill Correctional facility in Te Kauwhata.
 - g) [REDACTED],
and
 - h) Acknowledging her doctoral thesis as a casualty and consequence of that time. The worker research undertaken by the Respondent during that time did not reach the required doctoral standard.
- [52] As a result of that rehabilitation, the Respondent's current manager at MIT is prepared to acknowledge that she presents "*no further risk to MIT or to the teaching profession*". The Respondent submits that he has made this assessment after working with the Respondent for more than two years. The Respondent's manager acknowledges that she manages a budget of approximately \$448,000 and has a credit card with a limit of \$2,000. In the time that she has been employed by MIT

she has proved herself to be trustworthy in undertaking her financial management duties.

[53] The Respondent's manager at MIT confirmed to the Tribunal that he did not consider it necessary for any conditions to be imposed that restricted her ability to handle finances, and confirmed that there are not such restrictions on her employment at present.

[54] The Respondent submits that considerable weight should be given to this evidence, as:

- a) He has managed the Respondent for two years.
- b) He is aware of the Respondent's prior conduct, and despite that prior conduct he has deposed on oath that the Respondent has proven herself trustworthy.
- c) MIT does not consider it necessary to impose restrictions on the Respondent's ability to manage financial matters in her employment.
- d) The deponent of the Affidavit is a trusted and senior member of public office. As the former Minister of Corrections and Associate Minister of Health, Mr Lotu-liga's professional judgement should carry weight on this issue. Further, it should provide comfort to the Tribunal that he believes the Respondent is not a future risk to the public or the teaching profession.

[55] In addition to the mitigating features set out by the CAC, the Respondent submits that the following factors are also relevant:

- a) The Respondent's contribution to academia and initial teaching education. Her work is being used by teaching professionals and is said to create a sense of pride for Pacifica teachers. This was confirmed in the Affidavit evidence available to the Tribunal.
- b) The level of trust and positive support of her current employer and her manager, Mr Lotu-liga.
- c) The Respondent's role at MIT which involves liaising with the teaching council to better align teaching initiatives and programmes.
- d) The cultural context in the Respondent's family background.
- e) The Respondent's cooperation and active engagement in the disciplinary process.

[56] The Respondent refers the Council to the decision of *CAC v Teacher*, a case involving a teacher convicted and sentenced on 10 charges of using a document to obtain pecuniary advantage. In that case the teacher's actions involved fraudulent claims for overpayments of benefits by around \$47,500. The penalty imposed in the District Court was six months home detention. Despite the significant amount involved and the dishonest nature of the offending in the outcome of conviction, the Tribunal in that case concluded that, "Censure is

sufficient to mark the seriousness of the Respondent's convictions". In that case the Tribunal was satisfied that the teacher was deeply remorseful and that there was no realistic prospect of reoffending. The teacher was supported by her current employer and had a clear understanding of the seriousness of her actions.

- [57] The Respondent submits that that case is the most comparable of those presently before the Tribunal. The Respondent submits that that case is somewhat more serious than the present taking into account the total amount involved.
- [58] The Respondent submits that the circumstances of the present case weight against cancellation as a fair and proportionate remedy, noting that the risk of recidivism is low, the full amount taken has been repaid, and that the Respondent is said to present no future risk to the teaching profession.
- [59] The Respondent does acknowledge the availability of penalties in the form of annotation of the register, and the imposition of conditions on the Respondent's practising certificate. The Respondent has reviewed the conditions proposed by the CAC and would seek an exception to the condition preventing the handling of money or finances to allow her to continue her current role, which does involve the handling of money and finances.

Discussion

- [60] In determining penalty, the Tribunal must ensure that three overlapping principles are met, namely the protection of the public through the provision of a safe learning environment for students and the maintenance of both professional standards and public's confidence in the profession⁸. We also refer to the decisions of the superior courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may well have that effect.⁹
- [61] In *McMillan* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding to exercise its power, and noted that they include:
- a) *Protecting the public.*
 - b) *Setting the standards for the profession.*
 - c) *Punishment.*
 - d) *Rehabilitation.*
 - e) *Consistency.*
 - f) *The range of sentencing options.*

⁸ *CAC v McMillan* NZTDT 2016/52.

⁹ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1NZLR 1 at [97]; in *re A Medical Practitioner* [1959] NZLR 784 at para [800] (CA).

(g) *The least restrictive outcome.*

(h) *Fair, reasonable and proportionate outcomes.*

- [62] We do not intend to repeat what we said in those decisions other than to note that we have turned our mind to these principles in reaching our decision on penalty.
- [63] We agree with the submissions of the Respondent in relation to the mitigating features of this incident. We also note that these are largely not disputed by the CAC. Further, we consider that the Respondent has demonstrated insight into her behaviour and that this insight and the steps taken to repay the full amount taken, significantly mitigates her risk of further incidences.
- [64] We do agree with the submission from the CAC that the starting point for offending as serious as this must be one of cancellation. It cannot be overlooked the duration of this offending, the gross breach of trust, and the total amount taken by the Respondent.
- [65] However, we also consider the Respondent has something of considerable value to contribute to the profession, and that she can continue to add value to the lives of students across New Zealand and also to the teaching profession in itself as she works towards better aligning teaching initiatives and programmes going forward.
- [66] Further, we acknowledge the significant rehabilitation undertaken by the Respondent, we acknowledge the cultural context and personal background of the Respondent that led to this offending. Given the very positive work undertaken by the Respondent and the ongoing support that she has from her employer at MIT, we consider that a penalty short of cancellation is available to the Tribunal. We agree with the CAC that censure, annotation of the register and the imposition of conditions on the Respondent's practising certificate, is appropriate.

COSTS

- [67] The CAC seeks an order for costs against the Respondent towards the CAC's actual and reasonable costs incurred in undertaking its investigative and prosecutorial functions.
- [68] The CAC submits that the starting point, in accordance with Tribunal's practise note of 17 June 2010, is an award of 50% of the cost of investigation, the hearing, and the Tribunal's costs.
- [69] Taking into account that the Respondent has accepted responsibility and has agreed to proceed with the hearing on the papers, with the benefit of an agreed summary of facts, the CAC submits that a reduction in the costs award is warranted, and the CAC seeks a reduced costs award of 40% of actual costs.
- [70] The Respondent acknowledged that the inquiry has incurred costs to the CAC. However the Respondent notes she has taken active steps to reduce the legal attendances involved in this proceeding. The Respondent acknowledges the

possibility of a contribution of 40% towards the reasonable costs of the CAC is available to the Tribunal but seeks that that be reduced to an award of 25% of actual and reasonable costs to take into account the Respondent's cooperation and the active steps taken in this disciplinary proceeding.

[71] Whilst acknowledging that the Respondent did take steps to reduce the costs incurred as a result of this proceeding, this was a matter that had to proceed to the Tribunal, and we have made a finding of serious misconduct. That outcome was not available without referral to the Tribunal. Accordingly, we see no reason that the award of costs should be reduced, and order costs of 40%.

NON-PUBLICATION

[72] The Respondent seeks name suppression on the basis that the publication of the Tribunal decision could have prejudicial effects on initiatives or work she has done in the teaching and education community.

[73] Initially the Respondent did not seek name suppression as she had not properly appreciated the positive changes for Pacific education that her work and commitment has inspired. Accordingly, the Respondent now seeks an order under section 32(1) of the New Zealand Teachers' Council (Conduct) Rules 2004, prohibiting the publication of

- (a) her name and any personal health or family information,
- (b) her employment with MIT,
- (c) her work with educational initiatives, including at MIT, with the Ministry of Education and any initial teacher initiatives, and
- (d) any academic work published by the Respondent referred to in this proceeding.

[74] In essence, the basis of the application for name suppression relates to the potential adverse impact on any initiatives being undertaken by the Respondent and her employers through the publication of this decision and the nature of the offending.

[75] The CAC opposed name suppression in the present case. The CAC submits that Tribunal hearings are generally conducted in public and the names of teachers who are the subject of proceedings are, by default, to be published. The CAC submits that this reflects the open justice principle contained in section 405(4) of the Act.

[76] The CAC submits that the principles relating to name suppression were summarised in *CAC v Teacher*¹⁰ as follows:

- (a) There is a presumption in favour of openness and therefore the starting point is that all names should be published.

¹⁰ *CAC v Teacher* NZTDT 2016/27

- (b) There is no onus on the applicant and the question is simply whether the circumstances justify an exception to the fundamental principle.
- (c) The correct approach is to strike a balance between the open justice considerations and the interests of party who seeks suppression.
- (d) In exercising its discretion, the Tribunal may have regard to the interests of any person, then decide if it is "proper" to order non publication of any aspect of the evidence.
- (e) "Proper" is not as high a threshold as "exceptional".

[77] The CAC further refers the tribunal to the decision of the Tribunal in *CAC v Jenkinson*¹¹ adopted a two-step process:

- (a) Step 1: "The threshold question". The Tribunal must decide if it is satisfied that the consequences relied upon would be likely to follow if an order prohibiting publication was not made. This simply means that there must be an "appreciable" or "real" risk that the asserted consequence would occur based on the evidence before it.
- (b) Step 2: If so satisfied, the Tribunal must determine whether it is proper for the presumption in favour of open justice to yield. This step requires that the Tribunal consider the more general need to strike a balance between open justice considerations and the interests of the party who seeks suppression.

[78] The CAC does not oppose suppression of the Respondent's personal health or family information, acknowledging that this has a general expectation of privacy.

[79] The CAC submits that the Respondent's name, the underlying factor for offending, as well as the factor of her employment with MIT and her involvement with educational initiatives, were not suppressed in the District Court. On that basis, the CAC submits that many of the particulars that the Respondent seeks to suppress are already in the public sphere and are able to be reported. Accordingly the CAC submits that an order for suppression would be of limited efficacy.

[80] Further, the CAC submits that the Respondent's grounds for seeking suppression in relation to the matters specified, do not meet the required threshold. The CAC submits that step 1 of the Jenkinson two-step process has not been satisfied as there is no causal nexus between publication of the matters sought, and the potential consequences asserted by the Respondent. Rather, the CAC submits that those concerns are speculative, and it cannot be said that there is any real or appreciable risk that they would occur.

[81] Further, the CAC notes that the Tribunal's decision will set out all of the relevant facts, including the fact that the Respondent repaid all of the stolen money, the Respondent was discharged without conviction by a District Court Judge, and the

¹¹ *CAC v Jenkinson* NZTDT 2018/14, 17 September 2018. This approach was affirmed more recently in *CAC v Tamaki* NZTDT 2019/128, 19 February 2021.

rehabilitation and mitigation steps taken by the Respondent between the time of misconduct and the hearing of the matter by the Tribunal.

- [82] With respect to the Respondent, we agree with the CAC. The consequences relied on by the Respondent are speculative, at best, and there is no real evidence before the Tribunal to indicate that they may occur. We also agree with the CAC that the decision includes all of the positive features in rehabilitation and mitigation set out by the Respondent. Accordingly if the full decision is read, then the drawing of adverse inferences against the Respondent would be reduced.
- [83] Finally, we consider that the Respondent's original position, that publication of her name would form part of her rehabilitation in atoning for her actions is, in fact, accurate.
- [84] Accordingly the application for suppression of name is declined.
- [85] We are prepared however to suppress personal and health information provided to the Tribunal. None of this is detailed within the decision of the Tribunal, however any search or disclosure of the CAC file should ensure that that material is not published.

ORDERS

- [86] The Tribunal's formal orders under the Education Act are as follows:
- a) The Respondent is censured pursuant to section 404(1)(b),
 - b) pursuant to section 404(1)(c), the following conditions are imposed on the Respondent's practising certificate for a period of two years from the date of this decision. The Respondent must:
 - (i) Provide a copy of this decision to any teaching employer she is working for at the time it is released, as well as any prospective teaching employer, and
 - (ii) With the exception of her employment for MIT, must not hold or undertake any teaching role involving the handling of any money or the management of any finances.
 - c) Under sections 404(1)(e), the register is to be annotated for a period of two years.
 - d) There is an order preventing publication of any personal health or family information relating to the Respondent.

- e) Pursuant to section 404(1)(h) the Respondent is ordered to pay 40% of the costs shown in the CAC schedule filed.
- f) The Respondent is also ordered to pay 40% of the Tribunal's costs pursuant to section 404(1)(i).



Hannah Cheeseman
Deputy Chairperson

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by the teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).