

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**UNDER THE** Education Act 1989

**IN THE MATTER** disciplinary proceedings pursuant to Part 32 of the Act

**BETWEEN** **COMPLAINTS ASSESSMENT COMMITTEE**

**AND** **SHARLEEN ANNE PARKER** registered teacher (Registration Number 302590), of North Shore City

Respondent

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**DECISION OF THE TRIBUNAL**

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**Hearing:** 15 December 2021

**Tribunal:** Jo Hughson (Deputy Chairperson),  
Rose McInerney, Nichola Coe

**Counsel:** D P Neild/L R van der Lem for the Complaints Assessment Committee  
R Tomkinson, for the Respondent  
Mr A Espie for the Centre and the Centre Owner  
in respect of non-publication orders

**Decision:** 21 January 2022

## Summary

- [1] Ms Parker is a fully registered teacher<sup>1</sup>. Her current practising certificate is due to expire on 1 May 2022. At the relevant time Ms Parker was a teacher at the [REDACTED] [REDACTED] in Auckland. The Centre is owned and operated by [REDACTED]. Ms Parker had begun her employment as a teacher at the Centre in 2008 and was later promoted to Team Leader. Ms Parker was in the Team Leader role at the relevant time (28 June 2019) and she remained in that role until her resignation on 12 July 2019<sup>2</sup>.
- [2] The Complaints Assessment Committee (the CAC) charged that on 28 June 2019 Ms Parker force-fed a [REDACTED] child (Child M) by putting spoonfuls of food into Child M's mouth while Child M was resisting and/or in distress and/or physically restraining Child M and/or using forceful language when communicating with Child M.
- [3] This conduct was alleged to amount to serious misconduct pursuant to section 378 of the Education Act 1989 (the Act), when the alleged acts are considered separately and cumulatively. Alternatively, it was alleged the conduct amounted to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to section 202 of the Act.
- [4] The hearing proceeded on the papers based on an Agreed Summary of Facts<sup>3</sup>. CCTV footage of the alleged conduct from the Centre's CCTV camera, was produced to the Tribunal and timestamps from the footage were included in the sequence of events outlined in the Agreed Summary of Facts.
- [5] Ms Parker admitted the conduct and accepted that her behaviour was serious misconduct. Despite those admissions it was for the Tribunal to reach its own view as to whether the conduct, if established, amounted to serious misconduct; and if so, what, if any, penalty orders should be made.

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<sup>1</sup> Agreed Summary of Facts (ASF) at [1] signed by Counsel for the CAC on 5 November 2021 and by Ms Parker personally, on 4 November 2021. Ms Parker obtained her provisional practising certificate in February 2007 and her full practising certificate in April 2010.

<sup>2</sup> ASF at [2] and [3].

- [6] Helpfully, joint written submissions were received from Counsel for the CAC and Ms Parker, addressing the issues of liability, penalty, and non-publication orders.
- [7] The Tribunal found the charge established. It was reasonably satisfied that the conduct was serious misconduct. The Tribunal made orders of censure, imposed conditions on practice, annotation of the register to note the censure, and costs.
- [8] The interim non-publication order that was in effect prior to the hearing, in respect of Ms Parker's name and identifying particulars, was not made permanent. Ms Parker did not seek a permanent order and the Tribunal was not satisfied that there were any grounds for a permanent order. It follows that Ms Parker's name may be published in connection with these proceedings.
- [9] The Centre filed an application for a permanent order in respect of its name and the name of [REDACTED]. The basis for the application was that the Centre and the Trust's reputations would be adversely affected by association with Ms Parker's conduct, risking the ability of both to operate. The risk of interference with their ability to provide services to vulnerable persons and of damage to the ongoing viability of a community project, associated with publication was relied on. The parties accepted that the Centre's identity is not relevant to the Tribunal's decision in respect of Ms Parker and that there was little public interest in the publication of the Centre's and the Trust's name. However, the parties did not agree with the Centre's position as there was no allegation that the Centre responded inappropriately to Ms Parker's conduct or that it permitted a culture conducive to Ms Parker's actions. For that reason, the parties indicated they would abide the Tribunal's decision. In the end, the Tribunal decided that the private interests of the Centre and the Trust were sufficient to outweigh the public interest in publication of the names of the Centre and the Trust. Permanent non-publication orders were made accordingly, under section 405(6)(c) of the Act.
- [10] The Tribunal also made a permanent order under section 405(6)(c) of the Act that the name of Child M, be prohibited from publication. The privacy interests of Child M outweigh the public interest in the child being identified. It followed that it was proper for there to be a permanent order.
- [11] The reasons for the Tribunal's decisions follow.

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<sup>4</sup> Application dated 2 June 2021

## Facts

- [12] The Tribunal made the following findings of fact<sup>5</sup>:
- [13] The incident described below occurred on 28 June 2019 between approximately 11.40am and 12.00pm, in the children's lunch area of the Centre. Ms Parker and two other Centre employees were supervising 11 children as they ate lunch, split between two tables. Ms Parker sat at one table with 5 children, while the other two employees sat at a second table with 6 other children.
- [14] During the course of serving lunch, Ms Parker attempted to feed Child M, a [REDACTED] [REDACTED] beside Ms Parker at the table. Ms Parker did this by taking a spoonful of M's food bowl and repeatedly putting the metal spoon up to the child's mouth. M refused to open her mouth to eat the food. The following description of the incident is by reference to time stamps on the top-right of the CCTV footage viewed by the Tribunal:
- (a) Ms Parker sat down on M's right-hand-side and attempted to feed M again, by putting a spoonful of food up to M's mouth. M refused to open her mouth and turned her head away. This lasted approximately 25 seconds before Ms Parker put the spoon down [11:48:28].
  - (b) After leaving the table to assist another child, Ms Parker returned to the table and sat down next to M. Ms Parker again put a spoonful of food up to M's mouth, but M turned her head away. This lasted approximately 12 seconds [11:44:20].
  - (c) After pausing briefly to complete paperwork, Ms Parker stood and leaned over the top of M, putting her left hand behind M's torso and pushed a spoonful of food into her mouth. M attempted to stop the food getting to her mouth by putting her left hand up but was unable to stop Ms Parker from getting the spoon into her mouth. M refused to eat the food off the spoon and Ms Parker stopped and stood up to refill another child's bowl. [11:45:40]
  - (d) Ms Parker then attempted a few times in quick succession to put a spoonful of food into M's mouth. When M attempted to turn away, Ms Parker put her hand across the child's back and held her far shoulder in an attempt to stop

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<sup>5</sup> ASF at [2]-[7].

M from turning away from her. After approximately 15 seconds, Ms Parker stopped and put the spoon back into M's bowl. [11:46:12]

- (e) Ms Parker paused to remove some food that had fallen down M's front, which M refused to eat. Ms Parker then made a further attempt to feed M by lifting the spoon up to M's mouth, but M resisted again, twisting her body away from the spoon. Ms Parker resumed her paperwork at 11:46:54. [11:46:39]
- (f) After looking at her paperwork for approximately 35 seconds, Ms Parker recommenced attempting to feed M with the spoon. Ms Parker held the spoon up to M's mouth, but M turned away. Ms Parker then held the spoon above the bowl towards M but not in M's face, for approximately 40 seconds. [11:47:29].
- (g) At 11:48:10 Ms Parker again brought the spoon towards M's mouth, placing a hand on M's shoulder, but M turned away. Ms Parker then placed her hands on either side of M to turn M back to face the table, pulling her chair into the table. Ms Parker then pulled M's bowl closer towards M. Ms Parker made several more attempts to feed M, but each time Ms Parker put the spoon up to M's mouth M turned away. At 11:49:20 Ms Parker stood up and refilled the bowls of two other children in the lunchroom. [11:48: 10].
- (h) Ms Parker then returned and sat back down next to M and attempted to feed her a spoonful of food. M refused, once again and turned her body away when the spoon was presented to her. [11:50:30]
- (i) Ms Parker attempted to convince M to eat the food by telling her "you need to eat, mummy says you have to eat...if you eat, you can have chocolate". M again refused to eat the food. As she did so Ms Parker showed M a piece of chocolate from inside her pocket. Ms Parker then attempted to feed M again, without success. At this point (11:56:15 onwards) there was one other Centre employee working in the lunchroom. [11:51:50]
- (j) When Ms Parker was the last teacher left in the lunchroom, she leaned in against the child and put her left arm around her back, taking hold of M's left arm, and turned M towards her. As she did so, Ms Parker put the spoon up to M's mouth and kept the spoon against M's mouth as M turned her head in an attempt to escape. [11:56:41]

- (k) M became visibly distressed and opened her mouth to cry. Ms Parker used this to place the spoon she was holding in M's open mouth. M pushed the food out of her mouth and Ms Parker proceeded to scoop the food from her clothing and pushed the food back into M's mouth. M continued to cry, and Ms Parker put a spoonful of food into her mouth a second time, before attempting to settle M, and clear food from in and around M's mouth. As M was crying other children approached and observed what was happening. [11:57:00]
- (l) Ms Parker then retrieved the chocolate bar from her clothing, released M's arm, and gave her a piece of the chocolate. She then offered M a spoonful of food. M took hold of the spoon and ate the food off it. Ms Parker then fed her another piece of chocolate, and then gave her a glass of water. [11:59:08].
- (m) Ms Parker and M then left the table. [12:01:10]

[15] In total, Ms Parker attempted to feed M at least 17 times.

### **Legal Principles - Liability**

[16] It was for the CAC to prove the charge, on the balance of probabilities.

[17] "Serious misconduct" is defined in section 378 of the Act as follows:

**Serious misconduct** means conduct by a teacher –

- (a) That-
- (i) Adversely affects, or is likely to adversely affect, the wellbeing or learning of one or more students; or
  - (ii) Reflects adversely on the teacher's fitness to be a teacher; or
  - (iii) May bring the teaching profession into disrepute; and
- (b) That is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.

[18] This test for serious misconduct is conjunctive<sup>6</sup>. That is, as well as being behaviour by a teacher that has one or more of the adverse professional effects or

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<sup>6</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

consequences described in subsection (a)(i)-(iii) the conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct. Those criteria are set out in Part 3, Rule 9 of the Teaching Council Rules 2016 (the Rules).

[19] Rule 9 states that a teacher's employer must immediately report to the Council in accordance with section 394 of the Act if the employer has reason to believe the teacher has committed a "serious breach of the Code of Professional Responsibility".

[20] The Code of Professional Responsibility (the Code) documents the minimum standards for ethical and professional behaviour that are expected of every registered teacher. As such the Code sets out the commitments that teachers make to the profession, learners, families and whānau, and to society.

[21] Rule 9(1)(a) through (k) is a non-exhaustive list of conduct which may constitute a serious breach of the Code and therefore, which must be reported by the teacher's employer.

[22] Whether or not there has been serious misconduct and the severity of any such misconduct is assessed by objective standards.

[23] The CAC submitted that the Respondent's conduct engaged all three limbs of the definition in section 378 (a). It was submitted further that the conduct engaged section 378 (b) as it was a serious breach of the Code as demonstrated by the examples given in Rule 9 (1)(a) and (k) of the Rules. As such, the CAC submitted that the test for serious misconduct was met.

[24] When determining whether established conduct is likely to have had an adverse effect on a student for the purposes of the definition of serious misconduct in section 378 (a)(i), the Tribunal is not required to be satisfied that there has been an actual adverse impact on a student's or students' wellbeing or learning. While there may be no direct evidence of adverse consequences for a student, the Tribunal is entitled to proceed on the basis that such consequences are a logical outcome or likely occurred because of the teacher's conduct.

[25] Previous Tribunal decisions demonstrate that the term "fitness to practise" in the definition of serious misconduct in section 378 (a)(ii) extends beyond competence issues and includes conduct that, when considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the teacher and the teaching profession as a whole, including conduct which falls below the

standards legitimately expected of a member of the profession, whether of a teaching character or not.<sup>7</sup>

[26] When considering whether particular conduct may bring the teaching profession into disrepute (for the purposes of section 378 (a)(iii); and Rule 9(1)(k)) the question to be asked is whether reasonable members of the public, informed and with the knowledge of all the factual circumstances, could reasonably conclude that the reputation and good-standing of the teaching profession was lowered by the behaviour of the teacher concerned.<sup>8</sup> This objective test is applied regularly by the Tribunal<sup>9</sup>.

[27] As to the requirement that the conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, relevantly, Rule 9(1)(a) relates to using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so. It is Rule 9(k) that encompasses an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[28] Rule 9(2)(b) provides that serious misconduct described in any of rule 9(1)(a) to (e) and (k) may be a number of acts forming part of a pattern of behaviour, even if some of the acts when viewed in isolation are minor or trivial.

[29] Subjective matters personal to the respondent teacher are not to be considered in any significant way when objectively assessing whether there has been serious misconduct<sup>10</sup>. Personal factors may be given full consideration at the penalty stage if a charge is found to have been established. As below, the Tribunal considered matters that Ms Parker raised by way of explanation for her conduct in that way.

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<sup>7</sup> This is the approach taken to "fitness to practise" for the purposes of the Health Practitioners Competence Assurance Act 2003, and the approach which has been taken by this Tribunal in previous decisions.

<sup>8</sup> Being the standard stated by the High Court (Gendall J) in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28] in relation to the test of "likely to bring discredit to the [nursing] profession", adopted by the Tribunal in previous decisions including *CAC v Webster NZTDT* 2016-57, 6 April 2017 at [46] and *CAC v Harrington NZTDT* 2016/63, 6 April 2017 at [17].

<sup>9</sup> Above, fn. 8.

<sup>10</sup> See *Martin v Director of Proceedings* [2010] NZAR 333 and *Cole v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, at [126]-[130] applied in previous decisions of this Tribunal.



## Relevant standards

[30] The Code makes it clear that teachers are expected to behave in ways that promote a culture of trust, respect, and confidence in them as a teacher and in the profession. Clause 1.3 of the Code addresses a teacher's commitment to the teaching profession and relates to:

maintaining public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.

[31] By acting with integrity and professionalism, teachers and the teaching profession maintain the trust and confidence that learners, families and whānau, and the wider community place in teachers to guide their children and young people on their learning journey and to keep them safe<sup>11</sup>.

[32] Conduct that damages this trust and confidence breaches the expectation set out in Clause 1.3. That may include conduct outside of work that interferes with their performance as a teacher, that affects the trust and confidence that others have in them as a teacher, or that reflects badly on the integrity or standing of the teaching profession.

[33] Clause 2.1 of the Code reads:

Work[ing] in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.

[34] The Code was issued with "Examples in Practice" which provide positive examples of what the principles look like in practice and include behaviours that are unacceptable and breach the Code.<sup>12</sup> In relation to clause 2.1, an example of behaviour that does not promote learners' wellbeing includes inappropriate handling such as physically grabbing, shoving, or pushing, or using physical force to manage a learner's behaviour.

[35] The Tribunal assessed the conduct against those standards.

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<sup>11</sup> Clause 1.3 *Code of Professional Responsibility*.

<sup>12</sup> *Code of Professional Responsibility, Examples in Practice* (Education Council, Wellington, June 2017).

## Findings on the Charge

[36] The Tribunal considered the established facts and the submissions for the parties, carefully. It noted that Ms Parker accepted that her conduct was serious misconduct.

[37] The Tribunal was satisfied the evidence established that on 28 June 2019, at [REDACTED] [REDACTED] where she worked as a teacher, Ms Parker force-fed a [REDACTED] child, Child M. The conduct involved Ms Parker putting spoonfuls of food into Child M's mouth while Child M was resisting and at times in distress, physically restraining Child M, and using forceful language when she communicated with Child M.

[38] The Tribunal was satisfied that Ms Parker's course of conduct was serious misconduct, and therefore that it was entitled to exercise its powers pursuant to section 404 of the Act.

[39] The Tribunal accepted the following submissions from the parties:

- (a) Force-feeding Child M was plainly an act likely to have affected Child M's wellbeing. The child became obviously distressed and resistant during the course of Ms Parker's conduct. Ms Parker responded to that resistance by restraining Child M. This course of action, continued as it was, presented a clear risk to the wellbeing of Child M. The act of forcing food into the child's mouth as she opened it to cry presented a clear risk of obstructing her breathing and creating a choking hazard. Child M could also have been injured by the metal spoon as she turned her head away from it. In addition, the obvious distress felt by Child M during Ms Parker's conduct could have caused Child M to fear being fed – causing ongoing issues with nutrition and development.
- (b) The use of such a method of feeding a child, particularly one of Child M's age, was reckless and has no place in modern early childhood teaching environments. It reflects poorly on Ms Parker's suitability to teach, being a profound lapse of her professional judgement. In turn, members of the public must be taken to think less of a profession which tolerates the use of such dated feeding techniques as Ms Parker resorted to using on the occasion the Tribunal has reviewed.
- (c) Each of (i), (ii) and (iii) of limb (a) of the definition of serious misconduct in section 378 of the Act is engaged. As a matter of course, it follows that with reference to Rules 9 (1)(a) and (k), the conduct involved an unjustified use

of force and was likely to bring the reputation of the wider teaching profession into question (limb (b)).

- (d) With reference to the Code of Professional Responsibility and the Examples in Practice, Ms Parker's force-feeding was unprofessional, exposed Child M to a risk of harm, detracted from the profession's culture of trust, and was altogether inappropriate.
- (e) The Tribunal has previously held that where a teacher force-feeds a child, that may constitute serious misconduct. In *Sullivan*<sup>13</sup> the teacher had force-fed a child (aged between 2 and 2.5 years-old) by taking hold of the child's face with one hand to squash open their mouth, and then forcing a forkful of food into the child's mouth as he screamed. The Tribunal accepted that the act of force-feeding a child engaged each limb of the test for serious misconduct and was of a quality requiring reporting as an example of unjustified or unreasonable physical force and conduct likely to bring disrepute to the teaching profession.
- (f) *Ngapo & Ngapo*<sup>14</sup> was a case involving two teachers (a mother and daughter) who accepted they had engaged in serious misconduct while working together in an ECE centre. Relevantly, part of the conduct in question included occasions where both had force-fed children, including a 20-month-old, who was forced to eat spoonfuls of food when he opened his mouth to breathe or cry.

### **Finding – serious misconduct**

[40] For those reasons the Tribunal was satisfied the Charge of serious misconduct was established.

### **Penalty**

[41] Having made an adverse finding of serious misconduct, the Tribunal was entitled to exercise its powers under section 404 of the Act. The Tribunal could do one or more of the things set out in section 404(1).

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<sup>13</sup> *CAC v Sullivan* NZTDT 2018/84.

<sup>14</sup> *CAC v Ngapo & Ngapo* NZTDT 2014/46 and 47.

[42] It is well established that the primary purposes of the imposition of disciplinary penalties under the Act are to maintain professional standards (through general and/or specific deterrence), to maintain the public's confidence in the teaching profession, and to protect the public through the provision of a safe learning environment for students<sup>15</sup>.

[43] Rehabilitation of the teacher is often an important purpose.<sup>16</sup>

[44] In previous decisions the Tribunal has accepted as the appropriate sentencing principles those identified by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*<sup>17</sup>. His Honour identified eight factors as relevant whenever an appropriate penalty is being determined in professional disciplinary proceedings. In short, the Tribunal must arrive at an outcome that is fair, reasonable, and proportionate in the circumstances. It must identify the least restrictive penalty that can reasonably be imposed which meets the seriousness of the case and discharges the Tribunal's obligations to the public and the teaching profession.

### **Facts relevant to penalty**

#### *Personal circumstances of Ms Parker*

#### *Ms Parker's response*

[45] The following facts were agreed<sup>18</sup>, and the Tribunal made findings accordingly:

- (a) The CEO of Entities of the Trust met with Ms Parker on 1 July 2019 and notified her that she had received complaints that Ms Parker had force-fed Child M. Ms Parker accepted the allegation, explaining that "[M's] dad had been complaining that [M] was not eating and I felt the need to get some food into her so I could tell him she ate."
- (b) Ms Parker resigned from the Centre the next day.
- (c) In a subsequent written response to the CAC investigator, Ms Parker explained that in the lead-up to the incident:

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<sup>15</sup> As discussed in *CAC v McMillan* NZTDT 2016/52 at [23].

<sup>16</sup> *CAC v Teacher* NZTDT 2016/55 at [30].

<sup>17</sup> [2012] NZHC 3354 at [44]-[51].

<sup>18</sup> ASF [21]-[26].

*Every day [M's] parents would ask whether M had eaten and were asking us how they and we could get her to eat. Most days M was hardly eating. This had been going on for a few weeks.*

- (d) Further, Ms Parker explained that *“it seemed like M wanted to stay and eat, because she chose to stay sitting at the table.”*
- (e) Ms Parker spoke at a meeting she attended with the CAC on 17 September 2020. She stated that she felt sick watching the CCTV footage and if she were put in the same position again, she would act differently.
- (f) Since her resignation from the Centre on 12 July 2019, Ms Parker has worked at another early childhood education centre without issue, other than having to take a period of leave leading up to, and recovering from, an operation. In that regard the Tribunal was advised that Ms Parker has been unable to work since late 2020.

[46] Since the incident in question, Ms Parker has undertaken professional development. The Tribunal received evidence that Ms Parker had completed the ‘Parenting Programme and Journey through Changes’ Te Puna Hauora course (a paid 18-part online course aimed at parents), the ‘Gently challenging children’s hidden needs – Parenting and Attachment Patterns’ and ‘What’s Behind the Behaviour – Healing Centred Engagement’ Caring Families Aotearoa courses. In addition, Ms Parker indicated she had also engaged in self-directed learning on the topic of children’s eating behaviours.

[47] The parties advised the Tribunal that they agreed this is not a case where children appear to be at continuing risk from Ms Parker, given both her efforts at professional development and her continued employment as an ECE teacher without incident.

[48] It was submitted that in those circumstances an appropriate penalty would be a combination of orders of censure, annotation of the register, and conditions on practice. As to conditions, the parties indicated they agreed that appropriate conditions would require Ms Parker to complete a suitable professional development course (such as the Incredible years Programme) within a specified period, not have unsupervised contact at work with children for 12 months of returning to work, that she not hold a management position for 12 months of returning to work, and that Ms Parker should be required to provide a copy of this decision to any prospective employer for a period of 12 months.

### *Penalties imposed in comparable cases*

[49] It is necessary to ensure that the penalty imposed for the serious misconduct that has occurred in this case, is consistent with the penalties imposed in comparable previous cases. As was said by Randerson J in *Patel v Dentists Disciplinary Tribunal*<sup>19</sup>:

.... while absolute consistency is something of a pipe dream, and cases are necessarily fact dependent, some regard must be had to maintaining reasonable consistency with other cases. That is necessary to maintain the credibility of the Tribunal as well as the confidence of the profession and the public at large.

[50] The Tribunal sought guidance from the comparable cases relied on by the CAC, as discussed, and used those cases to benchmark the relative seriousness of Ms Parker's conduct.

[51] In *Sullivan*<sup>20</sup> the Tribunal accepted that the teacher's behaviour was not motivated by anger or frustration. Instead, the Tribunal found that the teacher had force-fed the child on instructions she had received from the child's parents. It was also noted that the teacher had taken responsibility and expressed insight at an early stage. On that basis, the Tribunal imposed a penalty comprised of orders of censure and conditions (to complete the Incredible Years Teaching programme and show a copy of the Tribunal's decision to any prospective employer for one year).

[52] In *Ngāpo & Ngāpo* the Tribunal accepted the joint position of the parties as to penalty and made an order of censure and the imposition of conditions on each of the respondents. M. Ngāpo (the mother) had a condition imposed on her practising certificate that she was not to work in a management ECE position for three years, and R. Ngāpo (the daughter) was required to undertake an approved course on behaviour management before resuming teaching, and to undertake two years' of supervision with an approved mentor for two years upon her return to teaching (who was to provide regular reports on the teacher's conduct). She was also prohibited from working with her mother.<sup>21</sup>

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<sup>19</sup> (High Court, Auckland, AP77/02, 8 October 2002), at [31].

<sup>20</sup> Above, fn. 13.

<sup>21</sup> In *Ngāpo & Ngāpo* in addition to force-feeding, the case involved charges of yelling at children, confining children in small spaces as punishment, rough handling of children, and throwing a ball at a child's head.

[53] The Tribunal accepted the submission that as Ms Parker's conduct was a one-off incident, not motivated by anger or intention to hurt the child, Ms Parker's conduct was similar to that in *Sullivan*. In both *Sullivan* and this case, a utensil was used to feed the child in question, creating a risk of injury distinct from the risk of causing each child to choke. There are other similarities including that in both cases the teachers admitted their wrongdoing and were willing to rehabilitate.

#### *Joint submissions*

[54] Counsel submitted (jointly) that Ms Parker's conduct is not so serious that no outcome short of deregistration would be appropriate to mark it, or to protect children.<sup>22</sup> The cases referred to indicate that the appropriate penalty in cases involving force-feeding is one of short suspension and/or a combination of lesser orders.

#### *Findings on Penalty*

[55] The Tribunal considered the relevant penalty principles including the comparative cases, as well as the submissions that were made for the parties.

[56] The Tribunal was satisfied that it was appropriate and necessary to impose a formal penalty. For the reasons given below, the Tribunal considered that the least restrictive penalty which meets the seriousness of the case and discharges the Tribunal's obligation to the public and the teaching profession is a censure to express the Tribunal's disapproval of the conduct which occurred (section 404(1)(b)), annotation of the register (of the censure) for a period of 12 months (section 404(1)(e)) and the imposition of conditions on practice (section 404(1)(c)).

[57] The Tribunal accepted that cancellation or suspension of registration or a practising certificate should not be ordered if an alternative penalty can achieve the objectives sought. Further, that rehabilitation of the teacher is a factor requiring careful consideration. Ultimately, the Tribunal must balance the nature and gravity of the offending and its bearing on the teacher's fitness to practise against the need for removal or suspension and its consequences to the individual teacher<sup>23</sup>.

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<sup>22</sup> Cancellation of registration is required in two overlapping situations: where the conduct is sufficiently serious that no outcome short of deregistration is appropriate, and where the teacher has insufficient insight into the cause of their behaviour and lacks meaningful rehabilitative prospects *CAC v Fuli-Makaua* NZTDT 2017/40, 5 June 2018 at [54].

<sup>23</sup> *Dad v General Dental Council* [Privy Council] at [1543] referred to in *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02, 8 October 2002, Randerson J) at [31].

[58] The Tribunal concluded that there were alternatives to cancellation and suspension of Ms Parker's registration or practising certificate that would achieve the objectives of protecting the public and maintaining the standards of the teaching profession, having regard to the gravity of her offending and its bearing on her fitness to be a teacher. The Tribunal did not consider that Ms Parker's conduct was of sufficient gravity to warrant the imposition of these most severe penalty outcomes and was of the view that such measures would be a disproportionate response to what was a one-off incident of force-feeding a child in circumstances where the teacher has admitted that her conduct fell below acceptable standards and where she has demonstrated a willingness to rehabilitate. The Tribunal was satisfied Ms Parker has insight into her misconduct, as demonstrated by the significant steps she has taken already to rehabilitate herself.

[59] In that regard, when determining the penalty orders to be made, the Tribunal also considered the aggravating and mitigating features identified by the parties.

[60] The Tribunal accepted the submission that this is not a case where children appear to be at continuing risk from Ms Parker.

[61] The Tribunal decided to make an order censuring Ms Parker as a mark of its disapproval of her conduct, and to uphold professional standards. Ms Parker's conduct involved behaviour that is not acceptable in a modern New Zealand early childhood setting. Aggravating the conduct was the fact that Ms Parker was in the Team Leader role at the Centre at the time of her misconduct and could reasonably have been expected to meet the requisite professional standards and expectations when feeding Child M.

[62] In addition, the Tribunal ordered that the register of teachers be annotated to record the censure, pursuant to section 404(1)(e). Such an order will ensure transparency and protect the public. It will remain in effect for 12 months from the date of this decision.

[63] The Tribunal decided to impose the following conditions on Ms Parker's practising certificate, for rehabilitative purposes and to protect the public (pursuant section 404(1)(c)):

63.a.1 Ms Parker must complete the Incredible Years Programme within 18 months and provide confirmation of completion to the Teaching Council.



- 63.a.2 Ms Parker is to work with the support of a mentor approved by the Teaching Council, for a period of 12 months of returning to work. The focus of the mentoring is to be on dealing with challenging situations involving children in an ECE setting.
- 63.a.3 Ms Parker is not to have unsupervised contact with children at work, for a period of 12 months of returning to work.
- 63.a.4 Ms Parker is not to hold a management position in an ECE Centre for a period of 12 months of returning to work.
- 63.a.5 Ms Parker must provide a copy of the Tribunal's decision to any current or prospective (or future) employer in the teaching sector for a period of 12 months. This condition is to apply for 12 months from the date of this decision.

### *Costs*

- [64] It is usual for an award of costs to be made against a teacher once a charge is established. When considering the appropriate quantum of costs, the Tribunal must take account of the need for the teacher who has come before the Tribunal to make a proper contribution towards the costs that have been incurred. As has been said in previous decisions of the Tribunal, the teaching profession as a whole should not be expected to fund all the costs of the disciplinary regime under the Act.
- [65] The CAC sought a contribution towards its costs of \$3200.00, representing 40% of costs capped at \$8000.00 excluding GST. Total external legal costs were indicated as being \$10,805.00. It was indicated that the parties agreed that a 40% contribution was appropriate having regard to Ms Parker's agreement to proceed with a hearing on the papers with the benefit of an agreed summary of facts.
- [66] The CAC acknowledged that Ms Parker has spent a period of time unable to work due to medical incapacity following her offending and has limited current financial means. In particular, the Tribunal was advised that Ms Parker has been on a sickness benefit since she has been unable to work following her surgery (since late 2020). Further, that she expects that she will not be returning to work for another three to six months, and then will gradually return to work on a part-time basis. It was for that reason that the CAC indicated it was prepared to cap recoverable costs at \$8000. That appeared entirely fair and reasonable to the Tribunal.

- [67] The Tribunal agreed that a 40% contribution to the CAC's costs as claimed, was reasonable and appropriate. That is in line with recent decisions of the Tribunal.
- [68] Accordingly, the Tribunal made an order pursuant to section 404(1)(h) that Ms Parker is to pay the sum of \$3,200.00 to the CAC.
- [69] It was indicated that Ms Parker wishes to pay costs by instalments of \$10 per week while she is on the sickness benefit, at a rate to be adjusted upon her return to work. If Ms Parker wishes to enter a payment arrangement of this nature, then she should take this up with the Teaching Council as costs ordered by the Tribunal under section 404(1)(i) are recoverable as a debt due to the Council.<sup>24</sup>
- [70] As to the hearing costs the Tribunal made an order that Ms Parker make a 40% contribution towards those costs, being payment of the sum of \$458.00 to the Teaching Council. That order is in line with the Tribunal's Costs Practice Note and is made under section 404(1)(i).

### **Non-publication orders**

- [71] The Tribunal's jurisdiction to make non-publication orders is found in section 405 of the Act. An order can only be made under section 405 (6) (a)-(c) if the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.

#### *Ms Parker*

- [72] Interim non-publication orders were in place at the time of the hearing, including in respect of Ms Parker's name and identifying details.
- [73] Ms Parker did not seek a permanent non-publication order in respect of her name. Now that she has been found guilty of serious misconduct there is a public interest in her name being published in connection with these proceedings. The principle of open justice is paramount to maintain public confidence in the teaching profession through the transparent administration of justice<sup>25</sup>. There are no private interests of Ms Parker that are apparent to the Tribunal which would override the public interest in open disciplinary proceedings and her name being published. Accordingly, the

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<sup>24</sup> Section 404(3) of the Education Act 1989.

<sup>25</sup> *CAC v Teacher NZTDT 2016/27*, at [66].

Tribunal concluded that it is proper that the interim order in respect of Ms Parker's name and identifying particulars not be made permanent. The interim order will expire when this decision is issued to the parties.

*Child M*

[74] The Tribunal considered that it is proper that the name of Child M be permanently suppressed from publication having regard to the child's privacy interests. Accordingly, there will be a permanent non-publication order in respect of Child M and any identifying particulars.

*Application by Centre and Centre Owner*

[75] By application dated 2 June 2021 the Centre and the Trust sought orders suppressing their names and any other details which might lead to their identification in connection with these proceedings. The application was supported by affidavit evidence given by the CEO of the Trust.

[76] The grounds on which the orders were sought were that the public naming of the Trust and/or the Centre would have the potential to damage their reputations and standing within the community, interfere with their ability to provide services to vulnerable persons, and damage the ongoing viability of a community project which the Trust operates in partnership with another entity. Further grounds were the interests of the Trust, its staff and members of its community (including children, adult learners, parents, and whānau) outweighing any public interest in the Trust or Centre being identified in connection with these proceedings.

[77] The affidavit evidence of the CEO included the following:

- (a) [REDACTED] Its aim is to hear and respond to the local community it serves. It provides [REDACTED]  
[REDACTED]  
[REDACTED]
- (b) The Trust operates a community project in partnership with another entity [REDACTED]  
[REDACTED].
- (c) Through its many initiatives, the Trust provides affordable and dependable services to the local community. Parents have consistently entrusted the

Trust with their whānau, and the Trust continues to provide trustworthy services.

- (d) The Trust complied with its obligation to investigate Ms Parker's alleged conduct and then make a mandatory report to the Teaching Council in respect of the conduct. Ms Parker's behaviour was not condoned by the Centre and her conduct is not a reflection of the organisation or philosophy. As such, the Trust's association with the proceedings is a direct result of its compliance with its mandatory reporting obligations, rather than any fault on the part of either the Trust or the Centre.
- (e) Allegations of abuse are serious matters. Association with an abuse case will negatively affect the reputation of the Centre, both as an entity and as a charity.
- (f) The Trust and its multiple initiatives all work to support vulnerable members of the local community. Association with these proceedings would be devastating for the Trust and the Centre and it is imperative that vulnerable individuals are not frightened, and that the work in the community supporting those with no voice is not tainted.
- (g) Publication will also negatively affect the ongoing viability of the community project the Trust runs with another entity, and that other entity which has a critical role in supporting the vulnerable.
- (h) If either the Trust or the Centre is named then every member of the small community would be vulnerable by association including parents, staff and whānau. Non-publication would protect the victim, the parents and those staff who were involved in bringing the matter to the Trust's attention.
- (i) One individual's actions should not affect the ongoing work of many. The Trust wants to continue to provide a safe and trustworthy service to the local community and those in need. This can only be achieved if the names of the Trust and the Centre are not published in association with these proceedings.

[78] The parties accepted the identity of the Centre and the Trust are tangential to the proceedings, that there is little public interest in the names of the Trust and the Centre being published, and that the names can be redacted from this decision without compromising the transparency of these proceedings.

[79] However, the parties indicated they did not go so far as to “adopt the Centre’s position” as it is difficult to appreciate how the Centre, or the Trust would be affected by publication. It was identified that there is no suggestion that the Centre responded inappropriately to Ms Parker’s conduct, or that it permitted a culture conducive to Ms Parker’s actions. For those reasons, the parties indicated they would abide the Tribunal’s decision.

[80] The Tribunal weighed the competing private and public interests. It was persuaded that given the importance of the need for the Trust and the Centre to continue to support vulnerable members of the community it serves, and provide a safe and trustworthy service, publication of the names of the Trust and the Centre could present a real risk to the standing of both the Trust and the Centre in the community and interfere with their ability to provide charitable services. Given that this was a one-off incident, Ms Parker has not been employed at the Centre since July 2019 and there is no suggestion or evidence that the Centre responded inappropriately to Ms Parker’s conduct, or that it permitted a culture conducive to her conduct, the Tribunal concluded that the private interests of the Trust and the Centre outweigh the public interests in them being identified in connection with these proceedings. Non-publication orders would also further protect Child M from being identified, in the Tribunal’s view. In the Tribunal’s opinion, it follows that it would be proper to permanently prohibit publication of the names and identifying details of the Trust and the Centre.

[81] Accordingly, there will be permanent orders under section 405(6)(c) of the Act in respect of [REDACTED].

## **Conclusion**

[82] The Charge was established. Ms Parker is guilty serious misconduct.

[83] The Tribunal’s formal orders under the Education Act 1989 are:

- (a) Ms Parker is censured for her serious misconduct pursuant to section 404(1)(b).
- (b) The register is to be annotated to record the censure, for 12 months pursuant to section 404(1)(e).
- (c) The following conditions are to be imposed on Ms Parker’s practising certificate, pursuant to section 404(1)(c):

- 83.c.1 Ms Parker must complete the Incredible Years Programme within 18 months and provide confirmation of completion to the Teaching Council.
- 83.c.2 Ms Parker is to work with the support of a mentor approved by the Teaching Council, for a period of 12 months of returning to work. The focus of the mentoring is to be on dealing with challenging situations involving children in an ECE setting.
- 83.c.3 Ms Parker is not to have unsupervised contact with children at work, for a period of 12 months of returning to work.
- 83.c.4 Ms Parker is not to hold a management position in an ECE Centre for a period of 12 months of returning to work.
- 83.c.5 Ms Parker must provide a copy of the Tribunal's decision to any current or prospective (or future) employer in the teaching sector for a period of 12 months. This condition is to apply for 12 months from the date of this decision.
- (d) Ms Parker is to pay \$3,200.00 to the CAC as a contribution to its costs pursuant to section 404(1)(h).
- (e) Ms Parker is to pay \$458.00 to Teaching Council in respect of the costs of conducting the hearing, under section 404(1)(i).
- (f) There is an order under section 405(6)(c) permanently suppressing from publication the name and identifying particulars of Child M.
- (g) There is an order under section 405(6)(c) permanently suppressing from publication the name and identifying particulars of [REDACTED]  
[REDACTED]

Dated at Wellington this day of

21<sup>st</sup> day of January 2022



**Jo Hughson**  
Deputy Chairperson

## **NOTICE**

- 1 A teacher who is the subject of a decision by the Disciplinary Tribunal made under section 404 of the Education Act 1989 may appeal against that decision to the District Court (section 409(1) of the Education Act 1989).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 404 (section 409(2)).
- 3 An appeal must be made within 28 days of receipt of written notice of the decision, or any longer period that the District Court allows.
- 4 Section 356(3) of the Education Act 1989 applies to every appeal under section 409 as if it were an appeal under section 356(1).