

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

DECISION NO: NZTDT 2022/38

UNDER THE Education and Training Act 2020

IN THE MATTER of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against [REDACTED] [NAME PERMANENTLY SUPPRESSED] registered teacher (Registration Number [REDACTED]), of Auckland

Hearing held on the papers on Tuesday, 21 March 2023

Tribunal: Jo Hughson (Deputy Chairperson),
Kiri Turketo, Kura Tuhura

Shannon Hullett (Tribunal Coordinator)

Teresa Rifle (newly appointed Tribunal member) –
observing

Appearances: Rebecca Scott for the Complaints Assessment
Committee

Janette Brown, NZEI Te Riu Roa for the teacher

Decision: 14 April 2023

Summary

- [1] ██████ (Ms Q) is a registered teacher who at the relevant time in February 2021 worked at ██████ in South Auckland.
- [2] The Complaints Assessment Committee (the CAC) charged that on two occasions on or about 18 February 2018, Ms Q assaulted two children in her care; Child X, aged 7, by smacking him on the thigh, and Child Y, aged 6, by smacking her on the bottom. (the Charge)¹.
- [3] This conduct on each of those occasions was alleged to amount to serious misconduct. Alternatively, it was alleged the conduct amounted to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020 (the Act).
- [4] The Charge was heard on the papers. The evidence produced included an agreed summary of facts².
- [5] Written and oral submissions were received from Counsel and Ms Brown for Ms Q, addressing the issues of liability, penalty, and non-publication orders.
- [6] Ms Q accepted the Charge.
- [7] The Tribunal found the Charge made out and that on each of the occasions when Ms Q assaulted the two children, who were both in her care, her actions amounted to serious misconduct.
- [8] The decision of the Tribunal is that penalties should be ordered against Ms Q for her two acts of serious misconduct. Ms Q is censured. There are to be conditions on Ms Q's practising certificate which will require her to undergo mentoring by a mentor of her choice for one year and to undertake a professional learning and development course or programme around personal development and management of self, within one year. Also, Ms Q will be required to provide a copy of this decision to her current employer, and for two years, to any prospective or future employers in the education sector.

¹ Notice of Charge dated 2 August 2022.

² Agreed Summary of Facts dated 18 November 2022 [ASF] signed by both Counsel on behalf of the CAC and Ms Q.

[9] Ms Q is also being ordered to contribute towards the costs of the CAC and the Tribunal associated with these proceedings.

[10] The Tribunal is making permanent orders under section 501(6)(c) of the Act prohibiting from publication the name and identifying details of the teacher (Ms Q), her husband and granddaughter (and whānau), and the three foster children who were in her care at the relevant time two of whom were the children who were assaulted by Ms Q on 18 February 2021. These permanent orders are being made primarily to protect the privacy and welfare interests of the three foster children. Were Ms Q to be named in connection with these proceedings the Tribunal considers that there is a real risk that the children would be identified. As such, the Tribunal considered that the relevant public interest considerations are outweighed by the private interests of the three children and Ms Q and her whānau, in the circumstances of this case. For the avoidance of doubt, the name of the school where Ms Q taught at the relevant time is permanently suppressed as it is an identifying feature of the children who attended the same school.

[11] These findings were indicated in a Minute the Tribunal issued to the parties the day after the hearing. The formal findings and the reasons for the Tribunal's decisions now follow. The penalty orders will take effect from the date of this decision.

Factual Findings

[12] The Tribunal made the following findings of fact based on the evidence that was produced in the Agreed Summary of Facts³:

[13] In February 2021, Ms Q was the court appointed caregiver through Oranga Tamariki (OT) of three children: Child X who was born in 2008; Child Y who was born in December 2013; and Child Z, who was born in December 2014. Ms Q had been their caregiver since 2018. She was also a teacher at their School.

[14] On 19 February 2021, the Assistant Principal of the School noticed bruising on Child Y's right inner thigh. Child Y explained that his "nana" – Ms Q – had smacked him the night before for "making the wrong choice". The Assistant Principal took a photograph of the bruising. The photograph was included in the evidence that was produced to the Tribunal.

³ Agreed Summary of Facts (ASF) signed by Ms Q on 18 November 2022, at [2]-[12].

- [15] On the 18 February 2021, Ms Q went into the bedroom in her house shared by the children, and found them in hyperactive state, racing each other up the bunk bed ladder. Ms Q grabbed hold of Child X and Y, one at a time, and sat them down on the floor. When they would not settle down and listen to her, she smacked Child Y on his leg and Child X on her bottom. Ms Q gave Child Y a smack on his leg so he would settle down and listen to her. Ms Q was under stress at the time, and she was worried they would hurt themselves as the edges of the bunk were sharp and the children had been spoken to a number of times to be careful so they would not get hurt.
- [16] A report of concern was made to OT and a joint New Zealand Police – OT investigation was initiated. OT uplifted the children from School on 19 February 2021 and from Ms Q's care via successive Temporary Care Agreements. The photograph the Tribunal viewed formed part of the School's report of concern to OT on 19 February 2021.
- [17] Child Y told his social worker that his nana had given him a hiding for making bad choices and then sent him to bed. Child Y said that he had cried because it was painful. He also said to the social worker that his older sister, Child Z, hits him.
- [18] OT decided not to return the children to Ms Q's care.
- [19] In March 2021, the Police interviewed Ms Q, as well as the children. Child Y explained that, on the night of 17 February 2021, Ms Q came into his bedroom and said, "Why are you still up?" and then slapped hm on his leg three or four times, and then had slapped Child X too. Ms Q accepted that she hit Child Y on the leg once.
- [20] The Police decided not to issue a formal warning or to lay any charges due to there being insufficient evidence. Ms Q was given educational advice on parenting.
- [21] On 9 August 2021, the Principal of the School made a mandatory report to the Teaching Council. Ms Q resigned from the School on 2 November 2021, while an employment investigation was underway.
- [22] Both in writing and at a meeting with the CAC in July 2022, Ms Q admitted she had smacked Child Y on his thigh and Child X on the bottom with an open hand on 18 February 2021.

Legal Principles - Liability

- [23] The burden of proving the charge (on the balance of probabilities), lay with the CAC.

[24] The definition of serious misconduct in section 10 of the Education and Training Act 2020 (which is identical to the definition in section 378 of the Education Act 1989, now repealed) applies. It provides:

Serious misconduct means conduct by a teacher –

- (a) that-
 - (i) adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 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.

[25] The test is conjunctive⁴. That is, as well as being behaviour by a teacher that has one (or more) of the adverse professional effects or 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.

[26] For each assault, Rule 9(1)(a), (j), and (k) in Part 3 of the Teaching Council Rules 2016 (the Rules) were relied on by the CAC:

9 Criteria for reporting serious misconduct

(1) A teacher's employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to):1 or more of the following:

(a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so.

...

(j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more.

(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

⁴ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64] with reference to the definition in section 378 of the Education Act 1989.

[27] Rule 9(1)(k) of the Rules is a “catch all” provision⁵. In *Teacher Y v Education Council of Aotearoa New Zealand*, the Court of Appeal held in relation to the predecessor Rule 9(1)(o):⁶

... Sub-rule (o) was clearly designed to be a catch-all provision in recognition of the fact that it was impossible to categorise or capture in specific wording all forms of serious misconduct. The sub-rule is necessarily and deliberately broader than what goes before and of course expressly includes the word “omission”.

[28] In relation to whether an act or omission brings, or is likely to bring the teaching profession into disrepute, the question to be asked by the Tribunal is whether reasonable members of the public, informed of all the facts and circumstances, could reasonably conclude that the reputation and good standing of the teaching profession would be lowered by the behaviour of the teacher concerned.⁷

[29] That approach reflects the fact that whether there has been serious misconduct or misconduct simpliciter⁸, or not, and the severity of any such misconduct is to be assessed by objective standards.

[30] Previous Tribunal decisions demonstrate that “fitness to be a teacher” in the definition of serious misconduct 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.⁹

⁵ *Teacher Y v Education Council of New Zealand* [2019] NZCA 637 at [69].

⁶ Above fn. 15.

⁷ *CAC v Teacher C* NZTDT 2016/40 28 June 2018 at [203] citing *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]. This test was applied in *Teacher Y v Education Council of Aotearoa New Zealand*, above fn. 15 at [48].

⁸ The District Court on appeal, has ruled that if any one of the matters under limb (a) of the definition of serious misconduct are made out, the teacher’s conduct will amount to misconduct, whereas if the conduct also meets limb (b), the conduct will meet the conjunctive test for serious misconduct; *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64]. *Evans v Teachers Disciplinary Tribunal* [2020] NZDC 20062, 8 October 2020, at [42].

⁹ 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 to the test for “fitness to be a teacher”, by this Tribunal in previous decisions.

[31] Subjective matters that are personal to the respondent teacher are not to be considered in any significant way when the Tribunal objectively assesses whether there has been serious misconduct. Personal factors may fully be considered at the penalty stage if a charge is found to have been established.¹⁰ The Tribunal considered Ms Q's reported stress levels at the time of the assaults, at the penalty stage.

Relevant standards

[32] The Tribunal assessed Ms Q's established conduct against the following standards set in the Code of Professional Responsibility and in previous, comparable, cases.

Code of Professional Responsibility

[33] The standards of behaviour expected of registered teachers are contained in the Teaching Council's Code of Professional Responsibility. The Code emphasises in Clauses 1 and 1.3 that teachers need to maintain the trust and confidence of the teaching profession by "demonstrating a high standard of professional behaviour and integrity"¹¹.

[34] In *CAC v Teacher Z*¹² the Tribunal explained that by acting with integrity and professionalism, teachers maintain the trust and confidence placed in them by learners, families and whānau, and the wider community "*to guide their children and young people on their learning journey and to keep them safe*"¹³. Further, that conduct in breach of Clause 1,3 "*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.*"¹⁴

¹⁰ 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.

¹¹ Code of Professional Responsibility, 1.3.

¹² *CAC v Teacher Z* NZTDT 2020/19 at [26].

¹³ *CAC v Teacher Z* NZTDT 2020/19 at [25].

¹⁴ *CAC v Teacher Z* NZTDT 2020/19 at [26].

Previous comparable cases

- [35] The Tribunal has previously affirmed that the use of force by a registered teacher for a corrective purpose, even if no aggression or anger is involved, will typically amount to serious misconduct.¹⁵
- [36] In *CAC v W*¹⁶ the Tribunal found that the teacher's assault on her 17-year-old daughter by hitting her with the back of her hand, reflected adversely on the teacher's fitness to be a teacher and may bring the teaching profession into disrepute. The daughter was not a student of the teacher, and the conduct did not take place at the teacher's workplace. The Tribunal referred to *CAC v Risuleo*¹⁷ where the Tribunal described legislative amendments that have the result of prohibiting the use of force in early childhood services and registered schools, and the use of force by parents. In that case the Tribunal stated that the repeal of the parental defence to the use of force on children formerly contained in section 59 of the Crimes Act 1961 "*marks society's increasing aversion to the use of force by adults on children, no matter what the relationship, and bringing it in line with the long-held intolerance of assaults on adults*".¹⁸ The Tribunal in *CAC v W* also accepted that the conduct fell within the contemplation of Rule 9(1) because it was conduct that could be the subject of prosecution for an offence punishable by a term of imprisonment of three months or more¹⁹.
- [37] In *CAC v Teacher D*²⁰ the Tribunal found a teacher guilty of serious misconduct for having assaulted her foster children at home. The teacher was an OT approved caregiver to five foster children and two other children also lived in the home. During an interview with OT, two of the foster children disclosed that the teacher had hit one of them around the face and on two other occasions, hit the same child on the hand with a wooden spoon. The conduct was considered to reflect adversely on the teacher's fitness to be a teacher and was of a character and severity that met the

¹⁵ *CAC v Haycock* NZTDT 2016/2.

¹⁶ *CAC v W* NZTDT 2018/105.

¹⁷ *CAC v Risuleo* NZDT 2018/8.

¹⁸ *CAC v Risuleo* NZDT 2018/8 at [25].

¹⁹ *CAC v W* NZTDT 2018/105 at [25].

²⁰ *CAC v Teacher D* NZTDT 2019/51.

Teaching Council's reporting criteria (because it was conduct that was likely to bring discredit to the teaching profession).²¹

- [38] In *CAC v Teacher Z*²² the Tribunal found that the teacher had committed misconduct that was sufficiently serious to warrant discipline, when she had slapped and/or hit her two daughter's palms with a ruler on several occasions, up to three times on each occasion, and that on one occasion she slapped her daughter on the cheek.²³ The conduct occurred purely in the private sphere in the context of parenting (her own children), rather than teaching. The Tribunal noted that "*registered teachers are expected to role model positive behaviour in their daily lives, including to the students they teach, and to children in general. The Respondent's conduct, on the limited occasions the Tribunal has found it occurred, called into question her parenting skills, demonstrated a lack of judgement and on the one occasion when she slapped her daughter on the cheek, a lack of self-control in front of and towards her own child/children*".²⁴ The Tribunal in the present case, considered that case was materially different because here the two children who were assaulted were children who had been placed into Ms Z's care by the State, rather than the teacher's own children. Also, the children were not teenagers, as they were in the *Teacher Z* case. There was an absence of specific vulnerability factors that are present here, in the *Teacher Z* case. More is said about this, below.

Discussion and Findings on the Charge

- [39] The Tribunal was satisfied the evidence established the matters alleged in the Charge; that on 18 February 2021, Ms Q assaulted Child X (a 7-year-old boy) who was in her care, by smacking him on the thigh; and Ms X assaulted Child Y (a 6-year-old-girl) who was also in in her care, by smacking her on the bottom.

- [40] As to liability, the Tribunal accepted the following submissions that were made for the CAC:

- (a) Ms Q's use of force was for corrective purposes, and it resulted in physical harm to Child Y. The significance of the bruising on his inner thigh was

²¹ *CAC v D NZTDT 2019/51* at [23]- [25].

²² *CAC v Teacher Z NZTDT 2020/19* at [2]-[4].

²³ *CAC v Teacher Z NZTDT 2020/19* at [35].

²⁴ *CAC v Teacher Z NZTDT 2020/19* at [37].

noticed by the Assistant Principal. Child Y is reported to have told his social worker that he cried because it was painful. Child X also alleged that Ms Q had hit her on the bottom.

- (b) Here both limbs of the definition of serious misconduct are met.
- (c) The children in Ms Q's care were vulnerable because of their young ages and family background which led them to being placed in the care of Ms Q by OT. Ms Q should have taken different action to manage the hyperactive behaviour of the children in her care, and to manage her own stress. The Tribunal agreed that reasonable members of the public would reasonably conclude that the reputation and standing of the teaching profession was lowered by Ms Q's conduct. The conduct reflects adversely on Ms Q's fitness to be a teacher and may bring the teaching profession into disrepute.
- (d) The conduct was, without doubt, of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct. The criteria in Rule 9(1)(a) are met because the conduct involved the unjustified or unreasonable physical force on a child. Although the Police decided not to take any action, the conduct involved acts that could have attracted a prosecution for offences punishable by imprisonment for a term of three months or more. Section 194(a) of the Crimes Act 1961 provides that every person is liable to imprisonment for a term not exceeding two years who assault any child under the age of 14 years. Both Child X and Child Y were under the age of 14 when Ms Q assaulted them. Rule 9(1)(j) was also engaged. Further, the conduct was in the opinion of the Tribunal conduct that brings the teaching profession into disrepute for the purposes of Rule 9(1)(k).
- (e) A finding of serious misconduct is consistent with the majority of the Tribunal's previous, comparable, decisions which reiterate that the use of physical force against children is unacceptable and amounts to a disciplinary offence, even when the conduct occurs solely in the private sphere. In this case there is a closer nexus between the teacher's conduct and her professional role as Ms Q was a teacher at the school that her three foster children attended (although she was not their teacher). Ms Q and the children were all members of the same school community.

[41] It was for all those reasons that the Tribunal's opinion was that both of Ms Q's assaults amounted to serious misconduct in terms of the applicable definition. Accordingly, the Charge is established. Ms Q is guilty of serious misconduct.

Penalty

[42] Having made adverse findings of serious misconduct, the Tribunal was entitled to exercise its powers under section 500 of the Act. The Tribunal could do one or more of the things set out in section 500(1). It goes without saying that the penalty that is imposed must be appropriate for the Charge before the Tribunal.

[43] It is well established that the primary purposes of the imposition of disciplinary penalties against teachers who have been found guilty of a disciplinary offence 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 students²⁵.

[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*²⁶. His Honour identified eight factors as relevant whenever an appropriate penalty is being determined in proceedings of this nature. Those factors are:

- (a) What penalty most appropriately protects the public.
- (b) The Tribunal must be mindful of the fact that it plays an important role in setting professional standards.
- (c) Penalties imposed may have a punitive function.
- (d) Where it is appropriate, the Tribunal must consider rehabilitating the professional.²⁷
- (e) The Tribunal should strive to ensure that any penalty imposed is comparable to penalties imposed in similar circumstances.

²⁵ As discussed in *CAC v McMillan* NZTDT 2016/52 at [23].

²⁶ [2012] NZHC 3354 at [44]-[51].

²⁷ *CAC v Teacher* NZTDT 2016/55 at [30].

- (f) It is important for the Tribunal to assess the practitioner's behaviour against the spectrum of sentencing options that are available. In doing so, the Tribunal must try to ensure that the maximum penalties are reserved for the worst offenders.
- (g) The Tribunal should endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- (h) It is important for the Tribunal to assess whether the penalty it is to impose is fair, reasonable, and proportionate in the circumstances presented to the Tribunal, or not.

[45] All the individual components of a penalty must be considered together so that the overall penalty is assessed against those eight factors.²⁸

[46] In *CAC v Cook* this Tribunal (although differently constituted) considered the *Roberts* factors and observed in respect of rehabilitation²⁹ that "*there is no merit in depleting the profession from experienced teachers where we consider rehabilitation possible*". The Tribunal here, endorsed that approach.

Submissions for the CAC

[47] It was submitted for the CAC that the appropriate disciplinary response to Ms Q's established conduct was censure and the imposition of conditions on her practising certificate, including mentoring, the provision of a copy of this decision to any prospective employer for two years from the date of the decision, and a condition requiring Ms Q to "*complete a programme approved by the Teaching Council that will assist with her rehabilitation*".

[48] The Tribunal accepted the submission for the CAC that the following aggravating features are relevant to the Tribunal's decision about penalty:

- (a) The bruise on Child Y's leg was significant. Child Y told his social worker he had cried because it was painful. The bruise was sufficiently prominent that the Assistant Principal noticed it and made a report of concern to OT. The photograph the Tribunal viewed showed the extent

²⁸ *M v A Professional Conduct Committee* [2015] NZHC 3063 at [17].

²⁹ *CAC v Cook* NZTDT 2018-50.

of the bruising. The Tribunal formed the view from what was depicted in the photograph that the smack cannot have been a short, sharp smack.

- (b) Ms Q also hit Child X on the bottom.
- (c) The conduct took place in a bedroom shared by the three foster children, all three of whom were present at the time.
- (d) Both Child X and Child Y were young and vulnerable due to their placement in foster care.
- (e) The foster children were uplifted by the OT while they were at school and removed from Ms Q's care. Because they had lived with Ms Q and her whānau for three years, the sudden change in their circumstances would have been disruptive and distressing.
- (f) Ms Q's granddaughter was also taken to OT but she was returned to Ms Q's home. The granddaughter found that experience difficult and upsetting (according to Ms Q).

Evidence and submissions for Ms Q

[49] The penalty proposed by the CAC was accepted by Ms Q although it was submitted that conditions on her practising certificate should not be in effect for more than one year (because of the length of time the Teaching Council's processes have taken and the trauma Ms Q has suffered as a consequence).

[50] Ms Q made a reflective statement³⁰ which contained statements relevant to penalty. This was gratefully received by the Tribunal and was considered carefully. In her reflective statement Ms Q made the following points (summarised):

- (a) Ms Q outlined her practising history and her pathway into the education sector when her grandchildren were finding it challenging at school. She wanted to help them succeed and enrolled at Te Wananga o Aotearoa in 2013, graduating in 2015. Initially she was a relief teacher and then at the end of 2016 she took a permanent position at the School where she worked at the time of the matters the Tribunal has reviewed.

³⁰ Reflective statement signed and dated 23 November 2022.

- (b) Ms Q outlined the background to the three foster children coming into her care in March 2018. Her husband and three of their grandchildren lived at Ms Q's home. Ms Q provided information about matters that occurred when the children were in her care including frequent visits by OT Case Managers, the children's lawyer, frequent sibling access, three times a year access for the children with their mother and whānau, Ms Q's attendances in relation to the children's health issues, her enrolment of two of the children at an early childhood centre, activities she enjoyed with the children, the positive relationship she had with them, and issues that arose for the children in terms of the behaviour of one of them towards the end of the 2020 school year and issues for another of them at the beginning of the 2021 year.
- (c) Ms Q provided information about what occurred on the day of 18 February 2021 and the aftermath of her having smacked the two children including the children being uplifted from the school and removed from her home. Ms Q acknowledged the distress the children would have been under and the hurt and worry her husband endured about the children's welfare and wellbeing after they had been removed from their care. Ms Q described the effects on one of her grandchildren being taken to OT. She wrote of her and her husband's involvement (with support provided by Caring for Families Aotearoa) in the process she went through with OT and the associated pain and grief she and her husband went through.
- (d) Ms Q described the skills and support she and her husband have learnt through Te Whakaora Tangata to help them get their lives back on track. She provided information about how she relaxes and her involvement in walking, running, daily exercise routines, and following sports.
- (e) Ms Q provided information about the support and professionalism she truly appreciates from the Principal and Deputy Principal of her current employer school.
- (f) Ms Q described the positive relationship she has with her grandchildren who live with her, and how she and her husband deal with normal behavioural issues that from time to time arise between her grandchildren.

- (g) Ms Q stated that she is very remorseful for smacking the two children who were in her care and that she will live with this for the rest of her life. She wrote of the benefit of the counselling and support she has received from agencies who she continues to reach out to when she needs to talk to someone. Ms Q stated that working with a range of professionals over this time has enabled her to be a better person professionally and personally. She stated that she knows what she did was wrong and believes the skills she has attained and with the continual support, she can guarantee that *“nothing like this will happen again”*.
- (h) Ms Q wrote of her passion for teaching and the teaching profession and helping students to do their very best. She expressed gratitude for her current Principal and Deputy Principal hiring her and believing in her to teach at their school noting *“I am surrounded by a strong Senior Leadership team whose professionalism at all times and their guidance and support have enabled me to be resilient and remind me why I chose to become a teacher”*.

[51] Ms Q provided a reference from her current Principal. The Principal noted that she was aware of the incidents the Tribunal has reviewed, when she hired Ms Q. She stated that Ms Q had told her she had smacked two of her foster children. The Principal stated *“unreservedly”* that she trusts Ms Q with the safety of the tamariki who attend the school and trusts her to lead the school’s kaiako including those who are newly qualified. In April 2022 Ms Q was appointed as Whānau Leader. Further, that Ms Q worked at a *“very high standard”* and *“meets”* the Code of Professional Responsibility and the Standards for the teaching profession.

[52] The Principal expressed concern about the effects on Ms Q’s health, wellbeing and teaching practice associated with the long, drawn-out process of the proceedings of the Teaching Council. She wrote of ways in which the school has been supporting Ms Q through the trauma she has suffered associated with the length of time it has taken for these matters to be concluded.

[53] For Ms Q it was submitted that the following factors are relevant in mitigation:

- (a) Ms Q told her potential employer that she had smacked the foster children, at a job interview. This indicates she was taking full responsibility for her actions.

- (b) This was a one-off event (unlike *Teacher W* where there were three events in one year).
- (c) The events occurred two years ago and there has been no repeat behaviour.
- (d) Ms Q has demonstrated insight into the effects of her actions on the children and the wider whānau.
- (e) She has taken steps to manage the normal stress that life brings, so that if she is faced with a similar situation, she is able to respond calmly.
- (f) Ms Q has demonstrated that she knows how to effectively deal with young people's behaviour by how she interacts with her granddaughter in her care.
- (g) Ms Q has a supportive employer who has identified that she is an effective teacher and poses no risk to tamariki at school.

[54] The CAC acknowledged that there are mitigating factors which are relevant. The Tribunal agreed that these were:

- (a) Ms Q has expressed remorse.
- (b) Ms Q has attended counselling and attended a Family Restoration Course with Te Whakaora Tangata.
- (c) Ms Q has demonstrated insight that she knows her conduct was wrong.
- (d) Ms Q's current employer is aware of these proceedings and is supportive of her.

[55] Another feature is that Ms Q's practice as a teacher was not in question. The information the Tribunal received about Ms Q's practise as a teacher (from the Principal's reference) is that Ms Q practises to a high standard.

Findings on Penalty

[56] The Tribunal considered the relevant penalty principles including the previous cases, as well as the submissions that were made for the CAC, Ms Q's reflective statement and her Principal's reference, and her representative's submissions.

[57] Taking all relevant matters into account, the Tribunal was satisfied that it was appropriate and necessary to impose a formal penalty. There is a need also to send

a message to members of the teaching profession that misconduct of the nature the Tribunal has found here is serious and will likely justify the imposition of a penalty in other similar cases. The imposition of penalties will achieve that outcome.

[58] The Tribunal's formed the view that Ms Q's assaults on her two foster children were of such severity as to warrant the imposition of disciplinary penalties to maintain professional standards and protect the public.

[59] The Tribunal took into account the aggravating features and the mitigating features identified above.

[60] 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 of Ms Q to express the Tribunal's disquiet about and disapproval of Ms Q's conduct, and the imposition of conditions on Ms Q's practising certificate.

[61] The following conditions are imposed on Ms Q's practising certificate (pursuant section 500(1)(c)). The conditions are imposed to assist Ms Q with her ongoing rehabilitation and to protect the public through the provision of a safe learning environment for students:

- a. Ms Q is required to work under the guidance and support of a mentor of Ms Q's choice, for a period of one year. The mentor is to be approved by the Manager: Professional Responsibility at the Teaching Council and the mentor will be required to provide a report to the Manager: Professional Responsibility, quarterly. The focus of the mentoring is to be on managing stressful situations and developing effective stress management techniques when managing children under her care.
- b. Ms Q is required to undertake a professional learning and development course or programme approved by the Teaching Council, around personal development and management of self that will enhance her learning around dealing with challenges that may arise when children are under her care, and her interactions with others in that context. This course is to be completed to the satisfaction of the Teaching Council within one year of this decision. The costs of the course or programme are to be met by Ms Q.

- c. Ms Q must provide a copy of this decision to her current employer, and for two years, to any prospective and/or future employers in the education sector.

[62] It is noted that the Tribunal considered the individual components of the penalty it is imposing, together, to ensure that the overall penalty was assessed against the *Roberts* factors and was a fair and reasonable penalty in all the circumstances.

Costs

[63] It is usual for an award of costs to be made against a teacher once a charge is established. A teacher who comes before the Tribunal should expect to make a proper contribution towards the reasonable costs that have been incurred.

[64] Ms Q's representative acknowledged that the matter has been able to be heard on the papers which typically attracts a costs order of 40% of the costs and expenses incurred by the CAC and the Tribunal.

[65] The Tribunal considered that an order of 40% contribution to the CAC's costs as claimed, would be reasonable and appropriate in this case. The reduced costs order Tribunal is making takes into account that Ms Q accepted liability and agreed to proceed with a hearing on the papers with the benefit of an agreed summary of facts. The CAC agreed that in those circumstances a reduction in costs was warranted.

[66] Accordingly, the Tribunal made an order pursuant to section 500(1)(h) that Ms Q is to pay the sum of \$3240.00 to the CAC which is 40% of the total CAC costs (including external legal costs).

[67] As to the costs of conducting the hearing, the Tribunal made an order that Ms Q make a 40% contribution towards those costs (estimated to be \$1455), being payment of the sum of \$582.00 to the Teaching Council. That order is made under section 500(1)(i).

Non-publication orders

[68] The Tribunal's jurisdiction to make non-publication orders is found in section 501(6) of the Act. An order can only be made under section 501 (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.

- [69] The default position is the principle of open justice. The Tribunal needs to consider whether consequences relied on by the applicant would be “likely” to follow if no order was made. In the context of section 501(6) this means there must be an appreciable or real risk, to be assessed on the evidence before the Tribunal. When considering whether it is proper for the open justice principle to yield, the Tribunal needs to strike a balance between the public interest factors and the private interests advanced by the applicant.
- [70] Ms Q sought a permanent non-publication order in respect of the names of the three foster children, her own name and her whānau (including her husband, and granddaughter). It was submitted that because the three foster children had been integrated into Ms Q’s whānau for about three years, the connections would be well known in their community such that if Ms Q is identified then the foster children would be easily identified.
- [71] The CAC did not oppose Ms Q’s application for non-publication orders. It was accepted that publication of Ms Q’s name would risk the identification of the three foster children and her granddaughter. On that basis the CAC considered that Ms Q’s name should be suppressed under the children’s suppression order.
- [72] Counsel for the CAC acknowledged that a non-publication order over the name of the school where she was employed at the time of the conduct was not sought by Ms Q. The CAC indicated it would abide the Tribunal’s decision in relation to publication of any identifying details about the School, noting that publication of these details may present a further risk that the foster children may be identified.
- [73] The Tribunal balanced the competing public interest factors which favour open justice and Ms Q being named, against the competing private interests of the three foster children, and to a lesser extent, Ms Q and members of her whānau. The Tribunal had no difficulty reaching the view that the privacy and welfare interests of the foster children are paramount and override the public interest in Ms Q being named. There is no public interest in the children being named or identified and therefore in the Tribunal’s opinion, it is entirely proper that the names and identifying particulars of the three children are permanently suppressed from publication.
- [74] Because naming Ms Q would mean there is a real risk that the foster children could be identified, it follows that it is also proper to permanently suppress Ms Q’s name. It follows that the names of Ms Q’s husband and whānau, including her granddaughter, should also be permanently suppressed from publication. There will

also be a permanent order suppressing the name of the school the foster children attended at the relevant time, and where Ms Q worked as a teacher. The name of the school is an identifying feature of the foster children.

[75] Non-publication orders are made accordingly.

Conclusion

[76] The Charge is established. Ms Q is guilty of serious misconduct.

[77] The Tribunal's formal orders under the Education and Training Act 2020 are:

- (a) Ms Q is censured, pursuant to section 500(1)(b).
- (b) The following conditions are imposed on Ms Q's practising certificate, pursuant to section 500 (1)(c):
 - a. Ms Q is required to work under the guidance and support of a mentor of Ms Q's choice, for a period of one year. The mentor is to be approved by the Manager: Professional Responsibility at the Teaching Council and the mentor will be required to provide a report to the Manager: Professional Responsibility, quarterly. The focus of the mentoring is to be on managing stressful situations and developing effective stress management techniques when managing children under her care.
 - b. Ms Q is required to undertake a professional learning and development course or programme approved by the Teaching Council, around personal development and management of self that will enhance her learning around dealing with challenges that may arise when children are under her care, and her interactions with others in that context. This course is to be completed to the satisfaction of the Teaching Council within one year of this decision. The costs of the course or programme are to be met by Ms Q.
 - c. Ms Q must provide a copy of this decision to her current employer, and for two years, to any prospective and/or future employers in the education sector.

- (c) Ms Q is to pay \$3,240.00 to the CAC as a contribution to its costs pursuant to section 500(1)(h),
- (d) Ms Q is to pay \$582.00 to Teaching Council in respect of the costs of conducting the hearing, under section 500(1)(i).
- (e) There are orders under section 501(6)(c) permanently suppressing from publication the names and identifying particulars of:
 - a. The three foster children ([REDACTED], [REDACTED] and [REDACTED])
 - b. Ms Q ([REDACTED])
 - c. Ms Q's husband ([REDACTED]); and
 - d. Ms Q's granddaughter ([REDACTED]) and whānau.

Dated at Wellington this
14th of April 2023



Jo Hughson
Deputy Chairperson

NOTICE

- 1 A teacher who is the subject of a decision by the Disciplinary Tribunal made under section 500 of the Education and Training Act 2020 may appeal against that decision to the District Court (section 504(1)).
- 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 500 (section 504(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 Clause 5(2) to (6) of Schedule 3 to the Education and Training Act 2020 applies to every appeal under section 504 as if it were an appeal under clause 5(1) of Schedule 3.