

NZTDT 2018/22

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 **NIGEL COLIN EDGECOMBE**, Teacher
(Registration Number 323904)

Respondent

DECISION OF THE TRIBUNAL

Hearing: 20 October 2020 on the papers

Tribunal: Ms J C Hughson (Deputy Chairperson),
Ms M Cassidy and Ms R McInernay (registered
teachers)

Counsel: Mr D R La Hood/D M Helm for the Complaints
Assessment Committee
No participation by or for Respondent

Decision: Recalled and reissued 10 December 2020

Introduction

1. At the material times the Respondent, Mr Edgecombe, was a registered teacher with a full practising certificate. In the 2016 school year he was working as a secondary school teacher at a School in the Wellington region.
2. The Education Council as it was then, received a mandatory report from the School on 10 November 2016. It was alleged that Mr Edgecombe had engaged in serious misconduct. The mandatory report was referred to the Complaints Assessment Committee (CAC) for investigation. Mr Edgecombe responded to the mandatory report on 7 April 2017¹. In January 2018 Mr Edgecombe was interviewed by the CAC's lead investigator². He provided further written responses to the CAC. At the conclusion of the CAC investigation, the Committee laid a disciplinary charge against Mr Edgecombe³.

The Charge

3. By Notice dated 21 June 2018, the Complaints Assessment Committee (the CAC) charged as follows:
 1. on various occasions in the 2016 school year, [Mr Edgecombe] breached professional boundaries by:
 - a. Making inappropriate physical contact with students, namely:
 - i. Slapping a female student (Student R) ON the bottom in the dressing room during the drama play;
 - ii. Giving Student A [sic – Student R] 'horsey-bites' by squeezing her upper leg with his hand;
 - iii. Placing a female Student (Student J) in a headlock and putting one of his fingers into her ear.
 - b. Making inappropriate comments about the physical appearance of students, namely:
 - i. Commenting to Students A, B and C on the size of their bottoms when transporting them to the school;
 - ii. Telling a student she was the 'ugly one'; and

¹ Annexed to the Statement of Nikki de la Mare dated 10 October 2019 as Exhibit ND1.

² Above fn 1. Notes of interview held on 25 January 2018. Mr Edgecombe then provided a copy of his statement to the School Board of Trustees in 2016, on 29 January 2018 as annexed to Ms de La Mare's statement pages 104-110. Mr Edgecombe responded to the CAC investigator's report on 1 March 2018, and 24 March 2018 (pages 64-67, 69-70 and 99-107 of Exhibit ND1)

³ Formal statement of Nikki de La Mare dated 10 October 2019

8. These disciplinary proceedings have been protracted. Mr Edgecombe had indicated in September 2018 and at various points subsequently that he wished to have no part in the proceedings, although he has always maintained that the CAC and the Teaching Council have not been interested in the “accuracy, or reality” of the allegations in the Charge⁶. His view was that he did not see the point of these proceedings continuing, particularly once his registration was cancelled in February 2019.
9. The CAC indicated that it wished for the proceedings to continue to finality so that there is a public record of the findings of the Tribunal in relation to the separate alleged misconduct, whatever they may be. The CAC was entitled to take that position and it was not for the Tribunal unilaterally to direct that the proceeding be discontinued. It was for that reason, on 12 September 2019 the then Deputy Chairperson of the Tribunal directed that the matter be scheduled for a formal proof hearing. Mr Edgecombe did not request an in-person hearing and an ‘on the papers’ hearing was directed⁷.
10. The Charge was to be heard on 28 November 2019. Unfortunately, that did not occur. On 16 July 2020, a Deputy Chairperson issued a Minute⁸ through which the Tribunal raised that it had received no evidence Mr Edgecombe had been served with the notice of hearing and the CAC’s bundle of documents. The reasons for the delay between 28 November 2019 and 16 July 2020 were not clear to the Tribunal that heard the Charge. In any event, subsequently, by Memorandum dated 11 August 2020⁹, Counsel for the CAC was able to satisfy the Tribunal that Mr Edgecombe had been served with notice of the hearing and the evidence being produced to the Tribunal by way of formal proof of the Charge.
11. On 7 August 2020, the Custodial System Manager at Rimutaka Prison confirmed that Mr Edgecombe did not wish to be heard by the Tribunal. By separate email to Counsel for the CAC dated 8 August 2020, with reference to previous indications he had given, Mr Edgecombe stated emphatically that he did not wish to have continued engagement in the disciplinary process. He alleged that he did not believe his continued participation in the proceedings would make a difference to the Tribunal’s findings. He alleged that the Tribunal had already made up its mind. Of course, that was not the case. The teacher members of the Tribunal that was constituted to hear

⁶ Pre-hearing Conference before (Deputy Chairperson) John Hannan dated 12 September 2019 at [5]-[7].

⁷ Minute of Pre-Hearing Conference held on 12 September 2019 before John Hannan.

⁸ Minute dated 16 July 2020 from Deputy Chairperson Nicholas Chisnall.

⁹ Memorandum of Counsel for the CAC as to Service dated 11 August 2020

the Charge did not receive the evidence that was produced, until late September/early October 2020.

12. The hearing proceeded on 20 October 2020. By way of formal proof, the CAC filed statements made by five (by then former) students of the School, a statement from the Principal of the School at the time, and a statement made by Ms Nikki De La Mare who was the third investigator that was assigned to the CAC, the previous two having resigned from their positions at the Teaching Council (the Council)¹⁰. Ms De La Mare was an employee of the Council, although she is no longer.¹¹ The form of the statements mirror the requirements of a formal statement in criminal proceedings, which can be used as formal proof in that jurisdiction. The Tribunal agreed to admit those statements, although as discussed below, some significant concerns were held about the nature of some of the material in and/or annexed to them. Written submissions were received from Counsel for the CAC.
13. The Tribunal considered the evidence and the submissions for the CAC, carefully. The Tribunal was satisfied that Particular 1 a. and its three sub particulars (breached boundaries by making inappropriate physical contact with students) was established on the balance of probabilities, and the conduct was serious misconduct. In relation to Particular 1 b. and its three sub particulars (breached professional boundaries by making inappropriate comments about the physical appearance of students) the Tribunal found that the conduct was established to the required standard but was misconduct rather than serious misconduct when sub particulars i. and ii. are considered individually and together, and sub particulars i, ii. and iii. when they are considered cumulatively. The Tribunal was not satisfied particular 1 c. and its two sub particulars (breached professional boundaries by leading inappropriate class discussion) was proved to the required standard on the evidence that the CAC placed before the Tribunal.
14. Because Mr Edgecombe's registration had already been cancelled there was no need for the Tribunal to exercise its disciplinary powers under section 500 of the Education and Training Act 2020.
15. Following the hearing the Tribunal issued a Minute indicating its findings on liability and proposed orders.¹² The indication was given that there is to be an order permanently prohibiting from publication the names and any identifying details of the

¹⁰ Ms de la Mare's formal statement discloses that the file was first allocated to Mr Keith Jackson. He resigned from his position as a senior investigator in February 2018. The file was then allocated to Aaron Robertson. Mr Robertson's contract ended in March 2018. The file was then allocated to Ms de la Mare ([3]-[5]).

¹¹ CAC Memorandum on Evidence Required for Formal Proof dated 1 September 2020.

¹² Minute – Indication of Tribunal's Findings on Liability and Proposed Orders dated 21 October 2020

students referred to in the charge and all the students named or identified in the evidence filed by the CAC, pursuant to section 501(6)(c) of the Education and Training Act 2020. That is, the interim order that had been in place since 7 August 2018¹³ that encompassed the name of the School at which the incidents took place, was made permanent. The Tribunal was satisfied it is proper to make those orders having regard to the privacy interests of the students and the public interest. Further, publication of the name of the School may lead to the identification of the students.

16. The reasons for the Tribunal's findings are set out below.

Legal Principles - Liability

Onus and Standard of Proof

17. It was for the CAC to prove the charge.

18. As to the standard of proof in disciplinary proceedings, the appropriate standard is proof to the reasonable satisfaction of the Tribunal on the balance of probabilities. This is a static standard. However, the standard is measured by and reflective of the seriousness of the charge. That is, as the seriousness of an allegation rises, so does the cogency of the evidence required to satisfy the standard¹⁴.

19. In this case the allegations against Mr Edgecombe were more serious than many heard by the Tribunal. For that reason, the Tribunal determined the matter by applying the balance of probabilities standard but tempering that standard to reflect the seriousness of the allegations.

Serious misconduct

20. "Serious misconduct" is defined in section 378(1) 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 1 or more students; or

¹³ Minute of Pre-hearing Conference held on 7 August 2018 before Deputy Chairperson Nicholas Chisnall.

¹⁴ *A v A Professional Conduct Committee of the Medical Council of New Zealand* [2018] NZHC 1623 at paras [11] – [16] and as confirmed in *Z v Dental Council Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) endorsing the comments of Dixon J in *Brigginshaw v Brigginshaw* (1938) 60 CLR 336. *M v Medical Council of New Zealand (No. 2)* Unreported, High Court, Auckland, 68/95, 20 March 1996.

- (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.
- 21. This test for serious misconduct is conjunctive¹⁵. As such, as well as being conduct that has one or more of the adverse professional effects or consequences described in subsection (1)(a)(i)-(iii) the conduct must also be of a character or severity that meets the relevant Council criteria for reporting serious misconduct. The reporting criteria relevant here were those set out in Rule 9 of the Education Council Rules 2016 (in this case, as drafted prior to amendments on 18 May 2018) ("the Rules").
- 22. Whether or not there has been serious misconduct or misconduct and the severity of any such misconduct is to be assessed by objective standards.
- 23. The CAC submitted that the Respondent's conduct met all three of the adverse professional effects or consequences referred to in section 378(1) (a). It was submitted further that the conduct was of a character that met the criteria for reporting serious misconduct in Rule 9(1)(a), (c) and (o) of the Rules¹⁶. As such, the CAC submitted that the test for serious misconduct was met.
- 24. The Tribunal accepted Counsel for the CAC's submission that in respect of section 378(1)(a) the Tribunal does not need to find that the student involved suffered actual harm as a result of the teacher's conduct, but rather the teacher's conduct was likely to adversely affect their wellbeing or learning. That is, while there may be no direct evidence of adverse consequences for the student, the Tribunal is entitled to proceed on the basis that such consequences are a logical outcome of the teacher's conduct.
- 25. It is well established, by previous decisions of the Tribunal, that when considering whether particular conduct would bring the teaching profession into disrepute¹⁷ 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 has been lowered by the behaviour of the teacher concerned.¹⁸

¹⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

¹⁶ Education Council Rules 2016 (prior to 19 May 2018 amendment). Section 378(1)(b).

¹⁷ (for the purposes of section 378(1)(a)(ii)).

¹⁸ 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]. The same standard/test applies to Rule 9(1)(o) of the Rules.

26. Previous Tribunal decisions demonstrate that the term “fitness to be a teacher” in the definition in section 378(1)(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.
27. As to the requirement that the conduct must also be of a character or severity that meets the applicable Council criteria for reporting serious misconduct¹⁹, relevantly:
- Rule 9(1)(a) related to physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance of the teacher).
 - Rule 9(1)(c) related to psychological abuse of a child or young person which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment.
 - Rule 9(1)(o) was in relation to any act or omission that brings (or is likely to bring) discredit to the profession.
28. If the Tribunal is not satisfied the test for serious misconduct is met, conduct including (but not limited to) that of the character or severity described specifically in Rule 9(1) may still be the subject of an adverse finding that it was misconduct.
29. For conduct to amount to misconduct, it goes without saying there must have been a breach of accepted professional standards that is sufficiently serious to warrant discipline, in the opinion of the Tribunal.
30. Each case must be determined on its own facts. Not every departure from accepted professional standards will amount to serious misconduct for the purpose of section 378, or even misconduct (in a professional sense)²⁰. The principal purpose of the disciplinary regime provided for under the Act (to maintain professional standards and the public’s confidence in the profession, and to protect the public through the provision of a safe learning environment for students²¹) does not require a disciplinary response to “minor human errors that inevitably occur in professional practice”²².

¹⁹ As above, the criteria that applied at the time of the conduct were set out in Rule 9 of the Education Rules 2916 prior to the amendment of those rules on 19 May 2019.

²⁰ See Courtney J in *Martin v Director of Proceedings* (High Court, CIV-2006-404-005706) at [23] where this point was made in respect of health practitioners.

²¹ As discussed in *CAC v McMillan* NZTDT 2016/52.

²² To use the words of Courtney J in *Martin v Director of Proceedings* (above) at [23].

31. Subjective matters personal to the practitioner are not to be considered in any significant way when objectively assessing whether there has been serious misconduct or misconduct²³. Personal factors are given full consideration at the penalty stage if a charge is found to have been established.

Relevant standards

32. The Education Council's Code of Ethics for Registered Teachers (the Code of Ethics) applied at the time of Mr Edgecombe's alleged conduct in 2016. The Teaching Council's Code of Professional Responsibility (the Code) which sets out the standards of ethical and professional behaviour that are expected of every registered teacher, did not replace the Code of Ethics until June 2017.
33. The Tribunal sought guidance from the Code of Ethics as to the standards against which the conduct it was reviewing should be objectively assessed.
34. The Code of Ethics made it clear that teachers are vested by the public with trust and responsibility. Teachers are expected to develop and maintain professional relationships with learners based on the best interests of those learners²⁴ and promote the physical, emotional, social, intellectual, and spiritual wellbeing of learners.
35. In addition, teachers are expected to "exert every effort to maintain and raise professional standards, [and] promote a climate that encourages the exercise of professional judgement".²⁵ To fulfil their obligations to the teaching profession, teachers are expected to strive to advance the interests of the teaching profession through responsible, ethical practice.²⁶
36. However, quite apart from any express provision in the Code of Ethics the Tribunal can and should apply its own judgement to the facts of the matter before it, as may be established, and whether these meet the criteria under the Act for serious misconduct, or misconduct.
37. The task for the Tribunal is to consider whether the teacher has departed from acceptable standards required of a teacher in the circumstances. What those standards are will be the Tribunal's own assessment of what is appropriate professional conduct assessed against the purposes of the Act. The Tribunal recognises that the reasonableness of the standards applied should reflect

²³ See *C v PCC of the Nursing Council*.

²⁴ Code of Ethics, 1 (a).

²⁵ Code of Ethics, 4.

²⁶ Code of Ethics, 4(a).

community expectations as well as usual professional practice. As Elias J (as she was then) observed in *B v Medical Council of New Zealand*²⁷

The structure of the disciplinary processes set up by the Act, which rely in large part upon judgment by a practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical, and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the reasonableness of the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only practice but also patient interests and community expectations, including the expectation that professional standards are not to be permitted to lag. The disciplinary process in part is one of setting standards.

38. There have been many previous cases considered by the Tribunal relating to professional boundary transgressions. As to the general expectation that teachers maintain and respect the professional boundary, in *CAC v Huggard*²⁸ the Tribunal stated:

As the adult and a teacher, [the teacher] has a responsibility to maintain professional boundaries. [The teacher and student] are not contemporaries. They could not be friends. [The teacher is] in a position of power and responsibility, where he [or she] should role model appropriate behaviour. [His or her] actions should attract esteem, not discomfort or fear. Students and parents should be able to trust that when a student seeks mentorship, counsel or comfort from a teacher, the teacher will respond in a way that has the student's wellbeing as paramount.

39. Conduct that has involved professional boundary transgressions and which has been found to amount to serious misconduct has included:

- playing an inappropriate video that was unrelated to the students' learning, photographing students and exchanging texts with students at an assembly, taking a student home without notifying anyone, lying about the ownership of a visiting student's scooter at her house, swearing at students and flicking a student with the back of the fingers (in *CAC v Ganaha*²⁹ those actions were viewed collectively as having "repeatedly blurred the professional boundary");
- making inappropriate and repeated sexualised comments with Year 11 students including statements such as "let me take a photo of your bum/[tits]" and "when your nipples are hard you get horny"; commenting on a student's breast size and the appearance of "bum" and "tits" and asking if a student was

²⁷ HC AK HC 11/96, 8 July 1996.

²⁸ NZTDT 2016-33, at [21].

²⁹ NZTDT2017/10.

a virgin (in *CAC v Teacher D*³⁰ the Tribunal found that that behaviour involved a pattern of ongoing inappropriate behaviour over a period of time that would have had an adverse effect on the students, and seriously called into question the teacher's fitness to practise); and

- tickling a student around the waist and arms when the teacher had called the Year 5/6 student back into his classroom during morning tea or lunch time; on two occasions after tickling her the teacher had given that student sweets and on another occasion the teacher had pulled the student towards him by the neckline of her shirt (the Tribunal accepted the teacher had no sinister motivations).³¹

40. As the Tribunal observed in *CAC v Teacher*³² whether physical contact between a teacher and a student amounts to serious misconduct turns on the nature of the physical contact and the circumstances in which it occurs. That is because the range of circumstances which may occur in the classroom is infinite and includes everything from a light, congratulatory pat on the back, to a brutal sexual assault.

Evidence

41. The history of correspondence the Council and the CAC received from Mr Edgecombe (which was placed before the Tribunal) since these proceedings were brought in June 2018 made it clear that he did not wish to participate in the hearing. The correspondence indicated that Mr Edgecombe seemed to believe that the outcome was already a foregone conclusion.

42. In those circumstances the Tribunal had no choice but to proceed to deal with the matter based on the available evidence contained in the formal statements of the witnesses, as discussed below. The Tribunal did so but wishes to record that it did so with some significant misgivings.

43. The formal statements were made by the student witnesses in or around September 2019. The Principal's statement was made in mid-October 2019 and attached material from the School's investigation of complaints that had been received about Mr Edgecombe, Mr Edgecombe's responses, and the mandatory report that the School made to the Council. Some of the information obtained during the school's investigation (annexed to the Principal's statement) was not directly relevant to the particulars of the Charge and the Tribunal considered its prejudicial nature outweighed its probative value.

³⁰ NZTDT 2010/24.

³¹ *CAC v Teacher* NZTDT 2011/14.

³² Above fn. 26.

44. Some of that information was also attached to the statement made by Ms de la Mare, as it was information considered by the CAC and which led to the Charge. This raised issues for the Tribunal about the admissibility of certain evidence and the role of the Tribunal in those circumstances, particularly when the practitioner had elected not to participate or be represented.
45. Annexed to the formal statement made by the Principal were records of complaints the School had received about Mr Edgecombe including unredacted notes of interviews and ‘conversations’ undertaken with students by the Principal and the Deputy Principal, records of telephone conversations with parents of student complainants and emails received from parents, and statements (including handwritten) made by students at the School some of whom did not give any evidence in these proceedings. Also annexed was a copy of the Principal’s report to the Board of Trustees with his ‘conclusions’ on the evidence and recommendations as to whether employment disciplinary procedures should be initiated. The Deputy Principal did not make a formal statement in these proceedings. Nor did any of the parents who provided information to the school.
46. As was recognised in *CAC v [REDACTED]*³³:
Under r 31 of the Teaching Council Rules 2016 the Tribunal has broad powers to admit evidence, even if it is not admissible in a court. It reads:

At a hearing, the Disciplinary Tribunal may receive as evidence any document, record, or other information that may in its opinion assist it to deal with the matter before it, whether or not the document, record, or information would be admissible in a court of law.”
47. Prior to the hearing the Tribunal had signalled that it was prepared to admit statements that were made in a formal statement manner rather than by affidavit³⁴. As a professional disciplinary tribunal responsible for making important decisions that have a bearing on the careers and livelihood of teachers who come before it, the Tribunal recognised that it has a duty to ensure that its processes comply with the rules of natural justice which includes the need to run a fair hearing. That partly involves taking care as to the evidence the Tribunal admits and the weight that is given to evidence received at a hearing, particularly evidence that would be inadmissible in a court.³⁵

³³ Minute of the Disciplinary Tribunal dated 24 September 2019 at [4]-[5] attached to CAC Memorandum on Evidence Required for Formal Proof in these proceedings, dated 1 September 2020.

³⁴ Minute as to Evidence for Formal Proof Hearing dated 2 September 2020.

³⁵ See *Doherty v Judicial Committee of the Veterinary Council of New Zealand and others* (High Court, Wellington CP 37/00, 15 March 2001, Doogue J).

48. While the Tribunal has broad powers to receive evidence, in all cases the evidence must be relevant to the matters alleged in the charge and if relevant the Tribunal must weigh the probative value of the evidence against its potential prejudice to the teacher facing the charge.
49. Here the Tribunal was concerned that some of the evidence led by the CAC (as contained in the unredacted records from the School's investigation) went beyond the particulars in the Charge and some was otherwise prejudicial. In that regard, the Tribunal had concerns that some of that evidence potentially coloured the case in a way that was unfair to Mr Edgecombe, although that was denied by the CAC³⁶.
50. As to the material from the School's investigation which was annexed to the Principal's formal statement, as above, there was a considerable amount evidence that the Tribunal considered would not assist it with its task of assessing whether the allegations in the Charge were proved and if so, whether the established conduct amounted to serious misconduct or misconduct. That included some of the contents of Mr Edgecombe's own statements to the School which addressed allegations that were put to him, but which were not matters charged in these proceedings.
51. As will be apparent from the discussion below the Tribunal had regard to direct evidence relevant to the particulars of the charge and disregarded the evidence that could only be prejudicial, or which was not of any probative value in relation to matters arising from the Charge.
52. The Tribunal approached the material from the School's investigation on the basis that it was relevant only for the purposes of enabling the Tribunal to be satisfied as to the strength and reliability of the direct evidence given in these proceedings by those students who had also been spoken to during the School's investigation (for example, to assess the consistency of their accounts). In the Tribunal's view the conclusions drawn by the School that the conduct was serious misconduct were irrelevant to the Tribunal's task of making its own assessment of the alleged conduct on the admissible evidence placed before it. For that reason, evidence of that nature as it was contained in the material from the School's investigation, was disregarded.
53. In relation to the evidence given by the Teaching Council Investigator as to the CAC's investigation, it was clear to the Tribunal that none of the students, or the Principal who made the mandatory report, were interviewed by the CAC. It appeared to the Tribunal that when laying the Charge, the CAC relied on the information provided by the School with the mandatory report, and on the interview conducted with Mr Edgecombe in January 2018, and the written responses he provided to the CAC.

³⁶ Memorandum of Counsel for the CAC dated 7 December 2020.

Not all of the content of Mr Edgecombe's written responses to the CAC were relevant to the conduct charged. To the extent that the Tribunal considered it was not relevant, the Tribunal placed no weight on those parts of his responses. That included those parts of Mr Edgecombe's responses in which he alleged the investigations by the School and the CAC were unfair. While context may be considered, that does not mean that the Tribunal can or should receive material beyond that which is relevant to the conduct particularised in a Charge or which could not otherwise assist the Tribunal with its fact-finding task.

Facts

54. The Tribunal made the following findings of fact based on the direct evidence given by the students, supported as it was by information recorded by the Principal as to reports those students had made to the School in 2016 following the relevant incidents (and which formed part of the mandatory report).

Particular 1 a. (made inappropriate physical contact with students)

55. As to the allegation that Mr Edgecombe made inappropriate physical contact with students the Tribunal was satisfied that:

Student R

56. In 2016 Student R was a Year 11 student aged 16 years. Mr Edgecombe was her drama teacher.
57. During Term 2 Ms R was involved in a four-week intensive rehearsal for the class play.
58. On one occasion during the rehearsals Student R went into the dressing room and bent over to get something out of her bag.
59. Mr Edgecombe came from around the corner of the room and slapped Student R on the bottom. She looked up and Mr Edgecombe looked surprised, as if he knew he should not have done that. He said to Student R words like "I've still got the little eight-year-old boy inside of me".
60. Student R met with the School Principal and the Deputy Principal on 2 August 2016. She told them she was unhappy with how Mr Edgecombe had acted and how she felt like he had crossed the line in terms of inappropriate behaviour. She told them that this behaviour was typical of the way Mr Edgecombe interacted with his students, but that this was not okay.
61. It is noted that on 14 October 2016 Student R met with the Principal a second time and she was asked if she knew who might have witnessed Mr Edgecombe slapping

her on the bottom. She gave the names of three students. None of those students gave evidence in these proceedings and accordingly, the Tribunal placed no weight on records that were produced of what those students told the Principal or the Deputy Principal during the School's investigation. Those records were hearsay and there was nothing to suggest those students were not available to give evidence. The evidence given by the other four students who did make formal statements in these proceedings was about what they stated Student R told them about this incident, or what they had heard from others about the incident. It was clear they did not witness the incident themselves. The only direct evidence was that given by Student R in her formal statement and the Tribunal has based its finding on that evidence. It was consistent with what Student R reported to the Principal in 2016, as documented at that time. It was also consistent with what Students A and B stated Student R had told them about the incident.

Mr Edgecombe's response

62. For the record, by letter dated 17 August 2016 to the Principal and members of the School Board of Trustees³⁷, Mr Edgecombe stated that he did not have the same recollection as the student (Student R) and he did not think he had made contact with her at all. However, given the length of time that had passed and the physical state of tiredness he was in at the end of four weeks intensive work on the class play, he did not wish to dispute the facts. He stated "in no way is it appropriate to smack or even pretend to smack the bottom of a student. I was deeply tired at the time. I made a very foolish mistake. I would never do such a thing under any kind of normal working conditions, and I emphatically apologise".

Student A³⁸ [R]

63. During Term 2 in 2016 Mr Edgecombe would give Student R and her classmates a ride to and from the play rehearsals. On a few occasions when she was sitting in the front seat of his car, and he was driving, Mr Edgecombe gave Student R 'horsey bites' on her leg. He would squeeze just above her knee for a few seconds.

³⁷Principal's Statement, Exhibit "5".

³⁸The Charge referred to Student A however the CAC's submissions about this particular referred to the Student concerned as Student R and the evidence of Student R proved the allegation (Particular 1a.ii of the Charge).

64. On each occasion Student R asked Mr Edgecombe to stop and slapped his hand away. Mr Edgecome was joking but Student R did not find it funny and it made her feel uncomfortable.
65. On 2 August 2016, during her meeting with the Principal and the Deputy Principal, Student R told them about Mr Edgecombe giving her horse bites during rides in his car. Records of that meeting corroborate Student R's evidence. Student R is recorded to have told the Principal at that meeting that when she asked Mr Edgecombe to stop giving her horse bites, "he did".³⁹
66. Student R told her friend about this matter including that she felt uncomfortable about it but thought that Mr Edgecombe was joking around. The friend's formal statement (Student X) confirms this. The formal statements made by Student A and B confirm that Student R told them about Mr Edgecombe having given her horse bites on her thighs during car rides to and from the play.

Mr Edgecombe's response

67. In his letter to the Principal and the Board of Trustees of 17 August 2016 Mr Edgecombe admitted this conduct. He stated that on a handful of occasions he gave students sitting next to him in his car a horse-bite. He stated he was deeply saddened that this caused any discomfort and that he now realised he should not have done this. He said it was a "flippant, of-the-moment response to joking behaviour, when we were well into [class play] rehearsals and when some of the student-teacher reserve had broken down a little due to a small group of students being driven from school to rehearsals and back each day, by me in my own car". He stated that he was not suggesting his behaviour was appropriate, but that the particular context of a drama environment and the several weeks of close contact that the class play involved, was relevant.

Student J

68. In 2016 Student J was a year 12 student at the School. Mr Edgecombe was her drama teacher and her form teacher. This was Mr Edgecombe's second year teaching Student J.
69. In Term 2 Student J was involved in rehearsing for the class play for four to five weeks.
70. Mr Edgecombe would joke around with the students in his drama class. As part of the drama class the class would participate in interactive activities.

³⁹ Principal's Statement, Exhibit 1, page 184.

71. On one occasion when Mr Edgecombe was joking around with the class, he held Student J in a headlock and put his finger into her ear. This was something Student J expected her brother to do, but not a teacher.
72. Mr Edgecombe's actions made Student J feel uncomfortable and she told her friend about what had happened. The friend (Student X referred to above) confirmed in her formal statement that Student J told her about this incident and how it had made her feel uncomfortable. The friend (Student X) stated that Mr Edgecombe was always joking around, and she thought at the time that he did not mean any harm by it.
73. This was the only occasion when Student J experienced Mr Edgecombe being physically inappropriate with her.
74. On 10 August 2016 Student J met with the School Principal and she disclosed this incident to him.

Mr Edgecombe's response

75. In his letter of 17 August 2016 to the School Principal and the Board of Trustees Mr Edgecombe said he had "vague recall" of this incident which he said was also part of a "back-and-forth bantering conversation, in a drama space without tables and chairs in which students are regularly taking chances and exploring ideas through performance". He stated, "I can see how this might look nonsensical out of context – but I assure you that at the time I thought nothing of it." He apologised if this was distressing for the Student. He reported that "the same student still feels comfortable to discuss, banter, and explore character development within the class and around me." Mr Edgecombe stated in a later response that he appreciated that by physically touching Student J in this manner he placed himself at risk of "misinterpretation".

Particular 1 b. (making inappropriate comments about the physical appearance of students)

76. As to the allegation that Mr Edgecombe made inappropriate comments about the physical appearance of students, the Tribunal found the following facts established to the required standard.

Students A, B and C

77. Student A was a year 11 student⁴⁰. Mr Edgecombe was her class drama teacher. He had been her drama teacher since 2015.

⁴⁰ Statement of RM.

78. During Term 3 of 2016 Student A was involved in the four-week rehearsal for the class play. Mr Edgecombe would offer her and her friend and her sisters a ride up the hill to school in his 7-seater car.
79. During the car rides, on more than one occasion, Mr Edgecombe said words to Student A like “you can sit in the child’s car seat, but your bum is probably too big”. The friend (Student B) told Mr Edgecombe that it implied he had been looking and Student A thought this would cause him to stop making comments, but it did not⁴¹. Student B stated that instead, Mr Edgecombe “laughed it off”. This made her feel uncomfortable.
80. Mr Edgecombe made similar comments to other students when they would sit in the carseat.⁴²
81. Mr Edgecombe made similar comments about the girls in the car on several more occasions. Student A said this was to him (Mr Edgecombe) a joke, but it made her feel uncomfortable and that was a reason why she stopped getting rides from him.

Student C

82. On one occasion Mr Edgecombe looked in the rear-view mirror of his car and said to one of Student B’s younger sisters who was 9 years old at the time (Student C), “...and there’s the ugly one”.
83. Student B asked Mr Edgecombe not to speak to her younger sister like that to which he replied, “she knows I’m joking”.
84. Student B told Mr Edgecombe that she might not know. Student B felt disappointed that as an adult Mr Edgecombe did not seem to know the negative emotional effects that those comments could have on her young sister.

Student R

85. On one occasion during the play rehearsal Student R was helping set up lighting after school and was climbing up a ladder which was placed by some scaffolding.
86. There was quite a narrow gap between the ladder and the scaffolding that Student R had to squeeze through. As she was climbing through, Mr Edgecombe made a comment like “is she going to make it?”, and he then said something inappropriate about her bottom.

⁴¹ Statement of SH.

⁴² Statement of RW.

87. On 17 October 2016 Student R met with the Principal to talk about this incident and she made a handwritten statement about what had happened⁴³. Student R's written statement was consistent with her evidence produced to the Tribunal.
88. Student R reported that another student was present at the time of this incident however that student did not make a formal statement in these proceedings (although records of what that student reported to the Principal and a handwritten statement he made were annexed to the Principal's statement; that evidence was inadmissible hearsay). The Tribunal was not assisted by any other direct evidence about the incident but was content to accept Student R's evidence.

Mr Edgecombe's responses

89. In his letter to the Principal and the Board of Trustees dated 17 August 2016 Mr Edgecombe stated he recalled telling a student her bottom was too big to sit in a seat. He stated this occurred when a student was trying to sit in his four-year-old's carseat in his car.
90. Mr Edgecombe admitted that he often made joking comments about students' characteristics including telling his smallest students they were too big. He stated that he has a profound belief that drama assists students to be self-empowered enough to recognise and accept who they are and that the only way to learn self-acceptance is by learning how to "make peace with your own foibles and to learn to be proud of the things that make you different and unique".
91. Mr Edgecombe claimed to have no recollection of the ladder incident, but he admitted he "probably did make a joke comment" when Student R was up the ladder. Mr Edgecombe accepted that a joke about a student's backside is not appropriate, "no matter how many long days in a row one has worked."

Particular 1 c. (leading inappropriate class discussions)

Comments to class about Students D and E suffering from Asperger's Syndrome

92. The Tribunal was satisfied on the direct evidence given in the formal statements of student H and student M that Mr Edgecombe made comments about students suffering from Asperger's Syndrome.
93. One of the occasions occurred during play rehearsals when Mr Edgecombe talked to Student H, in earshot of the class, about a conversation he had had with the father

⁴³ Principal's statement, Exhibit "11", page 222

of a female student who had Asperger's Syndrome (when the student was not present).⁴⁴

94. The other occasions, also during play rehearsals, were in relation to two other (male) students. On one occasion Mr Edgecombe stated, in front of the class (in the presence of the student), words like "take [student] as an example, he finds all this memorising, reading, writing etc. difficult but it hasn't stopped him". On the other occasion Mr Edgecombe stated words to the effect of "we all know that [student] has Asperger's but it hasn't stopped him".
95. Mr Edgecombe has maintained throughout that he obtained the permission of the female student before he addressed her Asperger's syndrome with the class. There was no evidence to the contrary and the Tribunal accepted Mr Edgecombe's explanation about that.
96. There was no direct evidence from the male students about whom comments were made including about how the comments made them feel.
97. In any event, on the evidence before it, the Tribunal was unable to be satisfied that the CAC had proved to the required standard that any of the comments were inappropriate.

Leading classroom discussion about sexual violence against women, drink driving and physical violence

98. All the evidence produced to support this allegation was hearsay. The Principal's formal statement⁴⁵ addressed this matter but only by reference to information he had been given by students (and had noted⁴⁶) who had reported that discussions about these matters had been had in Mr Edgecombe's classes. No students provided formal statements addressing this matter directly or confirming what the Principal had recorded after his discussions with them.
99. The Tribunal was satisfied on the basis of Mr Edgecombe's own account to the Principal who spoke to him about these matters in 2016, that there were discussions in some of Mr Edgecombe's classes about sexual violence against women, drink driving and physical violence. However, without direct evidence about those discussions from student witnesses, including as to how the discussions came about and who lead them, the Tribunal was not satisfied the evidence produced by the CAC was sufficient to prove the alleged facts on the balance of probabilities.

⁴⁴ Formal statement of H at [8]-[10]. Formal statement of MW at [9].

⁴⁵ At [4] –[9]

⁴⁶ Including on 26 July 2016 when a female student (Student A) reported her concerns to the Principal.

100. For the record, when spoken to by the Principal in 2016 Mr Edgecombe denied that he led the discussions about these topics. He stated that he was “responding” when the topics arose during class or when discussions about those topics were instigated by students. He maintained that by engaging with his students about them, he was acting appropriately. Mr Edgecombe stated that “given that some students were responding somewhat flippantly I tried to emphasise some statistics to show them how serious the issue [drugs and alcohol and the resulting issues of drink driving and sexual assault] was. When this triggered sensitive issues for some of the students, I sincerely apologised.”⁴⁷

Liability Findings

101. As to particular 1, the Tribunal accepted the submission for the CAC that Mr Edgecombe’s physical contacts with students R and J, as found, were inappropriate and they were each a significant falling short of the professional standards that applied to teachers in 2016 (and continue to apply).
102. Slapping a student’s bottom, giving a student horsey bites, and placing a student in a headlock and putting his finger in the student’s ear, were clear breaches of professional boundaries. These actions were deliberate, rather than accidental. As Counsel for the CAC submitted, such behaviour is the antithesis of professional behaviour expected by a teacher.
103. For those reasons, the Tribunal had no difficulty concluding that the conduct (when the specific incidents are considered separately and together) seriously called into question Mr Edgecombe’s fitness to be a teacher. The student, whose bottom was slapped, said she was unhappy and felt that Mr Edgecombe had crossed the line in terms of appropriate behaviour. The Tribunal agreed. The 17-year-old female student who was put in a headlock stated she felt uncomfortable about what had occurred including when Mr Edgecombe had put his finger in her ear. That is hardly surprising. There had been an abuse of the power by the teacher in the professional relationship he had with his student.
104. Viewed individually and collectively the Tribunal was satisfied the conduct in particular 1 was serious misconduct. All three criteria in section 378 are engaged and the conduct was of a character and severity addressed by three of the criteria under Rule 9(1) of the applicable Rules, as discussed above. The cumulative effect of Mr Edgecombe’s conduct reflects an overall lack of judgement and respect for professional boundaries and clearly amounted to serious misconduct.

⁴⁷ Principal’s statement, exhibit “5”, page 200.

105. As to particular 2, the Tribunal was satisfied that Mr Edgecombe's comments about students' bottoms, and referring to a student's sister as "the ugly one", were breaches of professional boundaries and a falling short of accepted professional standards that apply to teachers. As the adult, Mr Edgecombe did not have sufficient regard for the negative emotional effects that such comments could have on young students. As such, he failed to maintain professional boundaries and failed to role model professional behaviour.
106. The Tribunal considered that sub particulars i. and ii. individually and together amounted to misconduct and sub particular iii. when considered cumulatively with the other sub particulars was misconduct. The Tribunal was not satisfied the conduct was serious misconduct. On their own the comments were foolish, potentially hurtful and were unprofessional. As such they were inappropriate. However, the direct evidence was that the comments were made in a joke-tone, by someone who was (overly) familiar to the students. That did not make the comments appropriate but it did suggest to the Tribunal that the conduct was not at the high end of the scale in terms of gravity and therefore, the Tribunal did not consider that a finding at the level of serious misconduct was warranted.

General remarks

107. The Tribunal accepted the submission for the CAC that maintaining appropriate professional boundaries and behaving in a manner that prioritises the psychological, physical, and emotional wellbeing of learners is of fundamental importance in the professional teacher-student relationship. Failure to maintain these boundaries brings discredit to the teaching profession. That is because breaches of such a basic and well-known fundament of a teacher's role would without doubt cause members of the public to doubt whether or to what extent the teaching profession was observing its obligations. For those reasons, there could be no doubt that the established conduct, viewed collectively was sufficiently serious to warrant disciplinary sanction.
108. The Tribunal records that in the context of a drama classroom, where it is acknowledged that physical boundaries can be looser than in a regular classroom, there is a heightened need for teachers to take care in terms of ensuring that the professional boundary is adhered to and maintained.

Penalty

109. The primary considerations when determining the appropriate penalty to impose in a case such as this are the protection of the public through the provision of a safe learning environment for students, and maintenance of both professional standards and the public's confidence in the teaching profession.⁴⁸ As was said by the Tribunal in *CAC v McMillan*⁴⁹:

The role of disciplinary proceedings is therefore to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

110. The Tribunal's task is to identify the least punitive option which meets the seriousness of the case and discharges the Tribunal's obligations to the public and the profession.
111. Following a finding of serious misconduct, the Tribunal has various powers under section 500 of the Education and Training Act 2020.
112. It was submitted for the CAC that the appropriate starting point and endpoint in respect of penalty in this case is cancellation of Mr Edgecombe's registration. It was submitted that although Mr Edgecombe's registration has already been cancelled in respect of his criminal matters, the Tribunal should record that the established misconduct alone would have resulted in cancellation alone. For the reasons discussed below, the Tribunal did not accept that submission.
113. The CAC referred the Tribunal to the penalty outcomes in *CAC v Ganaha*, *CAC v Teacher (NZTDT2010/24)* and *CAC v Teacher (NZTDT2011/14)* (referred to above). In *Ganaha* the teacher's registration was cancelled, she was censured, and the register annotated. In *CAC v Teacher (NZTDT2011/14)* the teacher was censured and deregistered. In the other case referred to, the teacher was censured, the register annotated, and his registration was suspended until he met a number of conditions.

⁴⁸ Section 377, Education Act 1989 (now the Education and Training Act 2020).

⁴⁹ NZTDT 2016/52 at [16] to [26].

114. When considering what penalty orders would have been imposed had Mr Edgecombe's registration not already been cancelled the Tribunal had regard to the fact that the established conduct here involved a number of instances of breaching professional boundaries over a period of time and which presented itself through a range of inappropriate conduct. This is not a case involving a single or one-off breach of the professional boundary. There was at least the potential for a negative impact on the students involved, which should have been apparent to Mr Edgecombe at the time of each incident. However, the Tribunal was satisfied the established conduct was not at the most serious end of the spectrum in terms of conduct involving professional boundary breaches, and that considered in isolation from the criminal offending, it did not warrant cancellation of registration.
115. Further, there was nothing to suggest to the Tribunal that prior to the mandatory report which ultimately led to the Charge, there had been any issues raised with the Council about Mr Edgecombe's adherence to professional boundaries in his role as a teacher.
116. As an indication was requested by the CAC, the Tribunal records that in respect of the established misconduct in this case the Tribunal would have made the following orders:
- An order censuring Mr Edgecombe to mark the Tribunal's disquiet about the established conduct (section 500(1)(b)); and
 - An order that the Register be annotated to record this decision and refer to this decision (section 500(1)(e)); and
 - An order suspending Mr Edgecombe's practising certificate until he meets the following conditions (section 500(1)(d) and section 500(1)(c)):
 - i. That he undertakes a course, approved by the Teaching Council, on professional boundaries and ethics; and
 - ii. That he provides evidence to the Teaching Council that he has sufficient knowledge of professional boundaries to be able to practise safely in a learning setting.
 - An order imposing a further condition that for a period of two years from the date of the Tribunal's decision, Mr Edgecombe to provide a copy of the decision to any and all current and/or prospective and/or future employers (section 500(1)(d)).

Costs

117. It is usual for an award of costs to be made against a teacher once a charge is established. 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.
118. The CAC sought a contribution towards 50% of its costs. In general, the starting point for costs orders is 50% of the CAC's (and the Tribunal's) costs⁵⁰.
119. The Tribunal must consider whether to make an order that Mr Edgecombe contributes to the CAC's costs in undertaking its investigation and prosecution functions (section 500(1)(h)), and to the Teaching Council in respect of the Tribunal hearing (section 500(1)(i)).
120. Counsel for the CAC indicated in a Schedule of Costs⁵¹ that the CAC's costs (excluding GST) in this matter were in the sum of \$30,204.71 comprised as follows:
- Costs of CAC \$1,618.94; and
 - Legal costs and disbursements for Tribunal proceedings - \$28,585.77.
121. The CAC sought an order that Mr Edgecombe pay 50% of total costs (that is, \$15,102.35).
122. The Tribunal's costs for the hearing were estimated to be \$1,145.00 excluding GST. That is likely to be a conservative estimate of total costs, when regard is had to the procedural history of this matter since the Charge was laid on 21 June 2018.
123. The Tribunal may have regard to the practitioner's financial circumstances as part of its consideration of costs. Mr Edgecombe has not provided any financial information which suggests his financial position is precarious. However, the reality is that he has been a prisoner since February 2019, and he remains imprisoned. His registration as a teacher has been cancelled and he will be unable to earn an income through teaching unless he successfully applies to be re-registered upon his release from prison.
124. Costs can be awarded against Mr Edgecombe despite that he is incarcerated.⁵²

⁵⁰ Tribunal's Practice Note 2010.

⁵¹ Dated 22 September 2020.

⁵² There have been several cases where the Health Practitioners Disciplinary Tribunal has made costs orders against practitioners who were imprisoned at the time of the hearing. In *Davis* (645/Ost14/248P) the practitioner was imprisoned, and the Tribunal had not been provided with any financial information by Mr Davis. The Tribunal considered that the practitioner should properly contribute to the cost of the proceeding and ordered him to pay 40% of the total costs of the Professional Conduct Committee and the Tribunal. In *Vautier* (291/Med09/140P) Dr Vautier was ordered to pay 25% of the actual costs of and incidental to the PCC's investigation, prosecution, and the Tribunal's costs despite that he was in prison at the time. Other cases where that Tribunal has made costs orders against practitioners who were currently imprisoned include *G* (723/HP15/314P), *N* (835/Nur16/350P), and *Dr T H J Fernando* (168/Med08/89P).

125. In *Pollock*⁵³ the Health Practitioners Disciplinary Tribunal (HPDT) stated that:
- “in the normal course of events it would be entirely appropriate that Mr Pollock be required to make a contribution towards the costs of the enquiry made by the Professional Conduct Committee and the hearing by the Tribunal in accordance with section 101(1)(f) of the [Health Practitioners Competence Assurance Act 2003]. However, Mr Pollock’s financial circumstances would appear to be dire and the Tribunal understands that he is currently serving a period of imprisonment. Accordingly, it is highly unlikely that any order for costs would be able to be effectively enforced. For these reasons, the Tribunal has decided not to impose any order for costs against Mr Pollock.”
126. In *Makaea*⁵⁴ the HPDT noted that the nurse was currently serving a term of imprisonment and had no current income. His Counsel stated that the practitioner had no means with which to meet a financial penalty. The Tribunal concluded that there was no point in making a costs order in that case.
127. The Tribunal has considered the impact that imprisonment will have had and will be having on Mr Edgecombe’s financial situation despite him not having provided any indication of this to the Tribunal to consider at the hearing.
128. The Tribunal has also had regard to the procedural history of this matter through the CAC and the Tribunal. The reality is there have been delays and costs will inevitably have been incurred both by the CAC and the Tribunal arising from those delays. The Tribunal does not consider that it is fair to expect Mr Edgecombe to meet any of the costs associated with those issues that were not of his making.
129. Also, one particular of the Charge (particular 3) was not proved.
130. In addition, there is the fact that Mr Edgecombe’s registration had already been cancelled by the time of the hearing. The principal purpose for the CAC proceeding despite that the public is already protected from Mr Edgecombe, has been to ensure there is a public record of the matters the Tribunal has reviewed and its findings, in the event Mr Edgecombe seeks re-registration. Since February 2019, the CAC has known there has been no need for the Tribunal to exercise its disciplinary powers in this case. The Tribunal considered that Mr Edgecombe should not be expected to meet any of the costs associated with the CAC pursuing the proceedings, in those circumstances.
131. Given that combination of circumstances there is to be no order of costs against Mr Edgecombe either under section 500(1)(h) or section 500(1)(i). The costs of the proceedings are to be borne by the teaching profession.

53 HPDT 95/Nur06/38P.

54 HPDT 102/Nur07/53P.

Non-publication order

132. The Tribunal has the power to make an order under section 501(6) of the Education and Training Act 2020 if it 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 to the public interest.
133. The CAC sought an order suppressing the name and identifying details of “all the students involved”. The CAC submitted that suppression of details that may identify the students involved is appropriate, given the age of the students, their inherent vulnerability, and the need to protect their privacy and well-being.
134. The Tribunal balanced the open justice considerations and the privacy interests of the students and was satisfied that it is proper for the names and identifying details of the students referred to in the Charge and all the students identified in the evidence filed by the CAC, to be permanently suppressed from publication. The Tribunal accepted the submission of the PCC in relation to the need to protect their privacy and wellbeing. There will be an order accordingly.
135. The order is to extend to the name of the School where the incidents occurred in 2016 as if the name of the School were to be published this may lead to the identification of the students⁵⁵.
136. Mr Edgecombe did not apply for an order permanently suppressing his name from publication. His name may be published in connection with these proceedings.

Conclusion

137. The charge that the conduct amounts to conduct which entitles the Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020 is established. The Tribunal has found that the established conduct in particular 1 of the Charge was serious misconduct, and the established conduct in particular 2 was misconduct.
138. Because Mr Edgecombe’s registration has already been cancelled there is no need for the Tribunal to exercise its powers under section 500.
139. The Tribunal’s only formal order under the Education and Training Act 2020 is that under section 501(6)(c) there is an order permanently suppressing from publication the names and any identifying details of the students referred to in the Charge and

⁵⁵ An interim non-publication order was made on 7 August 2018 by Deputy Chairperson Nicholas Chisnall, in respect of Mr Edgecombe, the students and the name of the School. Minute of Pre-Hearing Conference held on 7 August 2018 before Nicholas Chisnall.

all the students named or identified in the evidence filed by the CAC. This order extends to the name of the School at which the conduct occurred.

Dated this 10th day of December 2020

Jo Hughson
Deputy Chairperson