NZTDT 2019/50

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER	the Education Act 1989
IN THE MATTER	a charge of serious misconduct referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal
BETWEEN	**THE COMPLAINTS ASSESSMENT COMMITTEE** Referrer
AND	**MARK JARED PARSONS** Respondent

DECISION OF THE TRIBUNAL

Tribunal:	Nicholas Chisnall (Deputy Chair), Kiri Turketo and Tangi Utikere
Hearing:	17 June 2020
Decision:	2 September 2020
Counsel:	M Regan and C Best for the referrer J Brown for the respondent

Introduction

[1] The Complaints Assessment Committee ("the CAC") referred to the Tribunal a charge against Mark Parsons, the respondent, alleging serious misconduct and/or conduct otherwise entitling us to exercise our powers under section 404 of the Education Act 1989 ("the Education Act"). The CAC's notice of charge, which is dated 29 April 2019, alleges that Mr Parsons:

> (a) During 2016, used school funds to purchase an Apple iPad Air2 for personal use, without permission, resulting in a warning from the Police for theft;
>
> (b) In January 2017, used school funds to purchase a television for personal use, without permission; and
>
> (c) Lied to school staff about the purchase in paragraph (1)(b), above.

[2] We convened to hear the case in New Plymouth on 17 June 2020. At the conclusion of the hearing, the Tribunal invited the parties to file supplementary submissions, which we have since received and considered. In addition, the CAC filed a further memorandum on 20 August 2020 that raised concerns about Ms Brown's analysis of a particular factual issue. We canvass the contents of the submissions, to the extent it is necessary to do so, later in this decision.

This matter's procedural history

[3] This proceedings has a protracted history, which it is necessary to explain. The Tribunal was invited by the parties to determine the charge on the papers. This was on the basis that the facts were agreed. We convened a panel in late 2019 to do so. As it transpired, we felt unable to make the necessary findings of fact that the CAC submitted were inferentially available. We will set out in full what we said in a minute dated 30 November 2019:

> [2] We convened on 28 November 2019 to determine this matter on the papers. As we go on to explain, we do not consider that we can determine this case without first seeking further input from the parties.

[3] The procedural context is relevant. While Mr Parsons' counsel, Ms Andrews, acknowledged at a pre-hearing conference held on 23 May that the charge was not to be defended, a one day hearing was nonetheless sought to address penalty, and Ms Andrews telegraphed that three witnesses were to be called. A hearing was set down to be held in New Plymouth on 25 September. Timetabling orders were made and the CAC filed its submissions on 19 July addressing why it said the respondent's behaviour amounted to serious misconduct, as well as penalty.

[4] On 18 September, Ms Andrews advised the Council in an email that the hearing scheduled to take place in New Plymouth on 25 September could be vacated, and the matter determined on the papers. Ms Andrews then filed a lengthy affidavit from Mr Parsons, which is dated 19 September, in which he states that he was merely careless, and not dishonest, when he purchased the television and iPad. The affidavit therefore post-dates the CAC's submissions.[1]

[5] We are required to apply the conjunctive test under s 378 of the Education Act 1989 in determining whether the respondent has committed serious misconduct. In terms of the second limb of the test, the Education Council Rules 2016 describe the types of acts or omissions that are of a prima facie character and severity to constitute serious misconduct. Those which the CAC assert apply in the respondent's case – and specified in the notice of charge - are r 9(1)(h), which talks about behaviour by a teacher comprising "theft or fraud" - and r 9(1)(o), which encompasses "any act or omission that brings, or is likely to bring, discredit to the teaching profession".[2] The CAC's allegation that the respondent committed theft or fraud is consistent with the Police's decision to formally warn Mr Parsons for his use of his employer's credit card to purchase the iPad.

[6] Mr Parsons accepts that his behaviour amounts to serious misconduct. However, he disputes the assertion that r 9(1)(h) is engaged because he committed theft or fraud. The gist of his evidence is that he was facing various difficult events in his personal life when he purchased each of the electrical appliances; had no financial incentive to steal from the school; and lacked the skills to manage the financial obligations of his position as principal. He said that, during a moment of distraction, he used the wrong card to pay for the television. In contrast, he acknowledged that he intentionally bought the iPad

---

[1] (The footnotes are in the original minute.) Although the affidavit's contents replicate what is contained in a brief of evidence that is dated 6 July 2019.

[2] Which came into force on 1 July 2016 and had a name change to the Teaching Council Rules 2016 in September 2018. We will apply that iteration of the Rules that applied in 2016 and 2017.
The CAC's allegation that the respondent committed theft or fraud is consistent with the Police's decision to formally warn Mr Parsons for his use of his employer's credit card to purchase the iPad.

using his work card (at the same time as he purchased items for the school), and that he intended it for his personal use. He asserts his "careless" act was failing to ensure that he had reimbursed the school. In his affidavit, the respondent asserts that "when it came up", he told the school's accountant that he had bought the iPad for his own use.[3]

[7] Mr Parsons states, "… I understand how it can be perceived that I have stolen from the school, but this is not what has happened here as money is not something that has been lacking in our family".

[8] As such, Ms Andrews submits that the respondent was "careless" but not fraudulent.[4] Counsel submits that, in light of the respondent's affidavit, we cannot be satisfied that it is more likely than not that r 9(1)(h) is met. Ms Andrews' submissions address the definition of theft contained in s 219 of the Crimes Act 1961, and her central argument is that we cannot be satisfied that Mr Parsons – at the time of each purchase – had an intention to permanently deprive his employer.[5] Ms Andrews submits:

> By comparison [with another case where the teacher concerned had financial difficulties], the evidence in this case more strongly points to an inappropriately indifferent attitude towards financial boundaries and the coming and going of money, probably rooted in having too easy access to money, rather than feeling it was too scarce. This is not a justification for the respondent's actions merely an acknowledgement it fits more comfortably under rule 9(1)(o), rather than rule 9(1)(h) due to the weak evidence around any intention to permanently deprive.

[9] We have reached the preliminary view that we would be entitled to infer that Mr Parsons had the requisite dishonest intent at the time of each purchase. A dishonest intent on Mr Parsons' part can be inferred for the following reasons:

> (a) Mr Parsons' concoction of an explanation why the television was purchased for the school. He perpetuated the lie for approximately two months and only abandoned his explanation after the school made enquiries that demonstrated the falsity of his claim. On the respondent's explanation, he did not lie to avoid being held responsible for an act of dishonesty, but rather to prevent his "carelessness" being discovered. This explanation is unpersuasive.

---

[3] We observe that his statement that he disclosed the purchase to the school's accountant is at odds with what is contained in the remainder of the agreed summary of facts.

[4] Another descriptor Ms Andrews uses in her submissions is "accidental".

[5] While not addressed in Ms Andrews' submissions, we assume that she would mount a similar argument in respect to whether s 228(1)(b) of the Crimes Act 1961 applies to the respondent's behaviour. It describes the offence of "dishonestly and without claim of right, uses or attempts to use any document".

(b) Mr Parsons' formal warning by police for theft of the iPad. It is open to us to conclude that the Police's decision to warn, in lieu of prosecution, was predicated on Mr Parsons accepting that he had committed theft.

(c) The fact that Mr Parsons did not disclose his purchase of the iPad when he acknowledged that he had bought the television for his own use.

[10] Ms Andrews submits that the obligation in r 9(1)(o) "is where the serious misconduct is found" because of the respondent's "lie to cover up" his purchase of the television. We agree that this dishonesty forms a significant feature of the case. However, we also consider that it is necessary to determine whether Mr Parsons was dishonest at the time he purchased the items, as that is relevant to his culpability, and therefore penalty. Mr Parsons' affidavit discloses a factual dispute that requires a credibility assessment, which is not something we can do on the papers. This is a matter that falls to the CAC to prove. However, given the way the respondent has sought to dispute the facts – in an affidavit, having abandoned the scheduled defended hearing – we invite the parties to confer and file a joint memorandum addressing how they consider we should approach the factual finding required. Specifically, we ask counsel to consider whether a disputed facts hearing is required.

[11] We seek further submissions from counsel on another issue. While we are grateful for counsels' review of the Tribunal's decisions dealing with the expenditure by principals of school monies for personal items/services, we invite submissions that specifically address the gravity of Mr Parsons' misleading conduct after his purchase of the television was discovered. We invite counsel to consider our decision in *CAC v Jenkinson*,[6] which involved "a relatively sophisticated deception to subvert" a school's investigation into possible serious misconduct by a deputy principal. In *Jenkinson*, we described practitioners having a duty of candour towards their employers.

[12] The reason we seek further submissions is because we consider that Mr Parsons is in serious jeopardy of having his registration to teach cancelled. We invite the parties to address the point we made in Jenkinson, after we reviewed earlier decisions involving "employment-related fraud by teachers", that "the comparison tends to affirm that cancellation is the usual outcome in most cases involving deception".[7]

[13] Given the time of year, we invite the parties to confer and agree upon timetabling to address the issues we have raised.

[4] The parties agreed that a defended hearing was necessary, given Mr Parsons' denial that he had a dishonest intent when he purchased either the

---

[6] *CAC v Jenkinson* NZTDT 2018/14.
[7] At [28].

iPad or television. A hearing was scheduled to take place on 6 May 2020. As a consequence of the lockdown implemented due to COVID-19, it was necessary to vacate that hearing. The hearing ultimately took place on 17 June, after the lockdown was lifted.

The evidence

The agreed summary of facts

[5] The parties filed an agreed summary of facts, which provides:

> ***Introduction***
>
> 1. Mr Parsons was first provisionally registered on 9 April 2003 and was fully registered on 2 June 2004. His current practising certificate expires on 24 May 2019.
> 2. Whenuakura School is a co-educational rural school in South Taranaki. It caters for 43 children from Years 1 to 6. At the time of the alleged incident it had two teachers.
> 3. Mr Parsons was the Teaching Principal at Whenuakura School from the beginning of term 2 2014 until he resigned on 16 June 2017.
>
> ***Particulars 1(b) & (c): in January 2017, Mr Parsons used school funds to purchase a TV for personal use, without permission and lied to school staff about the purchase.***
>
> 4. On 11 January 2017, Mr Parsons purchased a 55 inch "VEON 551N 4K UHD TV V55UHDS" TV from Warehouse Stationary,[8] using Whenuakura School's charge card. The TV cost $699, and was entered into the Whenuakura School records as a "replacement TV".
> 5. On 18 January 2017, a staff member spoke with Mr Parsons. Mr Parsons told her that during the school holidays the TV in his classroom had fallen off the bracket (which had bent), causing the TV to fall to the ground, hitting the table and causing internal damage to the TV. However the staff member noted that the supposedly “new" TV appeared to be dusty, it had "fly shit" on it, and the cords were still tied up just as the school cleaner had left them. She also noted that there was no sign of the old television or any packaging from a new item.
> 6. On 30 January 2017, the staff member brought up the matter of the TV again with Mr Parsons while another staff member

[8] “Warehouse Stationery” and “The Warehouse” were used interchangeably in the evidence before us. No issue was taken with that.

was present. Mr Parsons repeated the same story to them both.

7. On 1 February 2017, the staff member raised her concerns with the Board of Trustees Chair, Mr Hurley.

8. On 8 February 2017, Mr Hurley went to Whenuakura School and inspected the two TVs located in the classrooms of Mr Parsons and another teacher. Neither of the TVs were the model for which the school was invoiced. Both were only 50 inch, while the invoiced TV was 55 inch. School records indicated these TVs had been purchased in 2014. The Warehouse subsequently confirmed that the models of TV located at the school had not been available for purchase from The Warehouse since April 2016 (and therefore could not have been purchased in January 2017).

9. Mr Hurley was unable to locate the new TV anywhere in the school.

10. On 9 March 2017 Mr Hurley spoke with Mr Parsons. Mr Parsons repeated the same story that he had told the staff members. Mr Parsons also attempted to show Mr Hurley the "new" TV, Mr Hurley asked Mr Parsons why there had not been an insurance claim if the old TV was broken, Mr Parsons claimed that it was because the excess was $1,000.

11. However Mr Hurley subsequently identified that the relevant excess was only $500.

12. On 15 March 2017 Mr Hurley advised Mr Parsons of his concerns. Mr Parsons responded by giving a different explanation. Mr Parsons claimed that:

    a. On 15 December 2016, his personal 50 inch TV was returned to The Warehouse for repair under warranty.

    b. Mr Parsons was advised it was not repairable.

    c. Mr Parsons claimed that on 11 January 2017 he received a credited amount for his personal TV onto his personal EFTPOS card for $448.98, and made a separate transaction for the new TV, accidentally charging the school account.

13. During this meeting Mr Parsons had a fainting episode.

14. After enquiries with The Warehouse, Mr Hurley discovered this explanation was false.

15. On 21 March 2017 Mr Parsons spoke with Mr Hurley again. Mr Parsons claimed that he had accidentally put the purchase on the school account. He acknowledged that the TV had been purchased for his personal use.

16. On 22 March 2017 Mr Parsons emailed Mr Hurley advising:

    I purchased a tv from the Warehouse for me in the xmas holidays. I didn't think anymore of it until I saw the accounts

> at school and realised, I put it on the school account. I should have paid for it out of my account but didn't which I know was completely inappropriate and wrong and I panicked not knowing what to do next ... I will reimburse the money immediately or purchase a tv for the new middle classroom at your earliest convenience.

17. On 5 April 2017 Mr Parsons refunded Whenuakura School for the full amount.

18. Mr Parsons resigned from Whenuakura School on 16 June 2017.

Particular 1(a): During 2016, Mr Parsons used school funds to purchase an Apple iPad Air2 for personal use, without permission, resulting in a warning from Police for theft.

19. On 15 July 2016 Mr Parsons purchased an Apple iPad Air 2 on the Whenuakura School account from a Noel Leeming store in Hawera.

20. The Noel Leeming invoice dated 15 July 2016 records the purchase of a number of iPads and other technology items for Whenuakura School. One of these was an Apple iPad Air 2 for $899.00. Mr Parsons also purchased accessories for that iPad to the value of $275.99, using the school account.

21. Mr Parsons did not have permission to purchase these items for his personal use.

22. Mr Parsons signed the invoice off for payment by the school's accounts team himself, but had not added the items to the school's assets register.

23. On 31 October 2017, a staff member at Noel Leeming in Hawera contacted Mr Hurley and informed him that Mr Parsons had recently requested a copy of a school invoice for some Apple iPads purchased in July 2016. On that same day, Mr Hurley confirmed the iPad Air 2 and the accessories were not recorded in the school's assets register and could not be found at the school.

24. Mr Hurley was able to confirm that the other items listed on the Noel Leeming invoice were on school property, and were listed on the school's assets register.

25. On 7 November 2017 Mr Hurley submitted a mandatory report to the Education Council about the conduct of Mr Parsons.

26. On 10 November 2017, Mr Hurley reported the matter to the Police.

27. On 12 January 2018, Police went to Mr Parsons' home with a search warrant. Mr Persons advised Police that he had given the iPad to his father-in-law who had since passed away, and that his mother-in-law was now in control of the

iPad. He claimed that he thought he had reimbursed the school for the iPad.

28. On 24 January 2018, Police issued Mr Parsons with a formal written warning for theft (over $1000) (ss 219 & 223(b) Crimes Act I961), after Mr Parsons repaid $1,047.47 to the school.

29. On 14 February 2019 Mr Parsons provided a written response to the Teaching Council. in part this notes:

> … I purchased the iPad for my father-in-law who had a terminal cancer illness, as a birthday present…
>
> It was bought with several other iPads and technology stuff for the school and I didn't really think about the exacts of it until I looked at the receipts, and I mentioned this to the accountant - so it was not put on the Assets register.
>
> …
>
> At the time, I believed I purchased it and then reimbursed the school. I can't remember whether that happened correctly, but when I had Police at my door and I could not produce a receipt, I settled the matter that day as I didn't want or need any more Whenuakura School issues in my life.

The CAC's evidence

[6] The CAC called three witnesses. The first was Andrew Hurley, who was on Whenuakura School's Board of Trustees from 2013 to 2019. Mr Hurley said that his initial role on behalf of the Board was to oversee the School's property. He was elected as Chairperson of the Board in 2016.

[7] In advance of the hearing, Mr Hurley was provided with a copy of the agreed summary of facts that we have set out. He explained that he had not seen the summary before it was provided to the Tribunal. He corrected one aspect. Whereas paragraph 12(c) states that Mr Parsons disclosed to Mr Hurley that he had received a refund on his personal television,[9] the witness explained that the respondent did not tell him this when they spoke on 15 March 2017. Rather, Mr Hurley said that he found this information out

[9] In Mr Hurley's statement, he referred to this as paragraph 11(c). However, we have changed the numbering in the summary.

himself after he met with Mr Parsons. He telephoned The Warehouse and spoke with a member of its staff.[10]

[8] Mr Hurley also explained that, to the best of his knowledge, Mr Parsons did not use the word "accidentally" when explaining how he had come to use the School's account.

[9] In cross examination, Mr Hurley confirmed that Mr Parsons, in an email dated 22 March, had informed him about the "mistake he had made with the card", which were Ms Brown's words.[11] However, Mr Hurley emphasised:[12]

> … up until that date, um, there was – he'd probably lied five times to various staff members about this purchase, up until that date. So it wasn't just at that meeting that he didn't confess about it, it was the lies up to that meeting as well.

[10] Mr Hurley said that the information he received verbally from The Warehouse was that the respondent took his original television in for repair on 15 December 2016.[13] This was affirmed by Mr Parsons in his evidence.

[11] Mr Hurley provided the Tribunal with copies of the documents that he requested from The Warehouse in respect to the purchase of the television on 11 January 2017. These comprise:[14]

> (a) A "goods returned" slip signed by Mr Parsons relating to his personal 50 inch television. The document records the return time as 1026 a.m., and the fact that Mr Parsons received a refund of $448.98 via EFTPOS.[15] It was not in dispute at the hearing that the signature on the form is that of Mr Parsons, or that the refund went to Mr Parsons' savings account at 1025 a.m.[16]

---

[10] Mr Hurley was asked during cross-examination whether it was possible that Mr Parsons had told about "the mistake with the card". Mr Hurley responded "definitely not". He explained that he had recorded his dealings with Mr Parsons using a dictaphone and then made notes from the recording: NOE 7-8.
[11] NOE 9.
[12] NOE 9.
[13] NOE 14.
[14] Mr Hurley said that he had not obtained physical copies of the documents from the Warehouse in 2017, but the information they contain is consistent with what he "verbally obtained" after the meeting on 15 March 2017.
[15] The document also recorded the name of the salesperson. The same person undertook both the return and the sale of the replacement television.
[16] NOE 48-50

(b) A second "goods returned" slip, which is the "customer copy". This contains further details, as it outlines that the refund was made to a TSB Visa debit card, and has the words "PIN verified" on it.

(c) A "packing slip", which pertains to the replacement 55 inch television. It discloses that the purchase price was $699, and that the purchase occurred at 1026 a.m. It records that the purchase was charged to Whenuakura School and contains a reference to the School's account number. The document has a signature block. That provided to us, which has the word "file" at the bottom, was not signed.

[12] We interpolate that the providence of the documents provided by The Warehouse was not in dispute at the hearing. Also, Mr Parsons accepted that he signed the packing slip when he purchased the replacement television.

[13] Mr Hurley provided us with a photocopy of the School's "Biz Rewards" charge card. He also provided us with a photograph of a TSB Visa debit card, which he said that he downloaded from Google. Mr Hurley stated that he did so "to illustrate the difference in the appearance of the two cards". We observe that Mr Parsons disputed that the photograph of the Visa card is an accurate depiction of the card that he used to complete the refund, as they are different in colour.[17] For that reason, we have put the photograph provided by Mr Hurley to one side.

[14] Mr Hurley also gave evidence about the iPad particular. He provided the Tribunal with the School's copy of the Noel Leeming tax invoice generated when the items were purchased by the respondent. Mr Hurley said that the handwritten notations on the invoice were made by Mr Parsons when he coded the iPads and accessories, for inclusion on the School's assets register. Mr Hurley told us:

(a) "Mr Parsons himself coded the six iPads for entry onto the school's assets register, but omitted to code the seventh iPad"; and

[17] NOE 11.

(b) "Mr Parsons requested that the entire value of the invoice (i.e. $5783.10) be added to the school's exhibit register".

[15] Mr Hurley stated that the way in which the invoice had been coded is contrary to the School's usual practice. Mr Hurley said that coding would usually be done by the School's office administrator, Sally Train, and then signed by Mr Parsons.

[16] Mr Hurley asserted that, to his knowledge, this was the only time that Mr Parsons personally coded a purchase made using the School's card. However, Mr Hurley conceded in cross-examination that he was not directly involved with the running of the office; albeit he said he had "a fair bit of involvement with it".[18]

[17] The second witness we heard from was Sally Train. Ms Train commenced as the School's office administrator in early 2013. She said that she worked with Mr Parsons for the entire time he was at the School: two to 2½ years. She agreed with Ms Brown's proposition that she, "had lots of opportunity to see how [Mr Parsons] managed things in that time".[19]

[18] Ms Train commented on the Noel Leeming invoice recording the purchase of the iPads and accessories. She confirmed that the respondent completing the coding of the items for inclusion on the School's assets register. About this, she said:

> [It] was slightly unusual for Mark to code the items, as normally I would do the coding, and then Mark would sign the invoice off, before we send it away for payment.

[19] Ms Train opined that the respondent demonstrated, "a real head for figures and numbers". For this reason, she disputed the respondent's assertion that he had poor financial awareness in 2016 and 2017.

[20] The witness was asked by Ms Brown about the respondent's proficiency coding items purchased by the School. The witness confirmed that Mr Parsons "had his head around it", and "would always make sure that it was, you know, coded where it was meant to be coded".[20] Ms Train

---

[18] NOE 13.
[19] NOE 19.
[20] NOE 20.

accepted that there were times, including when she was absent from the office because she was sick, when the respondent attended to the coding himself. She was asked to comment on whether, "when left in his own hands he could make mistakes around that"? The witness explained that there was a list taped to the wall that clearly set out the codes to use,[21] and, "obviously any queries, anything that we weren't sure of we would always, you know, confirm with our accountants as well". Ms Train confirmed that she and the respondent routinely spoke to the accountant.

[21] Ms Train acknowledged that she had not observed anything in the way that Mr Parsons dealt with the School's finances that had concerned her.[22] In response to a question from the Tribunal, Ms Train said that she had not picked up any errors made by Mr Parsons when he coded transactions. She described a collaborative approach if there was any uncertainty on Mr Parsons' part. Ms Train agreed that Mr Parsons was a "quick study", and would defer to her, and that he would seldom make a unilateral decision.[23]

[22] The third witness we heard from is the School's accountant, Merynn Campbell, who is a director in a firm that specialises in school accounting. Ms Campbell is her firm's client manager for the School, which is a responsibility she has held since July 2015. A colleague briefly held the role between November 2014 and mid-2015.

[23] Ms Campbell was called by the CAC to respond to Mr Parsons' statement that he disclosed to "the accountant" that he had purchased an iPad for himself, and that he would reimburse the School for it. He said that conversation informed his decision not to include the iPad on the assets register. Ms Campbell said she did not "recall" that she and Mr Parsons had any such discussion. In her evidence in chief, Ms Campbell said:

> If I had been advised by Mr Parsons that the iPad was a personal purchase, I believe I would have made an adjustment to the transaction recorded by the school in the school's 'Xero' software package, to record the portion of the invoice that pertained to a personal purchase by Mr Parsons. That is what happened with the TV purchase when I became aware that it was a personal purchase by Mr Parsons.

---

[21] Ms Train said there were 30 or more categories: NOE 24.
[22] NOE 21-22.
[23] NOE 25.

[24] Ms Campbell fairly conceded that she would not remember every conversation she had ever held with principals and school administrative staff. However, she added:[24]

> But … in this instance, because of the nature of the conversation, and it's – from an accounting point of view it's shifting – it's recording assets, and these, and a staff purchase, is quite significant, like I point out in 1.6 [of her brief of evidence], to get that right, and it's all got to go through audit and everything. So I would definitely remember because I would have acted on the conversation.

[25] Ms Campbell explained why she did not accept that Mr Parsons might have spoken to a colleague about the iPad purchase, instead of her.[25]

[26] In response to questions from the Tribunal, Ms Campbell explained the process that she would have followed in Xero had Mr Parsons raised with her the fact that one of the iPads on the invoice was for his own use. Ms Campbell said that, "It's not just a recoding, you've actually got to go back and split the [transaction]". Ms Campbell said that the original transaction in Xero has to be "completely undone". This did not happen. Ms Campbell said that she was "quite confident" that if she and Mr Parsons had had the conversation he described, the correction in Xero would have happened, and, in all likelihood, she would have undertaken the task herself during the telephone conversation.[26]

[27] Ms Campbell explained that the reason for coding an item purchased for personal use as a "staff purchase" is because this comprises an advance or loan to the employee concerned. Indeed, we were told that it is "illegal" for a school to lend an employee money.[27] As such, "By coding as a staff purchase the balance owing by the staff member is easily identifiable and trackable until repayment of the loan has been made". We assume that the existence of this procedure is tacit acknowledgement that loans by schools to staff do occur, notwithstanding the prohibition, and is designed to ensure that educational institutions are not left out of pocket.[28] Indeed, Ms Campbell

---

[24] NOE 29.
[25] NOE 30.
[26] NOE 35-36.
[27] Ms Campbell referred to the Financial Information for Schools Handbook, section 2.4.7.
[28] In *CAC v Witana* NZTDT 2016/24 we said at [63] that we found these rules to be contradictory. We remain of that view.

said, “it’s definitely not best practice”, but it does happen as “a convenience thing or they might get it at a good price, so it’s not to say it doesn’t happen, but payment is always made at the time of the purchase or beforehand”.[29]

[28] Ms Campbell said that she had several telephone conversations with Mr Parsons and the school administrator, together.[30] She said that, “The questions and conversations indicated to me that Mr Parsons was paying attention to details and was quite involved, unlike many Principals that I deal with (we now have in excess of 100 school clients)”. Her dealings with Mr Parsons meant that she was “rather surprised” by his assertion that, “paying attention to details has never been a strength for me”.

[29] Ms Campbell reviewed the records pertaining to the purchase from Noel Leeming on 15 July 2016. She said that her firm received the invoice from the School and processed it on 4 August 2016. There was no dispute that the copy she received was that notated by Mr Parsons, which recorded instructions to add the purchase of $5,783.10, GST inclusive, to the assets register. Ms Campbell said:

> Therefore, when Mr Parsons signed off the document, he did not specifically bring to our attention that part of the invoice related to a personal purchase (i.e. the iPad and related accessories).

[30] Ms Campbell said that, “the total invoice was coded by the school to a school expenditure code both on the invoice and in Xero, which did not indicate to us that any part of the invoice related to a personal purchase by Mr Parsons”. Ms Campbell said that the usual procedure when multiple items are purchased at the same time, and a single invoice generated by the vendor, is to use a generic description to describe all the items; not individually add them to the assets register. This explains why Ms Campbell did not identify the anomaly between the number of iPads purchased – seven – and the number Mr Parsons had said were to be added to the assets register – six. As such, the individual items were loaded onto the School’s assets register as a single “asset”, at the value of $5,783.10.

---

[29] NOE 29.
[30] Not Ms Train, who Ms Campbell said was away sick at the time. The purpose of the discussions held in July 2015 was to train Mr Parsons and the administrator how to enter transactions into Xero themselves, rather than to send the invoices to the accountant to do it: NOE 31-32.

The respondent's evidence

[31] To recapitulate, Mr Parsons accepts that he committed serious misconduct, but on a narrower basis than that alleged by the CAC.

[32] Mr Parsons provided an affidavit, which is dated 19 September 2019, ahead of the hearing scheduled to take place on 28 November 2019. The drift of his evidence is set out in the minute of 30 November, but we observe that the affidavit addresses a series of topics. It describes Mr Parsons' upbringing, education, marriage, and the way in which he interacts with his parents-in-law, under the heading "Generous-in-laws but lack of financial boundaries".

[33] He described, under the heading "My struggles" the fact that, in 2016 and 2017 when the two items were purchased, his attention was split between his responsibilities as a father and principal. About his job, he said that succeeding in his position was very important to him, but "the pressures were always mounting and the job was only ever taking more time". The respondent asserted that being able to manage the School, and "especially" its finances, "took more time and skills than I had". He said, "I had a very challenging relationship with the Board. I felt that I could not meet their expectations and that they wanted me gone".

[34] We will deal with Mr Parsons' evidence addressing the television allegation first. He said that:

> I purchased the TV with one of the cards in my wallet and signed for it, then left with it. I know I had my four children with me and it was the day before [his father in law] started his last round of chemotherapy, so I wasn't really paying attention as I should have been.

And

> I definitely should have taken greater care, and never actually have the school card anywhere near my own wallet or finances, and make sure that if I am to require a card, use it correctly, receipt accordingly and return it!

[35] In explanation for his lie to Mr Hurley, Mr Parsons said that:

> When I found out I made a mistake I thought that this would be the reason they would use to get rid of me. My thoughts were not clear, and I thought I needed to buy another TV for the third classroom so I will just pay for that one myself, and it will all even out! I lied as a result of panic and I knew my BOT Chair wanted

> me gone, so I thought that if I got around the lie, I could buy the new TV for the third classroom and no one would know of the mistake I had made and it would have all been cleared up – very stupid in hindsight!

[36] The respondent said that he should have "definitely" owned up to his lie and paid the money back immediately. He said he did so once he took advice from his union representative, but "I shouldn't have needed this pointed out".

[37] Mr Parsons said that the iPad was a purchase made at his mother-in-law's behest for his father-in-law's pending birthday. He was about to purchase iPads and notebooks for the School and, "I just said I could do that then". Further:

> I definitely should not have purchased an iPad for family use while on school business, and definitely should not have added it to the school receipt. I now understand the implications of this and not separating school shopping and personal shopping.
>
> I purchased the iPad along with other IT equipment for school, and when it came up I told the accountant that the iPad was for me and not for school and I would pay for it. I have never had strong financial grounding and paying attention to details has never been a strength for me, but I have since learned that this is my most important part of financial awareness.

[38] Mr Parsons said that, "… I understand how it can be perceived that I have stolen from the school, but this is not what has happened here as money is not something that has been lacking in our family".

[39] The respondent emphasised that he does not want the responsibility of being a principal again, and the "biggest learning curve" has been "having proper boundaries in place between personal and other finances". He offered the following reflection:

> Making a mistake in life is something that can happen, but being able to own up to it, take responsibility for it and make the correct response is something I have learned throughout this whole ordeal. I have worked too hard for too long to be irresponsible with money. I am trying to teach students and my own children the importance of being respectful, showing integrity and honesty and being a true leader. I have let myself down more than anyone can know and this still affects me today, and I believe it always will.

[40] Mr Parsons filed a supplementary statement on 9 June 2020. In it, he added further detail about the circumstances in which the television was purchased. He said that his wife gave birth to their fourth child in October

2017, his father-in-law was dying, and "we were all under a lot of stress". The family television "died", so he returned it to The Warehouse on 15 December 2016 to see whether it was reparable. It was not, so Mr Parsons:

> Went to The Warehouse [The Warehouse] with my four children to pick a new one on the morning of 11 January 2017. I took the children [aged seven, five, three and three months] so that the older children could be involved in choosing the new TV. [The respondent's wife] had taken her Dad to chemotherapy in Palmerston North. The children enjoyed the trip out and exploring the shop.

[41] The respondent said that his intention was to get through the outing "as quickly as possible", and his attention was primarily focused on supervising the children. Therefore, "The transactions relating to getting a refund for the old TV and purchasing a new one wasn't given the attention that it should have [been]".

[42] Mr Parsons said that both his personal Visa card and the School's Biz Rewards card were silver, and kept in the same place in his wallet. He explained that he "grabbed whichever" and the transaction went through. He said that:

> The replacement for the dead TV was managed at the customer service desk. I was at the customer service desk where I signed over saying everything was sorted, and I signed for the TV and went and got it and then put the kids and the TV into the car. I don't remember how I came to use the cards, but I remember signing a few things then left not thinking about exactly what went where.

[43] Mr Parsons said that he only became aware that the television had been purchased on the School's card after the school holidays.

[44] It became apparent during Mr Parsons' cross-examination that while the transactions required to return his original television and purchase the new one happened back to back, each involved a materially different process. Counsel for the CAC asked:[31]

> Q. Mr Parsons, I'm going to suggest to you that it doesn't make sense, it doesn't stack up that you would have used your personal card at 1025 a.m., gone through the process of arranging for the money to loaded on to your personal card and then entering your pin, and then within a minute mistakenly have

[31] NOE 52.

> taken the Biz Rewards card out of your wallet and accidentally or mistaken used that to purchase the TV?
>
> A. I'm not sure what you're wanting me to answer. Oh, it doesn't sound good at all, no.

[45] The Tribunal asked Mr Parsons why he did not use the same card to complete both transactions. He answered, "I don't know, I thought I did". He said that he remembered having his wallet on the counter and "putting in a PIN for something and I remember signing for something". He said he did not remember the details of the transactions, or taking a receipt. However, Mr Parsons acknowledged that, unlike his personal Visa card, the Biz Rewards card does not have a magnetic strip or PIN number. As such, to complete a purchase using this card, he was required to hand it over to the salesperson to enter the details and complete a sales docket. We were provided with that created by the Warehouse salesperson for the replacement television. As Mr Parsons said, "I had to sign a bit of paper".[32]

[46] Mr Parsons conceded that there were obvious differences in appearance between his personal card and the School's Biz Rewards card.[33]

[47] Mr Parsons provided us with a copy of an invoice dated 11 January 2017, generated by The Warehouse, and made out to the School, which describes the television purchased that day as "replacement TV". Mr Parsons said that this was consistent with his explanation that he bought the television to replace his own, which had failed under warranty. He emphasised that it was not meant to denote that the television was a replacement for one at the School.

[48] Mr Parsons said that he did not add the iPad to the assets register because he recognised this was a personal purchase. He said, "I thought I had reimbursed the school for this purchase". He said:

> The iPad and technology purchased was coded based on the phone call with the accountants. They told us what to code to and I just did that. I believed that I had paid the school back for the purchase of my father in law's iPad and equipment. When the Police challenged me about this and I couldn't find any receipt to verify that I had paid the school back at the time, I paid the school.

---

[32] NOE 53-55.
[33] NOE 55.

[49] In cross-examination, counsel for the CAC asked Mr Parsons to comment on why he had coded the purchase of six iPads, but had not adjusted the total. Mr Parsons conceded that, having consciously taken his personal iPad off the tally, sense dictates that he would have simultaneously adjusted the total downwards by $1075.[34]

[50] It was put to Mr Parsons that, first, he purchased the iPad alongside equipment for the School in the hope that it would go unnoticed and, second, that he never intended to reimburse the School. Moreover, Mr Regan suggested that the way in which Mr Parsons had coded the Noel Leeming invoice was an attempt to hide his purchase. These propositions were denied.[35]

Our factual findings

[51] The burden rests on the CAC to prove the charge. While the standard to which it must be proved is the balance of probabilities, the consequences for the respondent that will result from a finding of serious professional misconduct must be kept in mind.[36]

[52] In a relatively recent High Court decision, *Cole v Professional Conduct Committee of the Nursing Council of New Zealand*,[37] Gendall J said that while the burden rests on the prosecution throughout, in disciplinary proceedings there is an expectation that the practitioner "must be prepared to answer the charge once a prima facie case has been made out".[38] Mr Parsons met this expectation by giving evidence.

Particulars 1(b) and 1(c) – the purchase of the television

[53] We will explain our factual findings regarding the television particular first. The way in which the CAC framed particular 1(b) of the charge alleged that Mr Parsons "used school funds to purchase a television for personal use, without permission". As is apparent from the agreed summary of facts, Mr Parsons did not seek to resist this core allegation. The way Ms Brown

---

[34] NOE 63-64.
[35] NOE 67-68.
[36] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).
[37] *Cole v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, 31 May 2017.
[38] At [36].

put it on Mr Parsons' behalf was that he "had no claim of right to have possession of the TV as it was never authorised by the Board of Trustees". Ms Brown, in her submissions, said that the respondent's behaviour constituted serious misconduct because he had exhibited poor financial management by blurring the line between his personal finds and those of the School.

[54] We do not accept Ms Brown's submission regarding the television. If Mr Parsons' use of the Biz Rewards card was a genuine mistake, then that would constitute a complete answer to particular 1(b). However, as was identified in the 30 November 2019 minute, there is a stark factual dispute that we must address, which is whether there was a dishonest intent behind Mr Parsons' purchase.

[55] We are satisfied that it is more probable than not that Mr Parsons was dishonest at the time he purchased the television, for the reasons we will explain.

[56] We do not doubt that Mr Parsons was in a state of relative distraction when he completed the return of his television, and the purchase of its replacement, because he was paying close attention to his children. We also accept that it is plausible that the respondent's father-in-law's illness was playing on his mind. However, we do not accept that Mr Parsons' use of the Biz Rewards card to complete the purchase was accidental, or, as he put it "mistaken". There is simply not an air of reality to the respondent's evidence that he completed the transactions using whichever card came to hand. That explanation might have been more believable if the transactional procedure for the refund and subsequent sale matched. But they did not.

[57] We conclude that deliberate action on Mr Parsons' part was required to complete the refund with one card, and to then hand over a different card to the salesperson to enable the purchase to be transacted. It is significant to us that the Biz Rewards card had no PIN, and required the salesperson to print a form to complete the purchase. The additional time it would have taken to undertake this process – as compared to "swiping" a personal card and entering its PIN – is a cogent counterfactual to Mr Parsons' evidence that he was too distracted to pay attention to what he was doing. We cannot accept that he was oblivious to the fact that he had purchased the television using the School's card.

[58] While this particular was initially viewed by the parties through the lens of theft, we invited supplementary submissions addressing the offence created by s 228(1)(b) of the Crimes Act 1961. It describes using a document, dishonestly and without claim of right, with intent to obtain any property.

[59] It is not in dispute that a bank card is a "document" for the purposes of s 228. Given our factual finding that Mr Parsons' use of the Biz Rewards card was not accidental, the "used" element of s 228 is readily met. Mr Parsons' concession that he was not authorised to use the card to purchase personal items closes off the possibility that he had a claim of right.[39] As such, the nub of the issue is whether the respondent acted "dishonestly" when he completed the purchase. "Dishonestly" is defined in s 217 of the Crimes Act as:

> [In] relation to an act or omission, means done or omitted without a belief that there was express or implied consent to, or authority for, the act or omission from a person entitled to give such consent or authority.

[60] The wording of s 228 focuses the attention on the state of mind of the actor. To paraphrase what was said in the leading case on the meaning of "dishonesty", the objective facts of a particular case may be such that it can properly be inferred that the actor had a dishonest mind unless he or she can raise a reasonable doubt on the basis of a relevant but mistaken belief.[40]

[61] We consider that the objective facts of this case readily enable us to conclude that Mr Parsons had a dishonest state of mind on 11 January 2017. His concession that he knew he was not authorised by the Board of Trustees to purchase items for personal use via his Biz Rewards card is strongly supportive of a dishonest intent on his part, given our finding that he acted intentionally. However, we will not rely solely on the concession made by Ms Brown on Mr Parsons' behalf.

---

[39] Which is defined in s 2 of the Crimes Act 1961. It says "**claim of right**, in relation to any act, means a belief at the time of the act in a proprietary or possessory right in property in relation to which the offence is alleged to have been committed, although that belief may be based on ignorance or mistake of fact or of any matter of law other than the enactment against which the offence is alleged to have been committed.

[40] *Hayes v R* [2008] NZSC 3, 2 NZLR 321, (2008) 23 CRNZ 720 at [43].

[62] We consider that the lengths that Mr Parsons went to fabricating a story that the television was a replacement item for the School is powerful evidence that he had a dishonest intent. We accept that it is important not to leap to the conclusion that a lie was told to mask guilt. For that reason, we have assessed the plausibility of Mr Parsons' evidence that the lie was a panicked reaction to his fear of the professional repercussions that might follow should the Board find out he had used the School's funds to purchase the television. However, we do not consider that explanation bears weight. It is hard to conceive how such dire consequences would have been triggered had Mr Parsons told the Board that his use of the card was an accident. We suspect that had Mr Parsons simply told the truth, and repaid the relevant part of the balance on the card, the episode would not have resulted in this disciplinary proceedings.

[63] We find that there was an element of initiative to Mr Parsons' behaviour that undermines his description of a spontaneously told lie, borne of panic. How Mr Parsons was panicked into lying to the first recipient, a member of staff, is unclear. However, what is not in dispute based on the agreed summary of facts is that the respondent told a relatively well fleshed-out lie on 18 January 2017. He persisted with the lie for two months. He told it to two members of staff, and then to Mr Hurley. The explanation we heard in evidence was provided for the first time on 15 March 2017.

Particular 1(a) – the iPad and accessories

[64] Contrary to his position in relation to the television, Mr Parsons accepted that his purchase of the iPad and accessories using the School's funds was deliberate. As such, for this particular we accept the respondent's concession that he exhibited poor financial boundary setting.

[65] The respondent breached the trust placed in him by the Board of Trustees when he used the Biz Rewards card to purchase the iPad for his father-in-law. Therefore, we accept that the CAC has proved that Mr Parsons, "During 2016, used school funds to purchase an Apple iPad Air2 for personal use, without permission".

[66] We reject Mr Parsons' evidence that he told Ms Campbell he had purchased the iPad. We accept Ms Campbell's evidence that this is a conversation that would not have slipped her mind, and we do not consider

it at all probable that the amendment required in Xero would have been left undone had the purchase been disclosed to her. We accept Ms Campbell's evidence that she would have immediately made the correction required herself, as it required a degree of expertise using Xero that Mr Parsons did not say he possessed. For completeness, we have considered, but rejected, the possibility that Mr Parsons spoke to one of Ms Campbell's colleagues. To be fair to the respondent, this proposition was raised only faintly. Ms Campbell was the person responsible for the School's accounts. All Mr Parsons dealings were with her. Logic dictates that Ms Campbell is the person Mr Parsons would have called.

[67] There are two possible inferences to be drawn from Mr Parsons' claim that he disclosed his personal purchase to the accountant. While it might suggest that he lied in this proceedings to mask his dishonesty at the time the iPad was bought, the alternative is that he was attempting to resist the suggestion that he simply turned a blind eye to repaying the School. Based on our assessment of the other evidence, we have decided that it is the second that is the more likely of the two scenarios.

[68] The particular also included reference to the fact that Mr Parsons' purchase resulted in him receiving a formal warning for theft from police. While the fact of the warning is not in dispute, Ms Brown submitted that we should not place any weight on it for the purpose of assessing whether Mr Parsons had a dishonest intent. We accept this submission. The CAC assisted us on this point in its supplementary submissions. It said that while police had not provided a copy of the statement made by Mr Parsons, a note said that the respondent, "admitted to the facts as outlined and stated that he did it unintentionally as he thought he had reimbursed the school". Given this, we have decided not to treat the warning as evidence that supports an inference that Mr Parsons was dishonest.

[69] We consider the way in which Mr Parsons treated the coding of the items he purchased on 15 July 2016 for the purpose of the assets register speaks both for and against a dishonest intent on his behalf. The fact he recorded that six, not seven, iPads were to go on the register might be construed as Mr Parsons placing the School on notice that he had bought one for himself. After all, the fact that he bought seven was plain to see on the face of the Noel Leeming invoice upon which the respondent completed

his coding. This is notwithstanding the evidence we heard that invoices are not scrutinised by the accountant. In contrast, in support of the CAC's assertion that Mr Parsons had a dishonest intent is the fact that he did not deduct the cost of his own iPad and accessories from the total monetary value to be recorded on the register.

[70] The copy of the Noel Leeming invoice produced as an exhibit has the iPad and accessories purchased for Mr Parsons' father-in-law highlighted. Ms Brown submitted that, "Had Mr Parsons an inclination to hide the purchase of his father in law's equipment he would not have highlighted it in pink, nor would he draw attention to the fact that there were six iPads purchased for the school in that transaction, not seven".

[71] Ms Brown's submission regarding the import of this evidence led to the CAC filing a further memorandum. Counsel for the CAC described the evidence in support of the inference we were invited to draw as, at best, equivocal. We agree. Mr Parsons said that he took the copy of the invoice he received from Noel Leeming at the time of purchase with him to his parents-in laws' house. He said that he highlighted the items that required reimbursement on that copy, for the benefit of his mother-in-law. The evidence was clear that this was not the invoice ultimately sent to the accountant by the School.[41] Indeed, Mr Parsons was directly asked:[42]

> Q. Just looking at page 12, just to clarify what might have been said before, with respect to the highlights did you highlight those?
>
> A. I can't remember. I have had a highlighted copy that I had given to my mother-in-law.

[72] Someone highlighted the items purchased by Mr Parsons on the invoice. It might have been Mr Hurley. We simply do not know, given the state of the evidence. We treat this as a neutral factor although, as we have already observed, the personal items were there to be seen on the invoice; assuming that there was just cause for someone to scrutinise it, which there was not.

[73] The CAC emphasised the fact that Mr Parsons undertook the coding himself on this occasion. While we acknowledge Ms Train's evidence about

---

[41] NOE 73-76.
[42] NOE 79. The reference to "page 12" is to where the exhibit is in the agreed bundle.

the rarity of him doing so, we accept that Mr Parsons may have taken a more proactive responsibility for coding than she described. This is because she was absent from her role for some time on sick leave, and therefore was not in a position to provide a definitive opinion about Mr Parsons' practices. This is perhaps a generous conclusion, but one which also has the effect of counteracting the respondent's evidence that he lacked the confidence or skill to deal with financial matters. To the contrary, we consider that he downplayed his degree of competence.

[74] We have decided, by a very narrow margin, that Mr Parsons did not purchase the iPad with a dishonest intent. While the factors we have described pull in favour of a finding of dishonesty, we have afforded Mr Parsons the benefit of the doubt.

[75] Our conclusion regarding Mr Parsons' honesty does not detract from the fact that this constituted a very serious failing on his part. Having chosen to expend the School's money to buy the iPad, Mr Parsons ought to have been diligent to ensure he reimbursed it as soon as possible. In this regard, his standard of care protecting the School's financial interests fell well below that expected from principals. His explanation that he was indifferent to money because of his parent-in laws' wealth is beside the point. This might have imbued the respondent with a degree of indifference about his own financial wellbeing, but it did not entitle him to take a cavalier attitude towards public funds.

Our findings regarding the test for serious misconduct

[76] While the parties were agreed that the respondent's behaviour constitutes serious misconduct, the Tribunal is required to reach its own view. That being said, we have no hesitation accepting Mr Parsons' concession was appropriately made.

[77] Section 378 of the Education Act 1989 defines "serious misconduct" as behaviour by a teacher that has one or more of three outcomes; namely that which:

(a) Adversely affects, or is likely to adversely affect, the well-being or learning of one or more children: s 378(1)(a)(i); and/or

(b) Reflects adversely on the teacher's fitness to be a teacher: s 378(1)(a)(ii); and/or

(c) May bring the teaching profession into disrepute: s 378(1)(a)(iii).

[78] The test under s 378 is conjunctive.[43] As such, as well as having one or more of the three adverse professional effects or consequences described, the act or omission concerned must also be of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct. The Teaching Council Rules 2016 (the Rules) describe the types of acts or omissions that are of a prima facie character and severity to constitute serious misconduct.[44] Those which the CAC assert apply in the respondent's case, which are specified in the notice of charge, are r 9(1)(h), which talks about behaviour by a teacher comprising "theft or fraud" and r 9(1)(o), which encompasses "any act or omission that brings, or is likely to bring, discredit to the teaching profession".

[79] Starting with the first limb of the definition of serious misconduct, we accept that the respondent's behaviour fulfils all the three criteria in s 378(1)(a) of the Education Act.

[80] We are satisfied that Mr Parsons' behaviour behind particulars 1(a) and 1(b) is of a type that is "likely" to affect the learning of one or more children, thus engages s 378(1)(a)(i) of the Education Act.[45] The point we made in *CAC v Swinton-Robertson*[46] is that when a teacher deprives a school of resources, that is likely to jeopardise the educational wellbeing of those it serves. We consider that Mr Parsons' behaviour showed an inherent disrespect for the children, his colleagues, and the Board of Trustees of the School.

---

[43] *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.
[44] Which came into force as the Education Council Rules on 1 July 2016 and had a name change to the Teaching Council Rules 2016 in September 2018. We will apply the original iteration of the Rules that applied in 2016 and 2017.
[45] In *CAC v Marsom* NZTDT 2018/25, we adopted the meaning of "likely" used in the name suppression context - described by the Court of Appeal in *R v W* [1998] 1 NZLR 35 (CA). It said that "real", "appreciable", "substantial" and "serious" are qualifying adjectives for "likely" and bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.
[46] *CAC v Swinton-Robertson* NZTDT 2017/20.

[81] Turning to s 378(1)(a)(ii), there is no doubt that the respondent's behaviour behind all three particulars adversely reflects on his fitness to teach. Mr Parsons abused his position as principal when he used the School's monies for his and his family's direct personal benefit. Practitioners have an obligation to both teach and model positive values for their students.[47] Fraudulent behaviour is the antithesis of the standard of honesty expected of teachers. As we have previously said, principals are expected to maintain a higher standard of probity.[48] Mr Parsons fell well short of the mark.

[82] Nor do we have any hesitation concluding that the respondent's conduct is of a nature that brings the teaching profession into disrepute.[49] About this criterion, the High Court in *Collie v Nursing Council of New Zealand*[50] said there is an objective standard for deciding whether certain behaviour brings discredit to a profession. The question that must be addressed is whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We consider there can be no doubt that Mr Parsons general lack of financial boundary-setting, and his dishonesty in particular, risks lowering the profession's standing in the eyes of the public.

[83] Having fulfilled the first step in the test for serious misconduct, we must next be satisfied that the respondent's conduct is of a character and severity that meets one or more of the reporting criteria in 9(1) of the Rules. Again, of this there can be no doubt. First and foremost, we are satisfied that the purchase of the television and Mr Parsons's subsequent deceptive conduct towards Mr Hurley (and the respondent's colleagues) is directly caught by r 9(1)(h) because it constituted "fraud".

[84] While not particularly sophisticated, the respondent persisted with his deceit for two months. When Mr Hurley subjected his explanation to scrutiny, Mr Parsons added a further false detail - that he had not made an insurance

---

[47] This obligation is contained in clause 3(c) of the Code of Ethics for Registered Teachers, which applied at the time the respondent misconducted himself.
[48] *CAC v Witana* above n 28 at [89].
[49] Education Act 1989, s 378(1)(a)(iii).
[50] *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

claim because of the policy's excess. It was Mr Hurley's vigilance that ultimately forced Mr Parsons into the position where he had to admit the truth.

[85] Staying with particulars 1(b) and (c), we invited the parties to consider our recent decision in *CAC v Jenkinson*,[51] which involved "a relatively sophisticated deception by the teacher to subvert" a school's disciplinary investigation by the practitioner.

[86] The CAC, in its supplementary submissions, contended that *Jenkinson* is on point. It said that:

> The respondent's repeated lies did not involve the same level of sophistication as in *Jenkinson* and some of the other cases referred to therein, nevertheless he breached his duty to be candid towards his employer. As in *Jenkinson*, the respondent's deception was only uncovered because, despite the respondent's frequent lies, the Chair of the respondent's Board of Trustees made inquiries with the school's insurance and [The Warehouse].

[87] Ms Brown submitted that *Jenkinson* is "one of many Teachers' Tribunal cases that have dealt with teacher dishonesty and is not a precedent". Counsel also said that "in *Jenkinson* the Tribunal only referenced other Teachers' Tribunal cases when considering penalty and no cases that look more widely at penalty principles that consider higher authority".

[88] We agree with Ms Brown that each case must be assessed on its own facts. However, the reason we invited submissions on *Jenkinson* is because of the way we described the duty of candour that teachers owe to their employers. We will set out what we said in *Jenkinson* in full:[52]

> The CAC submitted that, "It is well established that professional persons are expected to be honest and candid when faced with conduct allegations". We agree. We also agree with the CAC's submission that there is not a material distinction between the duty of candour that a teacher owes his or her professional body vis-à-vis that in respect to an employer. Moreover, we accept that this expectation of cooperation and honesty applies

---

[51] *CAC v Jenkinson* above n 6.
[52] At [22]-[24]. Footnotes are in original.

notwithstanding that the practitioner considers the allegation to be spurious.[53]

On two occasions, we held that a failure to be truthful with the CAC amounted to serious misconduct. The first, NZTDT 2010/17, involved a practitioner who provided false information to the CAC during an investigation. We said:[54]

> [As] we have said in other cases, it is one of the hallmarks of a profession that it takes responsibility for ensuring that its members meet certain standards of conduct. The disciplinary processes involved – such as those contained in Part 10A of the Education Act 1989 – are the foundation for that. The Tribunal regards the maintenance of the integrity of those processes as of the highest importance. It is vital to their integrity that Complaints Assessment Committees and other such bodies can rely on the information they obtain in the course of investigations. In the Tribunal's view, for a teacher deliberately, as this Respondent has done, to forge exculpatory material and provide misleading information unquestionably constitutes serious [misconduct].
>
> We have no difficulty in concluding that forgery and the provision of false or misleading information reflect adversely on this Respondent's fitness to be a teacher.
>
> In addition to that, there is the further point made by Mr Lewis based on Rule 9(1)(o) of the Rules, and we agree that this Respondent's behaviour has brought, or is likely to bring, disrepute to teachers generally and is entirely inconsistent with any notion of his commitment to society and obligations of trust and responsibility to society and students.

More recently, in *CAC v Teacher C*,[55] which was a case where the practitioner "lied by omission" to the CAC, we said that:

> [206] We agree that the principles articulated in NZTDT 2010/17 apply in the instant case. As we have said on previous occasions, there is an expectation for honesty and integrity owed by practitioners to both the public and to other members of the profession.[56]

[89] To adopt what was said in *Jenkinson*, we are of the opinion that Mr Parsons' "attempt to mislead the School is behaviour that strikes at the heart of the expectation for honesty and integrity that the profession and the public have of practitioners".[57]

---

[53] The CAC cited what was said by the High Court in *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 83, at [108], for this proposition.
[54] NZTDT 2010/17, 13 August 2010.
[55] *CAC v Teacher C* NZTDT 2016/40.
[56] Applying what was said, albeit in different contexts, in *CAC v Teacher* NZTDT 2016/27 and *CAC v Leach* NZTDT 2016/66.
[57] At [25].

[90] Finally, we are satisfied that r 9(1)(o) is engaged in respect to the respondent's purchase of the iPad, and his failure to repay what he owed. For the same reasons that we described earlier in respect to s 378(1)(a)(iii) of the Education Act, we are satisfied that the respondent's behaviour brings discredit to the teaching profession.

[91] In summary, we are satisfied that the behaviour behind each of the particulars constitutes serious misconduct in its own right. The cumulative impact of the behaviour therefore merely serves to affirm the gravity of Mr Parsons' wrongdoing.

Penalty

[92] The primary motivation regarding the establishment of penalty in professional disciplinary proceedings is to ensure that three overlapping purposes are met. These are to protect the public through the provision of a safe learning environment for students, and to maintain both professional standards and the public's confidence in the profession.[58] We are required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.[59]

[93] The CAC submitted that if we conclude that Mr Parsons "acted dishonestly at the time he purchased the TV and/or the iPad and accessories, the starting point [for penalty] must be cancellation". Counsel went on to submit that, "It will then be for the respondent to demonstrate that he should remain in the teaching profession, with particular reference to his rehabilitative prospects, and the degree of insight that he has into the causes of his behaviour".

[94] Ms Brown disputed the accuracy of the latter submission. Her point was that it is wrong in principle to expect Mr Parsons to persuade the Tribunal that he should remain in the profession. Counsel referred us to

---

[58] The primary considerations regarding penalty were discussed in *CAC v McMillan* NZTDT 2016/52.
[59] See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

CAC v Teacher A,[60] where we traversed the applicable purposes and principles behind the powers in s 404 of the Education Act.

[95] We see the merit in the point made by Ms Brown. We acknowledge that the Tribunal is required to consider the range of powers available to it under s 404 of the Education Act, and to impose the least restrictive penalty that can reasonably be imposed in the circumstances. This requires us to consider "alternatives available to it ... and to explain why lesser options have not been adopted in the circumstances of the case".[61] In doing so, the Tribunal must try to ensure that the maximum penalty of cancellation is reserved for the worst examples of misconduct.

[96] In *CAC v Fuli-Makaua*[62] we endorsed the point that cancellation is required in two overlapping situations, which are:

> (a) Where the conduct is sufficiently serious that no outcome short of deregistration will reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession; and
>
> (b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

[97] We must seek to ensure that any penalty we institute is comparable to those imposed upon teachers in similar circumstances, as consistency is the bedrock of fairness. In *CAC v Leach,*[63] we were referred to the outcomes in four decisions that involved employment-related fraud by teachers.[64] In

---

[60] *CAC v Teacher A* NZTDT 2018/53.
[61] *Patel v The Dentists Disciplinary Tribunal* HC Auck Reg AP77/02, 8 October 2002, Randerson J at [31].
[62] *CAC v Fuli-Makaua* NZTDT 2017/40, at [54].
[63] *CAC v Leach* NZTDT 2016/66. Ms Leach was a principal who provided a false performance appraisal to be Board of Trustees. Her registration was cancelled.
[64] NZTDT 2013/12, NZTDT 2014/33, *CAC v Bickford* NZTDT 2016/21 and NZTDT 2016/27.

Jenkinson,[65] we considered *Leach*, as well as *CAC v Clark*,[66] NZTDT 2013/4, *CAC v Gittins*[67] and *CAC v Thornton*.[68]

[98] In addition, we have considered the two cases the CAC cited that dealt with principals who used a work card for personal expenditure: *CAC v Hill*[69] and *CAC v Fletcher*,[70] as well as the two cases that Ms Brown referred us to: *CAC v Swinton-Robertson*[71] and NZTDT 2012/29.[72] We have also considered *CAC v Witana*[73] and NZTDT 2008/12.[74]

---

[65] Where we suspended the teacher's registration for six months.
[66] *CAC v Clark* NZTDT 2017/4. The teacher forged the signature of her former principal when applying for a new job and created a false reference letter. Criminal charges followed. Ms Clark's registration was cancelled.
[67] *CAC v Gittins* NZTDT 2016/59. Mr Gittins completed a false NCEA moderation and included another teacher's name as the moderator, without that teacher's knowledge. Cancellation was narrowly avoided. Mr Gittins took full responsibility for his actions.
[68] *CAC v Thornton* NZTDT 2015/63. Ms Thornton forged the Board Chair's signature on cheques, and other forms. Cancellation was narrowly avoided on the basis that the money was owing to those the respondent paid, and the Board had approved payment. Conditions were imposed for five years, including a prohibition on the respondent holding a leadership role, or one with financial responsibility.
[69] *CAC v Hill* NZTDT 2015/59. Ms Hill used her work credit card to purchase petrol on six occasions. The overall amount involved was about $400. She knew that this was contrary to the school's credit card policy. The Tribunal did not find an intent to deceive. We imposed a condition preventing her from holding any position with financial responsibility for one year.
[70] *CAC v Fletcher* NZTDT 2018/17. He was the principal of a rural school, who used his school-issued fuel card to purchase nearly $6000 of petrol over three years. He also claimed reimbursement for a school-related trip he did not take. There was also a particular relating to rent arrears on the house he rented from the school. The Tribunal found the behaviour amounted to theft or fraud. The respondent did not resist cancellation.
[71] *CAC v Swinton-Robertson* NZTDT 2017/20. The teacher took boxes of toys belonging to his employer home. He initially lied about the fact he had taken them. We concluded this was theft. Cancellation was not sought, or considered necessary to protect the public given the respondent's early taking of responsibility and cooperation.
[72] The teacher was the deputy principal. She had a gambling addiction, pawned a school laptop, and then lied to her principal by saying it had been stolen. We found this amounted to theft. The teacher took full responsibility for her behaviour and was censured.
[73] *CAC v Witana* NZTDT 2016/24. Mr Witana was a principal. He was found guilty of having an inappropriate accounting system for amounts paid on behalf of, and recoverable from, staff (there were other allegations, too). Also, he used school funds to purchase personal items for himself and other staff members. At times, the amount owed was up to $10,000. There was no element of fraud. We concluded that cancellation was not warranted. We imposed conditions preventing Mr Witana from holding a leadership position or one with financial management responsibilities until the Teaching Council was satisfied he had learned the skills to do so.
[74] Where the teacher stole over $7000 from her employer, by siphoning off money received from parents in payment of fees. Her practising certificate was suspended for nine months.

[99] We acknowledge the inevitable factual distinctions between those earlier decisions and the present. Nonetheless, the comparison tends to affirm that cancellation is often the outcome in cases involving deception. Based on our review, we would not go so far as to say that cancellation is the commensurate penalty in "most" cases.[75]

[100] As our factual findings make clear, this is not a case where Mr Parsons was merely ignorant of, or indifferent to, his financial responsibilities as principal. We have found that the respondent was actively dishonest when he purchased the television. His subsequent lies to avoid discovery were a fundamental breach of the duty of candour he owed to his Board. Mr Hurley should have been entitled to take Mr Parsons at his word. We do not consider the fact that a relatively modest quantum was involved in the two transactions is a dispositive consideration. As we have already explained, the predominant aggravating feature, and that which directly bears on his fitness to teach, is Mr Parsons' deception.

[101] We have no hesitation concluding that the starting point must be cancellation of the respondent's registration to teach, given the gravity and extent of his serious misconduct. The question is, can we step back from cancellation? In other words, is it reasonable to impose a less restrictive outcome that will enable Mr Parsons to remain part of the profession?

[102] We are required to determine whether there is scope for the imposition of a penalty with a rehabilitative focus that will enable Mr Parsons to remain a member of the profession.

[103] This is by no means a straightforward exercise. We accept that Mr Parsons has no record of prior misconduct during his relatively lengthy career, which is a strong mitigating factor. However, unlike in other cases involving theft or fraud by a principal where we have imposed a penalty short of cancellation, Mr Parsons cannot rely upon a complete acknowledgement of responsibility in mitigation. Nonetheless, the penalty we impose must reflect the fact that he accepted that he committed serious misconduct; albeit on a narrower basis than that alleged by the CAC. Importantly, he

---

[75] Which was the submission made by the CAC in *Fletcher*, at [38].

acknowledged that he was dishonest in his dealings with Mr Hurley, which was an important (although perhaps inevitable) concession.

[104] We have considered the respondent's experience and the societal value in allowing him to remain a teacher. We accept that there will be circumstances in which a teacher's particular skills and experience mean that, with appropriate conditions and support, it is in the interests of the community that he or she retains registration. We accept that the respondent has positive professional attributes. However, the counterpoint is that teachers are expected to maintain public trust and confidence by demonstrating a high standard of professional behaviour and integrity. The respondent has flagrantly undermined these values and expectations.

[105] As we said in *Fuli-Makaua*, a practitioner's degree of insight into the cause of behaviour will be important when assessing his or her rehabilitative potential. Knowing what motivated the conduct is a way to gauge the risk of repetition. Cancellation is less likely to be required where the practitioner understands what led him or her to commit serious misconduct and is taking, or has taken, meaningful steps to reduce the risk of it happening again. We accept that Mr Parsons was under a high degree of personal and professional pressure in 2016 and 2017. However, we emphasise that the stress he was under, regardless of its intensity, neither excused nor justified his conduct. He exhibited very poor decision-making, as well as mendacity. That being said, we consider that Mr Parsons has demonstrated a sufficient degree of insight into his shortcomings as a financial manager and principal that a penalty short of cancellation is open.

[106] It is not in dispute that censure is warranted. However, it is not sufficient on its own to deter and denounce Mr Parsons' dishonesty. Nor are we satisfied that the conditions proposed by the parties, in combination with censure, will adequately achieve the relevant purposes and principles.

[107] Insofar as s 404 of the Education Act provides a penalty hierarchy, suspension is the step below cancellation. We consider that the choice we must make is between cancellation and suspension. We have decided, by a very fine margin, that suspension is the least restrictive way in which to maintain professional standards and the public's confidence in the profession. It is necessary that Mr Parsons' penalty highlights the standard of probity teachers, and particularly principals, are required to meet and the

consequences of the failure to do so. We are satisfied that suspension will achieve this, while still providing Mr Parsons with the opportunity to redeem himself.

[108] In *Jenkinson*, we ordered suspension for six months. However, that outcome reflected the fact that Mr Jenkinson took full responsibility for his dishonesty. While the lie Mr Jenkinson told his employer was executed in a more sophisticated way than here, Mr Parsons' behaviour is more serious overall, when the conduct behind particulars 1(a) and (b) is taken into account as well. For that reason, we agree that a longer term of suspension is required in the present case. In NZTDT 2008/12 we suspended the teacher for nine months. That practitioner's dishonesty was more financially significant than here, but that factor is outweighed by Mr Parsons' seniority and additional responsibility in comparison. In other words, as a principal he owed a heightened duty of care and probity.

[109] We are of the opinion that the commensurate period of suspension is 12 months. We acknowledge that suspension for this length of time will cause Mr Parsons personal and professional hardship. However, we consider that this term is necessary to meet the disciplinary purposes we have described, while still allowing the respondent to remain a teacher.

[110] We also agree that it is necessary to impose the conditions proposed by the parties. In line with similar cases, we intend to prohibit Mr Parsons from accepting any position in a school that requires him to hold a position of leadership or financial responsibility. This will inevitably prevent him from being employed as a principal for some time.

[111] Ms Brown invited us to impose the condition in a way that would enable Mr Parsons to return to a management position if he can satisfy the Teaching Council that he understands the financial responsibilities of the role. This was the approach the Tribunal took in *Witana*. However, there was no malfeasance by Mr Witana. Rather, he demonstrated a lack of financial prowess. That was not something that we found played a part in Mr Parsons' serious misconduct. We are satisfied that a complete prohibition, for three years, is required in light of Mr Parsons's dishonesty. This will meet the risk that he poses.

[112] We recognise that Mr Parsons is currently employed in a small rural school. Locating a substitute for the respondent at short notice may create hardship for that school. For that reason, we have decided to defer the commencement date of the suspension until the end of the fourth term in December 2020.

Costs

[113] The final determination regarding costs is delegated to the Deputy Chair.

[114] We direct that a schedule of the Tribunal's costs be prepared and provided to the respondent. The CAC is to file and serve a schedule of its costs on the respondent within 10 working days. The respondent then has 10 working days to file a memorandum, and any supporting evidence, in respect to costs.

Orders

[115] The Tribunal's formal orders under the Education Act are as follows:

(a) The respondent is censured for his serious misconduct pursuant to s 404(1)(b).

(b) Under s 404(1)(c), the following conditions are imposed on the respondent's practising certificate, which will apply for three years from the date of this decision:

i. Mr Parsons is to provide his current employer with a copy of this decision. Further, he is to inform any prospective employer of this proceedings and provide it with a copy of this decision.

ii. The respondent is not to hold a position of financial responsibility or leadership at any school, which includes any principalship or deputy principalship.

(c) Pursuant to s 404(1)(d), the respondent's practising certificate is suspended for 12 months, with the suspension to take effect from the earlier of either 20 December 2020, or when the fourth term at the school at which Mr Parsons is currently teaching ends.

(d) The register is annotated under s 404(1)(e) for three years.

Nicholas Chisnall
Deputy Chair

NOTICE

1 A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(2) or 404 of the Education Act 1989 may appeal to a District Court.

2 An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.

3 Section 356(3) to (6) apply to every appeal as if it were an appeal under section 356(1).