

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

DECISION NO: NZTDT 2022-51

UNDER THE Education and Training Act 2020

IN THE MATTER of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against **AMANDA MARGARET JILLIAN KLEIN** registered teacher (Registration Number 342303), of Te Kuiti

Hearing held on the papers on Friday, 10 November 2023

Tribunal: Jo Hughson (Deputy Chairperson),
Nikki Parsons and Celeste Harrington (registered teachers)

Shannon Hullett (Tribunal Coordinator)

Appearances: Rebecca Scott for the Complaints Assessment Committee

Mrs Klein

Decision: Thursday, 7 December 2023

Summary

- [1] Mrs Klein has been teaching for over 20 years. She was a qualified educator under the old points system before spending time at home with her children when they were preschoolers. Mrs Klein then re-trained and first registered as a teacher in 2013.¹
- [2] At the relevant time in July 2021, Mrs Klein had worked for six years as a teacher at Curious Keas in Piopio in the Waikato. Curious Keas is an Early Childhood Learning Centre with a roll of approximately 40 children, aged between 0 and 5 years. Curious Keas (the Centre) provides care for these children on two sides of the Centre. The Sparrows and Bluebirds side provides care for children aged between 0 and 3 years. The pre-school/Ngā Pukeko side provides care for children aged 3 to 5 years². Mrs Klein was a Team Leader of the Sparrows and Bluebirds.
- [3] Mrs Klein resigned from Curious Keas on 15 July 2021, with immediate effect and is not currently working as a teacher. However, the register shows she holds a current practising certificate which is valid until May 2025.
- [4] A Complaints Assessment Committee (CAC) was established to investigate matters about the conduct of Mrs Klein that were the subject of a mandatory report that the Centre had made to the Teaching Council of Aotearoa New Zealand on 22 July 2021. At the conclusion of its investigation, the CAC laid a charge³ alleging that Mrs Klein:
- a. On or about 13 July 2021, between approximately 3:45 pm and 4:45pm, left Child X asleep in a cot unattended while she went to the park with two other staff and children;
 - b. Acted dishonestly in respect of the incident involving Child X including by:
 - i. Falsely claiming that Child X was not left unattended when initially spoken to as part of the Centre's investigation; and/or

¹ Agreed Summary of Facts at [1].

² Agreed Summary of Facts at [2].

³ Notice of Charge dated 5 October 2022 signed by the Chair of the Complaints Assessment Committee, Lynda Harris.

- ii. Falsifying the sleep charts for Child X to show that Child X had been checked on between 3:45pm and 4:15pm, when Mrs Klein was at the park.

[5] This conduct, when the two particulars are considered separately or cumulatively, was alleged to amount to serious misconduct. Alternatively, it was alleged the conduct amounted to conduct which otherwise entitled the Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020 (the Act).

[6] The hearing proceeded on the papers. The evidence produced by the CAC was an agreed summary of facts which Mrs Klein had signed on 14 March 2023⁴. Mrs Klein accepted the charge and did not deny the gravity of the situation and the potential consequences that could have arisen. However, in a report supplementary to the agreed summary of facts, Mrs Klein explained what she described as “extenuating circumstances” surrounding her conduct on 13 July 2021. More is said about those matters below.

[7] Written submissions were received from Counsel for the CAC addressing the issue of liability, penalty, and non-publication orders. Mrs Klein filed brief written submissions on costs and name suppression and supporting character references to which Counsel for the CAC made written submissions in reply.

[8] The Tribunal found the Charge made out and that Mrs Klein’s amounted to serious misconduct (when the conduct in each of the particulars is considered individually and cumulatively), as that term is defined in section 10 of the Act.

[9] For the reasons given below, the decision of the Tribunal is that penalties should be ordered against Mrs Klein. The Tribunal is making an order of censure and an order suspending Mrs Klein’s practising certificate for six months. In addition, the Tribunal is ordering that there be a condition on Mrs Klein’s practising certificate after the period of suspension requiring her to undertake a suitable professional development course with a focus on ethics and professional behaviour, within six months; and that she be required to show any future employer in the education sector a copy of this decision (for 18 months).

[10] Mrs Klein is also being ordered to contribute towards the costs of the CAC and the Teaching Council associated with these proceedings.

⁴ Agreed Summary of Facts dated 14 March 2023 signed by Ms Klein.

- [11] The Tribunal decided it would not be proper to exercise its discretion and make a permanent order prohibiting Mrs Klein's name, or the Centre's name, from publication. There was insufficient evidence of private grounds that tip the scales away from the public interest factors which favour name publication when a teacher has been found guilty of a disciplinary offence. As the interim non-publication order that was made on 15 August 2023 in respect of Mrs Klein's name is not being made permanent⁵ her name may be published.
- [12] To protect the privacy interests of the child involved, there is to be a permanent non-publication order in respect of Child X's name. There is no public interest in Child X being named in connection with these proceedings. For the same reason, there is also to be a permanent non-publication order in respect of Mrs X, Child X's mother, and the name of Mrs Z who another mother of a child at the Centre who was named in the evidence.
- [13] No application was received for a non-publication order in respect of the name of the Centre, however the Tribunal considered whether it would be proper to make an order. The Tribunal reached the view that there were not sufficient grounds to make an order suppressing the name of the Centre.

Factual Findings

- [14] The Tribunal made the following findings of fact based on the evidence in the Agreed Summary of Facts⁶.
- [15] As noted, at of Tuesday, 13 July 2021, Mrs Klein was a Team Leader of the Sparrow and Bluebirds area of the Centre which cares for children ages 0 to 3 years. On that date, Mrs Klein was rostered on as the Person Responsible – primarily responsible for the day-to-day education and care, comfort, and health and safety of the children at Curious Keas. After 3.30pm, she was the only staff member rostered on in the Sparrows and Bluebirds side.

Child left unattended

- [16] On 13 July 2021, Child X was left in the care of the Centre. Child X was a child aged between 0 and 3 years at the time and her care was based out of the Sparrows and

⁵ Pre-Hearing Conference Minute – Conference held on 15 August 2023 at [5].

⁶ The Tribunal also had regard to some text messages between Mrs Klein and the Managing Director, Mrs Brough after the incident, diary entries/notes made by Mrs Klein and screenshots of Mrs Klein's handwritten letters to Mrs Brough in July 2021 including her resignation letter

Bluebirds side of the Centre. At about 2.30pm, Child X was placed in her cot in the sleep room by a staff member other than Mrs Klein. Child X fell asleep at about 2.35pm.

- [17] It was the responsibility of staff members finishing their shift who had put children in the sleep room, to let the remaining staff member know to continue the sleep checks.
- [18] Mrs Klein said that she twice attempted to get a handover from the staff member before they finished their shift but the staff member was on her mobile phone. Mrs Klein says she was not told there was a child asleep in the sleep room. In any event, Mrs Klein accepted that as the Person Responsible and the only member of the Sparrows and Bluebirds teaching team onsite from 3.30pm that she had ultimate responsibility for the Centre and the children in it.
- [19] At about 3.30pm there were five children (including Child X) in attendance at the Centre. Two other teachers who had duties during the day in the Ngā Pukeko side, wanted to take the children for a walk to the local park. Mrs Klein was the Person Responsible and she agreed the staff and children could go for the walk.
- [20] It was the practice at the Centre that the Person Responsible had to check off any children in the Centre before any spontaneous excursion. The *Spontaneous Excursions/Walks and Risk Matrix* cues the need for staff to check the roll against the children going on excursion.
- [21] Mrs Klein did not check the roll on the day sheet for 13 July 2021 against the children that were going on the excursion to the park. If she had checked the roll/day sheet, she would have realised there was another child in the Centre.
- [22] At approximately 3.45pm Mrs Klein, the two teachers and four other children went to the local park for a walk. Child X remained, unattended and asleep in her cot, in the Sparrows and Bluebirds sleep room.
- [23] At approximately 4.15pm, Child X's mother, Mrs X, arrived at the Centre to collect her daughter. She found Child X in her cot in the sleep room with no other staff or children present onsite. Another child's mother, Mrs Z, also arrived at the Centre just as Child X was discovered in her cot. Mrs Klein then arrived back at the Centre to find Mrs X holding her daughter, Child X.

Acted dishonestly

- [24] Mrs Klein initially told Child X's mother and Mrs Z that she had been in the office and that she had been checking gates and doors were locked when they had arrived. She said that she had checked Child X while she slept. Mrs Klein then altered the sleep room charts to record her initials against the five-minute intervals between 3.20pm and 4.30pm to indicate that she had been monitoring Child X in the sleep room during that period.
- [25] The following day, 14 July 2021, Child X's mother raised her concern that Child X had been left in bed while the staff and other children had gone to the park with the Managing Director (Stephanie Brough) of the Centre. An investigation was initiated by Mrs Brough.
- [26] When Mrs Brough asked the two other teachers who had gone to the local park for a walk, they said that Mrs Klein had stayed back with Child X. When Mrs Brough asked Mrs Klein about this, Mrs Klein said she had remained at the Centre while the others were at the park, that she was in the office and was checking the gates were locked and had been undertaking the monitoring of Child X in the sleep room.
- [27] However, the following morning on 15 July 2021, Mrs Klein contacted Mrs Brough and advised that she had in fact gone to the park. Mrs Klein expressed her feelings of guilt, shame and remorse and tendered her resignation. Mrs Klein explained that she had initially panicked at the enormity of the situation, and so blurted out that she had remained in the Centre (rather than gone to the park) and she had then altered the records.
- [28] The two other teachers who had gone to the local park also subsequently confirmed to Mrs Brough that they had initially lied, panicking, and seeking to protect Mrs Klein.
- [29] On 19 July 2021, Mrs Brough met with Mrs Klein and accepted her resignation.
- [30] Since this incident, Curious Keas has updated its policies and procedures documents to explicitly record tasks to be undertaken by the Person Responsible, including responsibility for checking off a spontaneous excursion.

Procedural history

- [31] On 22 July 2021, Mrs Brough filed a mandatory report with the Teaching Council. When she made her report, Mrs Brough noted that this is "absolutely out of character" for Mrs Klein with whom she described having had a working relationship

for over 21 years. Mrs Brough described Mrs Klein as “absolutely distraught, embarrassed and remorseful”.

[32] The Triage Committee of the Teaching Council on 6 September 2021 invited Mrs Klein to provide a response to the mandatory report. In response Mrs Klein acknowledged that she signed the sleep charts, saying this was in response to being in a state of shock that this incident had happened. She said in her 26 years teaching she had never had any incident of this nature happen while children have been in her care, and she acknowledged that her initial response to this incident damaged her credibility and the trust that Mrs Brough and the whānau at the Centre placed in her. She said that she did not ask the other two teachers to lie for her and she imagined that they too panicked at the enormity of the situation.

[33] The matter was referred to the CAC for investigation and the CAC determined to bring a charge, on 4 August 2022.

Legal Principles - Liability

[34] It was for the CAC to prove the Charge on the balance of probabilities.

[35] The definition of serious misconduct in section 10 of the Act is:

Serious misconduct means conduct by a teacher –

- (a) that-
 - (i) adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or
 - (ii) reflects adversely on the teacher's fitness to be a teacher; or
 - (iii) may bring the teaching profession into disrepute; and
- (b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.

[36] This test is conjunctive⁷. That means that at least one of the criteria under limb (a) as well as limb (b) must be met for conduct to amount to serious misconduct.

⁷ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64] with reference to the definition in section 378 of the Education Act 1989.

- [37] In relation to limb (1)(i)(a), “likely” means that the risk or possibility is one that is real; it must not be fanciful and one which cannot be discounted⁸.
- [38] Previous Tribunal decisions demonstrate that “fitness to be a teacher” in limb (a)(ii) includes conduct that, when considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the teacher and the teaching profession as a whole, including conduct which falls below the standards legitimately expected of a member of the profession, whether of a teaching character or not.⁹
- [39] As for conduct that may bring the teaching profession into disrepute in limb (a)(iii), the question to be asked by the Tribunal is whether reasonable members of the public, informed of all the facts and circumstances, could reasonably conclude that the reputation and good standing of the teaching profession would be lowered by the behaviour of the teacher concerned.¹⁰
- [40] In terms of the Teaching Council’s criteria for reporting serious misconduct (limb (b)), broadly, a teacher’s employer must immediately report to the Teaching Council if the employer has reason to believe the teacher has committed a serious breach of the Teaching Council’s Code of Professional Responsibility. The examples of conduct that is of the nature and severity to amount to a serious breach of the Code are set out in Rule 9 of the Teaching Council Rules 2016.
- [41] In this case, the CAC relied on Rules 9(1)(d), 9(1)(g) and 9(1)(k). Rule 9(1)(d) relates to a failure to protect a child or young person due to negligence or misconduct, not including accidental harm. Rule 9(1)(g) captures conduct that involves acting dishonestly in relation to a teacher’s professional role. Rule 9(1)(k) is a “catch all”

⁸ *CAC v Marsom* NZTDT 2018/25 adopting the meaning of “likely” in the name suppression context as described by the Court of Appeal in *R v W* [1998] 1 NZLR 35 – “real”, “appreciable”, “substantial” and “serious” are qualifying adjectives for “likely”.

⁹ This is the approach taken to “fitness to practise” for the purposes of the Health Practitioners Competence Assurance Act 2003, and the approach which has been taken to the test for “fitness to be a teacher”, by this Tribunal in previous decisions.

¹⁰ *CAC v Teacher C* NZTDT 2016/40 28 June 2018 at [203] citing *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]. This test was applied in *Teacher Y v Education Council of Aotearoa New Zealand*, above fn. 5 at [48].

provision¹¹ in relation to both acts and omissions that bring or are likely to bring the teaching profession into disrepute. The test is the same as for limb (a)(iii).

[42] Rule 9(2) is clear that the conduct in any paragraphs (a) to (e) and (k) may be a single act, or a number of acts forming part of a pattern of behaviour, even if some of the acts when viewed in isolation are minor or trivial.

[43] Personal factors raised by the teacher, including explanations for their conduct, may be considered at the penalty stage if a charge is found to have been established.¹² Subjective matters that are personal to the respondent teacher are not to be considered in any significant way when the Tribunal objectively assesses whether there has been serious misconduct.

Relevant standards

[44] When assessing Ms Klein's conduct against the criteria in the definition of serious misconduct, the Tribunal sought guidance from relevant standards of ethical and professional conduct set out in the Code of Professional Responsibility and Standards for the Teaching Profession, and as set and maintained by previous cases involving similar conduct.

[45] The high standards in the Code of Professional Responsibility are expected of every registered teacher.

[46] Clause 1 sets out the expectation that teachers are expected to demonstrate a high standard of professional behaviour and integrity (clause 1.3). By acting with integrity and professionalism, teachers, and the teaching profession, maintain the trust and confidence that learners, whānau, and the wider community place in them to guide their children and young people on their learning journey and keep them safe.¹³

[47] Clause 2.1 reads:

I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.

¹¹ *Teacher Y v Education Council of New Zealand* [2019] NZCA 637 at [69].

¹² See *Martin v Director of Proceedings* [2010] NZAR 333 and *Cole v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, at [126]-[130] applied in previous decisions of this Tribunal.

¹³ *CAC v Teacher Z* NZTDT 2020/19 at [26].

- [48] There are previous cases where the Tribunal has considered inadvertent neglect, by early childhood teachers leaving children under their care unattended, and which resulted in findings of “serious misconduct”. These cases provide an indication of the professional standards that are expected of teachers who are entrusted with the care of early childhood learners in an early childhood learning setting.
- [49] *Aiavao*¹⁴ involved a teacher leaving a two-year-old child alone and asleep for 15 minutes after closing up an early learning centre for the day. In *Lam-Sam-Tai*¹⁵ the teacher left a child alone, restrained in a car seat and locked in a van, for a period of four to six hours.
- [50] *Sharma*¹⁶ involved a teacher who had also falsified sleep records after having failed to check on children in a sleep room. Ms Sharma was a senior early childhood teacher who had not checked on children in the sleep room over a period of 45 minutes and then falsified the sleep check register with time records (eight records); that is, lying about her compliance with policies designed to keep children safe and subsequently falsifying the sleep check register.
- [51] In each of these cases the Tribunal found that the teacher’s conduct was serious misconduct.

Proof of allegations and findings on the Charge

- [52] The Tribunal was satisfied and found that the alleged acts in the Charge were proved, on the evidence received.
- [53] Mrs Klein accepted that her conduct was serious misconduct. However, the Tribunal was itself, required to consider whether the conduct was serious misconduct for the purposes of the Act.
- [54] The Tribunal concluded that considered objectively, Mrs Klein’s conduct in each of the particulars of the Charge did meet the test for serious misconduct.
- [55] The Tribunal accepted the following submissions of Counsel for the CAC in relation to Mrs Klein’s conduct leaving Child X unattended (particular (a)):

¹⁴ *CAC v Aiavao* NZTDT 2018-24, 16 April 2019.

¹⁵ *CAC v Lam-Sam-Tai* NZTDT 2017-18, 24 October 2017.

¹⁶ *CAC v Sharma* NZTDT 2018-51, 25 March 2019.

- (a) Mrs Klein's conduct in leaving Child X asleep and unattended was a fundamental failure of her duty of care towards children in the Centre. She failed to attend to the child's wellbeing and to follow proper check procedures intended to help prevent such an incident and designed to keep children safe.
- (b) The Education (Early Childhood Services) Regulations and the Licensing Criteria for Early Childhood Education and Care Services 2008 require early childhood centres to conduct sleep monitoring procedures. The procedures ensure that children are checked for warmth, breathing, and general wellbeing at least every 5 to 10 minutes, or more often according to individual needs. These procedures and policies are designed to keep children safe.
- (c) Similarly, it was the practice at Curious Keas that the Person Responsible had to check off any children in the Centre before any spontaneous excursion. The *Spontaneous Excursions/Walks and Risk Matrix* cues the need for staff to check the roll against the children going on an excursion.
- (d) Mrs Klein's conduct in leaving Child X asleep in a cot unattended while she went to the park with two other staff and children was negligence that put Child X at risk. Child X did not receive the required checks for warmth, breathing, and general wellbeing.
- (e) As a result of her failure to check off any children in the Centre before going on a spontaneous excursion, Child X was left alone and asleep in her cot inside the sleep room and was left unattended for half an hour. Had Child X's mother not arrived to collect her at 4.15pm, Child C could have been left unattended for longer. As Team Leader, the sole only member of the Sparrows and Bluebirds team left onsite after 3.30pm and as the rostered Person Responsible, Mrs Klein had ultimate responsibility for the Centre and the children in it.
- (f) Mrs Klein's conduct was likely to affect the wellbeing of Child X. Child X could have woken up and been distressed at any time after she was left alone. She was also left in the sleep room when the Centre was left unlocked and could have been accessed by anyone walking in off the street. Therefore, Child X's safety and security were compromised when she was unattended.

- (g) Mrs Klein's conduct may bring the teaching profession into disrepute. The public has an expectation that teachers in any learning environment will keep children and young people safe. A basic expectation of care in an early childhood facility is that very young children will not be left alone and unmonitored. Child X was under three years old. She was left alone and unattended for approximately half an hour before her mother arrived and found her. Reasonable members of the public informed of the all the facts could reasonably conclude that the reputation and good standing of the profession was lowered by Mrs Klein's conduct.
- (h) Limb 9(a) (i), (ii) and (ii) are met.
- (i) In terms of rules 9(1)(d) and (k) and limb (b):
 - a. Leaving a child alone and asleep in an unlocked childcare centre was a failure to protect to a child due to negligence.
 - b. Mrs Klein's conduct brings the teaching profession into disrepute.

[56] As the conjunctive test is met, it followed that particular (a) of the the Charge of serious misconduct was established.

[57] In relation to the allegation that Mrs Klein acted dishonestly, the Tribunal accepted the following submissions from the CAC (particular (b)):

- (a) Mrs Klein acted dishonestly in relation to her professional role by making a false claim to Child X's mother and to the Managing Director of Curious Keas, Mrs Brough when initially spoken to as part of the Centre's investigation. She claimed, falsely, that Child X was not left unattended. She then falsified the sleep room charts for Child X to indicate that Child X had been checked on between 3.45pm and 4.15pm, when Mrs Klein was at the park.
- (b) Mrs Klein falsified records designed to report on both the wellbeing of young children (by measuring sleep duration) and the performance of those charged with the care of those young children (by confirming the monitoring and checking of children in their care). Her actions in doing so were dishonest and lacked integrity.
- (c) Mrs Klein's conduct was also contrary to one of the four pillars that underpin the Teaching Council's Code of Professional Responsibility and

Standards for the Teaching Profession; that is, to act in a manner consistent with the value of *pono*, showing integrity by acting in ways that are honest, ethical, and just. Mrs Klein's dishonesty misled the parents of children at the Centre (Child X's mother and the mother of another child), as well as the Managing Director who had oversight and responsibility for investigating conduct occurring at the Centre. Dishonestly claiming that Child X was not left unattended inevitably undermined the trust and confidence of both the parents of children attending, and the management of the Centre.

- (d) Mrs Klein's conduct does not meet the expectations in the Code of Professional Responsibility to maintain public trust and confidence in the teaching profession by
- a. engaging in professional, respectful, and collaborative relationships with colleagues.
 - b. demonstrating a high standard of professional behaviour and integrity.
 - c. contributing to a professional culture that supports and upholds the Code.
 - d. respecting the vital role her learners' families and whānau play in supporting their children's learning by engaging in relationships with families and whānau that are professional and respectful.
 - e. respecting her trusted role in society and the influence she has in shaping futures by promoting and protecting the principles of human rights, sustainability, and social justice.
 - f. establishing and maintaining professional relationships and behaviours focused on the learning and wellbeing of each learner.
 - g. developing a culture that is focused on learning, and is characterised by respect, inclusion, empathy, collaboration, and safety:
 - i. managing the learning setting to ensure access to learning for all and to maximise learners' physical, social, cultural, and emotional safety.
 - ii. meeting relevant regulatory, statutory, and professional requirements.

- (e) The falsifying of records, potentially undermining the welfare of a young child, and undermining the trust and confidence of both the parents of children attending and management staff, was conduct that reflects adversely on Mrs Klein's fitness to be a teacher. This conduct may bring the teaching profession into disrepute. Limb (a) (ii) and (iii) are met.
- (f) Limb (b) is also met. Mrs Klein's conduct involved her acting dishonestly in relation to her professional role and involved acts and omissions that bring or are likely to bring the teaching profession into disrepute for the purposes of Rule 9(g) and (k).

[58] As the conjunctive test is met, it followed that particular (b) of the Charge of serious misconduct was established.

[59] The Tribunal had no difficulty concluding that the conduct in each of the particulars, when considered cumulatively, was serious misconduct.

Penalty

[60] Having made adverse findings of serious misconduct, the Tribunal was entitled to exercise its powers under section 500 of the Act. The Tribunal could do one or more of the things set out in section 500(1).

Penalty Principles

[61] It is well established that the primary purposes of the imposition of disciplinary penalties against teachers who have been found guilty of a disciplinary offence are to protect the public through the provision of a safe learning environment, maintain professional standards (through general and/or specific deterrence so that the public is protected from poor practice and from people unfit to teach), and maintain the public's confidence in the teaching profession¹⁷.

[62] In determining the appropriate penalty, the purpose is not to punish the teacher for their misbehaviour, although it may have that effect.

¹⁷ As discussed in *CAC v McMillan* NZTDT 2016/52 at [23] (Education Act 1989). This approach has continued to be endorsed as appropriate under the Education and Training Act 2020. For example, *CAC v Teacher* NZTDT 2022/10, 4 November 2022 at [28].

[63] The Tribunal's task is to identify the least restrictive option which meets the seriousness of the case and discharges the Tribunal's obligations to the public and the teaching profession.¹⁸

[64] In previous decisions the Tribunal has accepted as the appropriate sentencing principles those identified by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*¹⁹. His Honour identified eight factors as relevant whenever an appropriate penalty is being determined in proceedings of this nature. Those factors are:

- (a) What penalty most appropriately protects the public.
- (b) The Tribunal must be mindful of the fact that it plays an important role in setting professional standards.
- (c) Penalties imposed may have a punitive function.
- (d) Where it is appropriate, the Tribunal must consider rehabilitating the professional.²⁰
- (e) The Tribunal should strive to ensure that any penalty imposed is comparable to penalties imposed in similar circumstances.
- (f) It is important for the Tribunal to assess the practitioner's behaviour against the spectrum of sentencing options that are available. In doing so, the Tribunal must try to ensure that the maximum penalties are reserved for the worst offenders.
- (g) The Tribunal should endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- (h) It is important for the Tribunal to assess whether the penalty it is to impose is fair, reasonable, and proportionate in the circumstances presented to the Tribunal, or not.

¹⁸ *CAC v Teacher X* NZTDT 2020/33, 14 December 2020 at [33]-[34].

¹⁹ [2012] NZHC 3354 at [44]-[51].

²⁰ *CAC v Teacher* NZTDT 2016/55 at [30].

Findings on Penalty

Relevant considerations

[65] The Tribunal considered the relevant penalty principles including previous comparable cases, as well as the evidence it received including the written supplementary report, information, and submissions provided by Mrs Klein.

[66] The Tribunal was satisfied that it was appropriate to exercise its discretion and impose a formal penalty.

[67] As for relevant aggravating and mitigating factors, the Tribunal balanced the following factors:

Aggravating factors

- (a) The length of time Child X was left alone and unmonitored for basic safety risks, in a sleep room in a Centre that was unlocked.
- (b) Mrs Klein's role as team Leader of the Sparrows and Bluebirds (ages 0 to 3 years) at the Centre, and her rostered role on Tuesday, 13 July 2021 as the Person Responsible. It was Mrs Klein who had ultimate responsibility for the Centre and the children in it. It was Mrs Klein who was expected to check off the roll against the children going on an excursion and who agreed that the other staff and children could go for a walk to the park.

Mitigating Factors

- (c) The underlying act of leaving Child X unattended was inadvertent. Mrs Klein, in her report that was supplementary to the agreed summary of facts said it followed her two unsuccessful attempts to get a handover from the staff member who had initially put Child X in her cot. This incident highlights the importance of compliance with handover procedures, which Mrs Klein as a Team Leader, ought to have known. The teacher ought not to have been permitted to leave without completing a proper hand over process although it was accepted that the teacher left without Mrs Klein being aware she had gone.
- (d) Even if Child X's mother had not arrived at the Centre around 4.15pm, Mrs Klein and the other teachers returned to the Centre shortly after this. However, given Mrs Klein was not aware of the extra child, this would not likely have resulted in the checks being undertaken.

- (e) Despite her initial denials, from 15 July 2021 Mrs Klein has held herself responsible and has never denied the gravity of her conduct and the potential consequences which could have arisen. Less than 40 hours after Child X had been found unattended, she initiated contact with the Managing Director of the Centre and admitted that she had gone to the park. Mrs Klein expressed her feelings of guilt, shame, and remorse. She resigned. Mrs Klein explained that her panic at the enormity of the situation was why she had initially blurted out that she remained in the Centre and why she had altered the records.
- (f) There was no evidence to suggest that this incident was anything other than a one-off instance of inappropriate professional behaviour on one occasion, that amounted to serious misconduct.
- (g) Mrs Klein cooperated with the CAC's investigation throughout.
- (h) Mrs Klein has not previously appeared before the Tribunal and has no prior disciplinary history. As noted, when filing her mandatory report, the Managing Director of Curious Kids reported that Mrs Klein's conduct was "absolutely out of character" for Mrs Klein with whom she described having had a working relationship for over 21 years. The Managing Director described Mrs Klein as "absolutely distraught, embarrassed and remorseful".
- (i) Character references produced to the Tribunal²¹, including from previous and current employers, teaching colleagues, and from parents of children Mrs Klein has been their child's ECE teacher, attest to Mrs Klein's dedication, work ethic, and professionalism as a teacher; and to her positive and constructive approach to working in a teaching team, as well as to her integrity.
- (j) Mrs Klein has cooperated with and engaged in, the Tribunal's process, for which the Tribunal expresses its gratitude to her.

[68] The Tribunal noted that in her supplementary report, Mrs Klein stated that her actions occurred at a time [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]. Mrs Klein reported that because she preferred to separate her personal and professional roles, she had not made her employer (Curious Kids) aware of the seriousness of the situation for her at the time.

[69] A letter from Mrs Klein's GP at Te Kuiti Medical Centre (Dr David McLean) dated 5 August 2021 confirmed that Mrs Klein had consulted with him on 22 July 2021 and 30 July 2021 for mental health support for work stress associated with the conduct the Tribunal has reviewed. It was clear to the Tribunal that Mrs Klein sought professional assistance at the earliest opportunity and was genuinely distraught about what had occurred.

Discussion

[70] Cancellation of registration was not sought by the CAC, and nor was an order suspending Mrs Klein's practising certificate.

[71] The CAC sought an order of censure, annotation of the register, conditions on Mrs Klein's practising certificate requiring her attend an ethics and/or professional behaviour course and to show any prospective employer a copy of this decision, as well as costs orders.

[72] *Aiavao* and *Lam-Sam-Tai* are comparable to Mrs Klein's conduct in particular (a) (leaving a child unattended). In those cases the Tribunal made orders of censure, annotation of the register, a condition that the teachers show any employer a copy of the Tribunal decision, and costs orders. Like Mrs Klein, Ms Aiavao's tendered resignation was accepted as a result of the incident. Ms Lam-Sam-Tai was demoted but her employment was not terminated.

[73] Mrs Klein's conduct had the added feature not present in those cases, in that subsequently she dishonestly falsified the sleep room charts immediately after it was discovered that Child X had been left unattended in the sleep room. In *Sharma*, which has similarities, the Tribunal ordered cancellation of Ms Sharma's registration.

[74] The Tribunal accepted the CAC's submission that there are features in Ms Sharma's case which distinguish the conduct from Mrs Klein's:

- (a) Ms Sharma's falsification of the sleep check register and lying about her compliance with policies designed to keep children safe was only one aspect of her behaviour that amounted to serious misconduct.

- (b) Ms Sharma also left her teaching team out of ratio on two occasions, failed to engage with colleagues respectfully and professionally on three occasions, and then engaged in a fraudulent strategy to obtain employment at a different early childhood centre by falsifying her resume, arranging for the provision of false references, and misrepresenting her previous employment. The Tribunal considered that the most serious aspect of Ms Sharma's behaviour was her dishonest conduct towards her prospective employer.
- (c) Ms Sharma's conduct was not a one-off incident of dishonesty relating to one incident. It spanned a period of months and involved numerous intentional acts of dishonesty and different contexts in which she was willing to lie.
- (d) The Tribunal did not accept that the dishonesty underpinning Ms Sharma's behaviour was out of character, or that there would be no repetition. The Tribunal was concerned that she had insufficient insight into the causes of her behaviour.

[75] It was accepted by the CAC that Mrs Klein's dishonesty related to only one incident and was reportedly "absolutely out of character" for a woman who had been teaching for more than twenty years without any incident.

[76] Further, that there are indications that Mrs Klein has insight into the cause and effects of her behaviour. In this regard, Mrs Klein initiated contact with the Managing Director of the Centre the day after she had spoken with her to correct the record and confirm that she had gone to the park. She tendered her resignation and expressed guilt, shame and remorse to the Managing Director, and explained that her panic at the enormity of the situation was why she initially blurted out that she had remained in the Centre and why she had altered the records.

[77] These matters do tend to suggest that Mrs Klein's dishonesty was a "one-off", and that it was short-lived. They distinguish Mrs Klein's conduct from Ms Sharma's conduct and led the Tribunal to conclude that Mrs Klein's dishonest can be properly characterised as likely a lapse of judgement.

[78] However, the Tribunal was concerned by Mrs Klein's submission that her "initial kneejerk reaction was to protect the integrity of the centre and staff, including herself". The Tribunal accepted the CAC's submission that this shows insufficient insight or remorse into the seriousness of her conduct in attempting to conceal that

she had left a child unattended in the Centre and her subsequent falsification of the sleep chart. Mrs Klein had the opportunity to be honest to Child X's mother and the other parent who had arrived to find the Centre unattended, but she dishonestly told them that she had been in the office when they arrived; and that she had been checking on Child X when she was asleep. Mrs Klein then falsified the sleep records to cover up that dishonesty. The next morning Child X's mother raised concerns with the Managing Director that despite Mrs Klein's explanation, she believed that Child X had been left in bed unattended and an investigation was initiated. The Managing Director then asked Mrs Klein whether she had stayed back with Child X and Mrs Klein repeated the falsehood that she had remained at the Centre monitoring Child X in the sleep room. It was not until the following morning, on 15 July 2021, that Mrs Klein contacted the Managing Director and advised that she had in fact gone to the park, explaining that she had initially panicked at the enormity of the situation, misled and lied to the parents, altered the sleep records and then lied to the Managing Director when she had first raised the issue with her the next day.

[79] The Tribunal accepted that there may have been initial panicking and "knee jerk" reaction to the situation, however the reality is that Mrs Klein had several opportunities to come clean and be honest about the situation and she did not. Mrs Klein's repeated dishonesty directly misled the parents of the children at the Centre, and the Managing Director. That dishonesty led to the inevitable undermining of the trust and confidence of both the parents of children attending and the management of staff at Curious Keas and reflects adversely on Mrs Klein's fitness to teach as well as brings the teaching profession into disrepute. This is a relevant consideration in terms of penalty imposition, in the Tribunal's view.

[80] The Tribunal noted the character reference from the Manager of Creative Kids Preschool, Te Kuiti, dated 30 August 2023 which evidences that Mrs Klein was employed as a Relieving Qualified Teacher in June/July 2022 to cover sick staff. Mrs Klein had been employed as an Early Childhood Educator at the Centre from the beginning of 2009 to September 2010. The Manager stated that she has always found Mrs Klein to be a positive and constructive team member who always formed positive working relationships with colleagues in that centre; and, significantly, that she would welcome Mrs Klein back within their small team of dedicated teachers at any time in the future if she chooses to, "as we have found her above reproach in all she does and gives, she is truly a value to any team she chooses to join."

Penalty

- [81] The Tribunal did not consider that cancellation was a fair, reasonable, and proportionate penalty here.
- [82] The Tribunal had regard to the penalties that were imposed in the comparable cases referred to above. The Tribunal considered that because Mrs Klein's conduct involved more than just her having left a child unattended in a sleep room in that it also involved dishonesty through false statements and the falsification of records, her conduct was more in the nature of Ms Sharma's conduct (albeit there were distinguishing features (as noted)) which resulted in cancellation of the teacher's registration.
- [83] The Tribunal concluded that the least restrictive penalty which meets the seriousness of the case and discharges the Tribunal's obligations to the public and the teaching profession, are as follows:
- (a) An order of censure pursuant to section 500(1)(b).
 - (b) The suspension of Mrs Klein's practising certificate for 6 months pursuant to section 500(1)(d).
 - (c) The imposition of conditions on Mrs Klein's practising certificate after the period of suspension has ended, requiring her to undertake a professional development course with a focus on ethics and professional behaviour (within 6 months) and to show a copy of this decision to any future employer in the education sector (for a period of 18 months).
- [84] The order of censure is being made under section 500(1)(b) to mark the Tribunal's disquiet and disapproval of Mrs Klein's serious misconduct, and to maintain professional standards.
- [85] The order of suspension is being imposed to maintain professional standards and to maintain the public's confidence in the teaching profession. The Tribunal considered that without such an order, the overall penalty would not be a proportionate response to what was highly serious misconduct, albeit that it was a one-off incident for which the teacher has some insight and has expressed remorse.
- [86] The conditions are to be imposed to protect the public and provide assurance that there are no concerns about Mrs Klein's fitness to be an early childhood teacher. There is also a rehabilitative element. Mrs Klein may wish to use the six months

when her practising certificate will be suspended, to undertake and complete the professional development course contemplated by the condition to be imposed, but ultimately that is a matter for her.

[87] The Tribunal wishes to record that it considers that Mrs Klein would be a loss to the teaching profession given her significant (20 plus years) experience as a teacher, and her prior unblemished record, were she elect not to resume teaching practice after her period of suspension. There is a public interest in an experienced teacher like Mrs Klein returning to teach, and the Tribunal hopes that when she has completed the professional development she will be required to undertake as above, Mrs Klein can put this unfortunate matter behind her and move forward.

Costs

[88] It is usual for an award of costs to be made against a teacher once a disciplinary charge is established. A teacher who comes before the Tribunal should expect to make a proper contribution towards the reasonable costs that have been incurred, to avoid the need for the profession as a whole to meet all the costs.

[89] Costs are at the discretion of the Tribunal and may be awarded under section 500(1)(h) (any party to pay costs to any other party) and section 500(1)(i) (Teaching Council costs of conducting the hearing).

[90] The CAC sought costs in respect of its investigation and prosecution, noting the general rule that where a charge is found proved, the starting point is 50% of the CAC's costs.²² The general legal principles which apply to costs include, but are not limited to, that costs are not in the nature of a penalty or to punish, the practitioner's means should be taken into account, and the level of costs should not deter other practitioners from defending a charge.

[91] In cases where the charge has been heard on the papers (where the teacher has admitted a charge and fully cooperated in bringing the matter to an end), these typically attract a costs order in the region of 40% of the costs and expenses incurred by the CAC (exclusive of GST).

[92] The CAC's costs (investigation and prosecution) were indicated to be \$8,898.94 exclusive of GST, which the Tribunal considered were reasonable.

²² Practice Note of the Teachers Disciplinary Tribunal, Practice Note 1: Costs, 1 April 2022 at [4].

- [93] In her supplementary report Mrs Klein noted that since leaving the Centre she had had to seek employment in a “less remunerative” position and is currently working in front line retail. She stated that her drop in income has placed her family in financial hardship. She indicated, however, that she has had offers from other early childhood and new entrants centres but her integrity has prevented her from considering these positions before this matter is resolved.
- [94] In her submissions, Mrs Klein submitted that her initial offer to resign was not accepted by the Managing Director and that she was paid her holiday and sick pay during this time. She did not seek alternative employment whilst she was trying to work toward a resolution with the Centre and after her holiday entitlement was exhausted the country went into COVID-19 lockdown. She was then left without any income for six months and no alternative employment options which caused disadvantage and distress. Mrs Klein indicated she would need to appraise how she could manage any “financial charges” made by the Tribunal.
- [95] In this case, the Tribunal considered that an order that Mrs Klein make a 40% contribution to the CAC’s costs as claimed, would be reasonable and appropriate. This takes account of Mrs Klein’s acceptance of liability and agreement to proceed with a hearing on the papers with the benefit of an agreed summary of facts, as well as the indication she has given of her current financial situation (albeit that this was not in the form of a declaration of financial means or affidavit, which is the Tribunal’s usual expectation).
- [96] Accordingly, the Tribunal is making an order pursuant to section 500(1)(h) that Mrs Klein is to pay the sum of \$3,600.00 (exclusive of GST) to the CAC²³.
- [97] As for the costs of conducting the hearing, the Tribunal is making an order that Mrs Klein make a 40% contribution towards those costs (estimated to be \$1,455 exclusive of GST²⁴), being payment of the sum of \$582.00 to the Teaching Council. This order is made under section 500(1)(i).
- [98] If Mrs Klein wishes to enter a payment arrangement in respect of these costs, then she should take that up with the Teaching Council.

²³ Costs Schedule of the CAC dated 31 October 2023 signed by Counsel for the CAC.

²⁴ Schedule of Teaching Council’s Costs for the hearing.

Non-publication orders

[99] Mrs Klein sought a permanent order prohibiting the publication of her name and identifying particulars.

[100] Prior to the hearing an interim order was in effect in respect of the name of Child X.

[101] No application was received from Curious Kids in respect of the Centre's name.

Summary of relevant law

[102] The starting point when considering applications for non-publication orders is the principle of open justice. In a professional disciplinary context, the principle of open justice maintains public confidence in the relevant profession through the transparent administration of the law.²⁵ In previous cases, the Tribunal has endorsed the statement of Fisher J in *M v Police*²⁶ at [15]:

In general, the healthy winds of publicity should blow through the workings of the Court. The public should know what is going on in their public institutions. It is important that justice should be seen to be done. That approach will be reinforced if the absence of publicity might cause suspicion to fall on other members of the community, if publicity might lead to the discovery of additional evidence or offences, or if the absence of publicity might present a defendant with an opportunity to reoffend.

[103] The Tribunal's jurisdiction to make non-publication orders is found in section 501(6) of the Act. An order can only be made under section 501(6) (a) to (c) if the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.

[104] When considering whether it is proper for the open justice principle to yield, the Tribunal needs to strike a balance between the public interest factors and the private interests advanced by the applicant. A two-step approach is usually followed by the Tribunal the first step of which is a threshold question, requiring deliberative judgement by the Tribunal whether, having regard to the various interests, it is

²⁵ *CAC v Teacher* NZTDT 2016/27 at [66].

²⁶ *M v Police* (1981) 8 CRNZ 14 at [15] cited in *CAC v Howarth* NZTDT 2019/87, January 2021 at [57].

“proper” to make a non-publication order. If the Tribunal concludes it is, then at the second stage the Tribunal may exercise its discretion and make the order sought.²⁷

[105] “Proper” sits below “exceptional” which is required in the criminal jurisdiction in the Courts and is more aligned with “desirable” which is what is required under the Health Practitioners Competence Assurance Act 2003.

[106] When deciding whether it is “proper” to make a non-publication order, the Tribunal must carefully evaluate the respective interests (private and public). The Tribunal’s principal objectives of protecting the public, maintaining professional standards, and maintaining public confidence in the teaching profession, are relevant to the balancing exercise. Suppression of the name of a teacher who has been found guilty of serious misconduct has the potential to erode public trust and confidence in the teaching profession.

[107] The relevant public interests to be evaluated are:

- (a) Openness and transparency of disciplinary proceedings
- (b) Accountability of the disciplinary process. The disciplinary process needs to be accountable so that members of the public and the profession can have confidence in it.
- (c) The public interest in knowing the identity of a teacher charged with a disciplinary offence.
- (d) The importance of freedom of speech and the right enshrined in section 14 of the New Zealand Bill of Rights Act 1990.
- (e) Unfairly impugning other teachers.

[108] The public interest in knowing the identity of a teacher charged with a disciplinary offence includes the right to know about proceedings affecting a teacher, but also the protection of the public and their right to make an informed choice about the extent to which they engage with or interact with the teacher.

²⁷ *CAC v Teacher NZTDT 2016/27* at [61]; recently referred to in *CAC v Howarth* (above).

[109] In *Dr Tonga v Director of Proceedings*²⁸ the High Court, on the issue of permanent name suppression under the Health Practitioners Competence Assurance Act 2003 following an adverse disciplinary finding, made the following point:

[F]ollowing an adverse disciplinary finding more weighty factors are necessary before permanent suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding has been made, the probability must be that public interest considerations will require that the name of the practitioner be published in a preponderance of cases. Thus, the statutory test of what is 'desirable' is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may incline in favour of the private interest of the practitioner. After the hearing, by which time the evidence is out and findings have been made, what is desirable may well be different, the more so where professional misconduct has been established.

[110] The Tribunal considered those same points can be made in respect of what is "proper" where a charge of serious misconduct by a teacher has been established.

[111] As for private interests, Gendall J in *Anderson v PCC*²⁹ agreed with Panckhurst J's statement in *Dr Tonga* as follows:

[36] Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interests such as protection of the public, maintenance of professional standards, both openness and 'transparency' and accountability of the disciplinary process, the basic value of freedom to receive and impart information, the public interest knowing the identity of a practitioner found guilty of professional misconduct, the risk of other doctors' reputations being affected by suspicion, are all factors to be weighed on the scales.

[37] Those factors were also referred to at some length in the Tribunal. Of course, publication of a practitioner's name is often seen by the practitioner to be punitive, but its purpose is to protect and advance the public interest by ensuring that it is informed of the disciplinary process and of practitioners who may be guilty of malpractice or professional misconduct. It reflects also the principles of openness of such proceedings, and freedom to receive and impart information.

²⁸ High Court, 21 February 2006, CIV-2005-409-002244, Panckhurst J.

²⁹ *Anderson v PCC of the Medical Council of New Zealand* CIV 2008-485-1646, 14 November 2008, Gendall J.

Mrs Klein's application

- [112] Mrs Klein submitted that the public's "right to know" needs to be balanced against other interests, including that she accepted the penalty proposed by the CAC. Further, that her daughter also works in local early childcare and Mrs Klein is concerned the publication of her name may unduly affect her daughter's employment options going forward. It was submitted by Mrs Klein this is particularly pertinent in a small community where the number of childcare services is limited. Mrs Klein is also concerned about the potential for cyberbullying to occur.
- [113] The Tribunal considered that there is no proper basis, evidentially or otherwise, to displace the principle of open justice and order that Mrs Klein's name is not to be published.
- [114] No information was provided as to whether Mrs Klein's daughter has the same surname as Mrs Klein or whether publication of Mrs Klein's name would in fact have any bearing or adverse impact on her daughter's employment prospects. For that reason, there was insufficient evidence to enable the Tribunal to be satisfied that the consequences relied on would be likely to follow if a non-publication order was not made. There is insufficient evidence of an appreciable or real risk that Mrs Klein's daughter's employment options in local early childcare would be affected by Mrs Klein's name being published.
- [115] As for Mrs Klein's submission that she has concerns about the potential for cyberbullying, the Tribunal was of the view that having a concern about this potential is not sufficient to enable it to conclude that there is any appreciable or real risk that that cyberbullying would be a consequence if Mrs Klein is named in connection with these proceedings.
- [116] Balancing these private interests raised by Mrs Klein with the relevant public interest factors, the Tribunal concluded that on the material Mrs Klein has provided there is no basis on which it could determine it would be proper for the presumption in favour of open justice to yield and for there to be a permanent non-publication order. The matters Mrs Klein has raised are ordinary hardships and expected consequences of her having been found guilty of serious misconduct, for which her practising certificate is being suspended (and other penalties are being imposed).
- [117] The Tribunal was of the view that it is not likely there will be adverse consequences for Mrs Klein beyond the expected level of embarrassment or discomfort were her name to be published.

[118] For those reasons the Tribunal did not consider it proper to make a permanent order. Mrs Klein's name may be published.

[119] However, the Tribunal decided it would be proper to permanently suppress the health information in paragraph [68] [REDACTED] for privacy reasons. There will be an order accordingly.

Child X

[120] The Tribunal considered the interests of Child X and her mother. The Tribunal considered it would be proper to permanently suppress the name of Child X and her mother (Mrs X), who were named in the evidence, to protect their privacy and wellbeing interests. There is no public interest in the names of the child and her mother being published in connection with Mrs Klein's offending. Accordingly, the interim order in respect of Child X will be made permanent, and there will also be an order permanently suppressing her mother's name.

[121] The age of Child X at the time may be published as this is a relevant detail that places the offending in its proper context. The Tribunal did not consider that publication of this detail would likely risk identifying the child beyond those who are already aware of the incident.

[122] For privacy reasons, there will also be a permanent order suppressing the name of Mrs Z who was the other mother who arrived at the Centre just as Child X was discovered in her cot.

The Centre

[123] Although no application was made for suppression of the Centre's name, the Tribunal considered the interests of the Centre. It decided that it would not be proper to suppress the name of the Centre, particularly as Mrs Klein is to be named such that there would be no utility in making an order.

[124] The Tribunal does not consider it likely that the Centre will suffer adverse effects beyond general disruption or fallout for the Centre which would displace the principle of open justice.

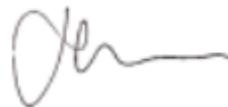
Conclusion and Orders

[125] The Charge is established. Ms Klein is guilty of serious misconduct.

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

- (a) Ms Klein is censured, pursuant to section 500(1)(b).
- (b) Mrs Klein's practising certificate is suspended for six months, pursuant to section 500(1)(d).
- (c) The following conditions are to be imposed on Mrs Klein's practising certificate pursuant to section 500(1)(c) to apply from the date the period of suspension ends:
 - i. Mrs Klein is to undertake a professional development course with a focus on ethics and professional behaviour within 6 months, to the satisfaction of the Teaching Council; and
 - ii. Mrs Klein is required to show a copy of the Tribunal's decision to any future employers in the education sector.
- (d) Mrs Klein is to pay \$3,600 to the CAC as a contribution to its costs, pursuant to section 500(1)(h),
- (e) Mrs Klein is to pay \$582.00 to the Teaching Council in respect of the costs of conducting the hearing, pursuant to section 500(1)(i).
- (f) There are to be permanent orders under section 501(1)(6) prohibiting from publication:
 - a. The name of Child X and her mother, Mrs X.
 - b. The name of parent Mrs Z.
 - c. The health information relating to [REDACTED] at paragraph [68] of this decision.

**Dated at Wellington this 7th day of
December 2023**



Jo Hughson
Deputy Chairperson

NOTICE

- 1 The teacher who is the subject of a decision by the Disciplinary Tribunal made under section 500 of the Education and Training Act 2020 may appeal against that decision to the District Court (section 504(1)).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 500 (section 504(2)).
- 3 An appeal under section 504 must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows (section 504(3)).
- 4 Clause 5(2) to (6) of Schedule 3 applies to an appeal under section 504 as if it were an appeal under clause 5(1) of Schedule 3.

IN THE MATTER OF the Education and Training Act 2020

AND

IN THE MATTER OF an inquiry by the New Zealand Teachers Disciplinary
Tribunal of the Teaching Council of Aotearoa New
Zealand into the conduct of Amanda Margaret Jillian
Klein of Piopio, Teacher (Registration Number 342303)

AGREED SUMMARY OF FACTS

1. Mrs Klein has been teaching for over twenty years. She was a qualified educator under the old points system before spending some time at home with her children while they were pre-schoolers. She then retrained and has been a registered teacher since 2013. Mrs Klein lives in Te Kuiti where—until July 2021—she worked for six years as a teacher at Curious Keas Limited (Curious Keas). Curious Keas is located in the small town of Piopio.
2. Curious Keas is an Early Childhood Learning Centre in Piopio, Waikato. It has a roll of approximately 40 children, aged between 0 and 5 years. Curious Keas provides care for these children on two sides of the Centre. The Sparrows and Bluebirds side provides care for children aged between 0-3 years. The pre-school/Nga Pukeko side provides care for children aged 3-5 years.
3. Mrs Klein is not currently working as an early childhood teacher. She resigned from Curious Keas on 15 July 2021, with immediate effect.
4. At the time of the events outlined below in July 2021, Mrs Klein was a Team Leader of the Sparrows and Bluebirds (ages 0-3) at Curious Keas. On 13 July

2021, she was rostered on as the Person Responsible – primarily responsible for the day-to-day education and care, comfort and health and safety of the children at Curious Keas. After 3.30pm, she was the only staff member rostered on in the Sparrows and Bluebirds side.

Child left unattended

5. On Tuesday 13 July 2021, [REDACTED] was left in the care of Curious Keas. [REDACTED] was a child aged between 0-3 years at the time and her care was based out of the Sparrows and Bluebirds side of Curious Keas. At about 2.30pm, [REDACTED] was placed in her cot in the Sparrows and Bluebirds sleeping room by a staff member other than Mrs Klein. [REDACTED] fell asleep at about 2.35pm.
6. While [REDACTED] remained sleeping, the teacher who had put [REDACTED] to sleep and who had been completing regular sleep checks on [REDACTED] finished their rostered shift at about 3.30pm.
7. It was the responsibility of staff members finishing their shift who had put children in the sleep room, to let the remaining staff member know to continue the sleep checks.
8. Mrs Klein said that she twice attempted to get a handover from the staff member before they finished their shift but the staff member was on her mobile phone. Mrs Klein says she was not told there was a child asleep in the sleep room. In any event, Mrs Klein accepts that as the Person Responsible and the only member of the Sparrows and Bluebirds teaching team onsite from 3.30 pm that she had ultimate responsible for the Centre and children in it.
9. At 3.30pm on 13 July 2021 there were five children (including [REDACTED]) in attendance at Curious Keas. Two other teachers, who had duties during the day in the Nga Pukeko side, wanted to take the children for a walk to the local park. Mrs Klein was the Person Responsible and she agreed the staff and children could go for the walk.

9. It was the practice at Curious Keas that the Person Responsible had to check off any children in the center before any spontaneous excursion. The *Spontaneous Excursions / Walks and Risk Matrix* cues the need for staff to check the roll against the children going on excursion.
10. Mrs Klein did not check the roll on the day sheet for 13 July 2021 against the children that were going on the excursion. If she had checked the roll/day sheet, she would have realised that there was another child in the Centre.
11. At approximately 3.45pm Mrs Klein, the two teachers and four other children went to the local park for a walk. [REDACTED] remained, unattended and asleep in her cot, in the Sparrows and Bluebirds sleeping room.
12. At approximately 4.15pm [REDACTED] mother, [REDACTED] arrived at Curious Keas to collect her daughter. She found [REDACTED] in her cot in the Sparrows and Bluebirds sleep room with no other staff or children present. Another child's mother, [REDACTED] also arrived at Curious Keas just as [REDACTED] was discovered in her cot. Mrs Klein then arrived back at Curious Keas to find [REDACTED] holding [REDACTED]

Acted dishonestly

12. Mrs Klein initially told [REDACTED] mother and [REDACTED] that she had been in the office and that she had been checking gates and doors were locked when they had arrived. She said that she had checked [REDACTED] while she slept. Ms Klein then altered the sleep room charts to record her initials against the five-minute intervals between 3.20 and 4.30pm to indicate that she had been monitoring [REDACTED] in the sleep room during that period.
13. The following day, [REDACTED] mother raised her concern that [REDACTED] had been left in bed while the staff and other children had gone to the park with the Managing Director (Stephanie Brough) of Curious Keas the following morning. An investigation was initiated by Mrs Brough.

14. When Mrs Brough asked the two other teachers who had gone to the local park for a walk, they said Mrs Klein had stayed back with [REDACTED]. When Mrs Brough asked Mrs Klein about this, Mrs Klein said she had remained at Curious Keas while the others were at the park, that she was in the office and was checking the gates were locked and had been undertaking the monitoring of [REDACTED] in the sleep room.
15. However, the following morning on 15 July 2021, Mrs Klein contacted Mrs Brough and advised that she had gone to the park. Mrs Klein expressed her feelings of guilt, shame and remorse and tendered her resignation. Mrs Klein explained that she had initially panicked at the enormity of the situation, and so blurted out that she had remained in the center (rather than gone to the park) and then altered the records.
16. The two other teachers who had gone to the local park for a walk also subsequently confirmed to Mrs Brough that they had initially lied, panicking and seeking to protect Mrs Klein.
17. On 19 July 2021, Mrs Brough met with Mrs Klein and accepted her resignation.
18. Since this incident, Curious Keas has subsequently updated its policies and procedures documents to explicitly record tasks to be undertaken by the Person Responsible, including responsibility for checking off a spontaneous excursion.

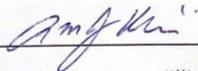
Procedural history

19. On 22 July 2021 Mrs Brough filed a mandatory report. When she made her report, Mrs Brough noted that this is "absolutely out of character" for Mrs Klein with whom she described having had a working relationship with for

over 21 years. Mrs Brough described Mrs Klein as “absolutely distraught, embarrassed and remorseful”.

20. The Triage Committee of the Teaching Council of Aotearoa New Zealand on 6 September 2021 invited Mrs Klein to provide a response to the mandatory report that had been filed with it. In response Mrs Klein acknowledged that she signed the sleep charts, saying this was in response to being in a state of extreme panic and shock that this incident had actually happened. She said in her 26 years teaching she has never had any incident of this nature happen while children have been in her care and acknowledged that her initial response to this incident damaged her credibility and the trust that Mrs Brough and the families at Curious Keas placed in her. She said that she did not ask the two other teachers to lie for her and she imagined that they too panicked at the enormity of the situation.
21. The Complaints Assessment Committee met on 4 August 2022. It concluded that Mrs Klein’s conduct may possibly constitute serious misconduct and accordingly referred the matter to the Teachers Disciplinary Tribunal under s 497(5) of the Education and Training Act 2020.

I, Amanda Margaret Jillian Klein, agree that the facts set out in this Summary of Facts are true and correct.



Amanda Margaret Jillian Klein

Dated the day of November 2022