

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Kay Joy Flowers

NZTDT 2018-19

Teacher Kay Flowers was referred to the Disciplinary Tribunal after failing to report her convictions of wilful omission and making a false statement. In 2013 she failed to inform the Ministry of Social Development about her starting paid work while on the Domestic Purposes Benefit.

The result: The Tribunal imposed a censure, annotation of the register and imposed a condition on that Ms Flowers inform future employers of the convictions and the Tribunal decision for a period of two years.

On 4 July 2019 the Tribunal released its decision following a hearing on the papers. Ms Flowers was on the Domestic Purposes Benefit in 2012 and signed a document agreeing to immediately advise the Ministry of Social Development (MSD) if there was a change in her work situation. As a result of MSD data matching it was found out that Ms Flowers worked as a relief teacher from December 2011 to July 2013. Ms Flowers did not inform MSD about this work. As part of MSD's investigation process, it was determined that Ms Flowers was overpaid approximately \$20,000. Ms Flowers informed the Education Council (now the Teaching Council) that she was charged but failed to report her convictions.

Ms Flowers did not deny that the incidents occurred. In her written response to the Tribunal she gave an overview of her difficult personal circumstances leading up to the incidents, writing her life was tough with "no good, only bad and worse". Ms Flowers also provided a character reference from the school that she was currently employed at.

The CAC submitted that the appropriate penalty should be censure, annotation and conditions. The CAC noted that any teacher convicted of fraud is at risk of losing their registration and serious dishonesty by definition raises an issue about a teacher's fitness to teach. The CAC submitted that the offending relates to a significant amount of money and occurred over an extended period of time while she was teacher. However, in mitigation the CAC also noted that Ms Flowers had expressed remorse, pleaded guilty, and had been cooperative throughout the CAC and Tribunal process.

In Ms Flowers' she submission accepted her conduct and the CAC's proposed penalty, although she sought a shorter length of time for the condition.

The Tribunal found that the offending crossed the threshold for serious misconduct as it was deliberate, involved a significant amount of money and was sustained offending over a period of time. However, the Tribunal noted that this was not a case of fraud for the sake of greed and there were contextual explanations for Ms Flowers' offending. The Tribunal considered there was a clear rehabilitative path for Ms Flowers and that she was capable of making significant contributions to her school and community.

The Tribunal decided that this was not a case which required cancellation and instead imposed a censure, annotation of the register and a condition to report the conviction and Tribunal decision for two years.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018/19

UNDER the Education Act 1989

IN THE MATTER of a referral of convictions by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

AND **Kay Joy Flowers, registered teacher, teacher registration 198477**

Respondent

DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

HEARING: 24 October 2018 (on the papers)

TRIBUNAL: John Hannan (Deputy Chair), Stuart King, David Spraggs

DECISION: 4 July 2019

COUNSEL: Claire Paterson for Complaints Assessment Committee
Janette Andrews (NZEI) for Respondent

Introduction

1. By Notice of Referral dated 7 June 2018 the Complaints Assessment Committee (CAC) has in accordance with Section 401(3) of the Education Act 1989 referred convictions for Wilful Omission and Making a False Statement to the Disciplinary Tribunal.
2. On 3 September 2014, the respondent was convicted and sentenced in the District Court at Waitakere of two offences pursuant to s 127 of the Social Security Act 1964, being:
 - Wilful Omission; and
 - Making a False Statement.
3. The respondent did not report the above convictions to the Education Council (as it was then) as she was required to do.
4. The CAC considers that the convictions warrant action by the Disciplinary Tribunal.

Agreed Summary of Facts

5. A summary of fact has been agreed as follows.

*1. On 3 September 2014, **KAY JOY FLOWERS** (Ms Flowers) was convicted and sentenced in the District Court at Waitakere of two offences pursuant to section 127 of the Social Security Act 1964, being Wilful Omission (x 1) and Making a False Statement (x 1).*

2. Ms Flowers pleaded guilty to a summary of facts (annexed). The summary of facts for this offending was as follows:

On 09 January 2012 the Defendant applied for a Domestic Purposes Benefit. This was granted on 28 December 2011.

On signing the application for benefit the Defendant agreed to immediately advise the Ministry if there were any changes to her circumstances that may affect her entitlement to benefit including if she had a change in work situation, such as starting employment.

As a result of information matching with the Department of Inland Revenue it was established that the Defendant commenced work for the Ministry of Education as a Relief Teacher from 25 December 2011 to 09 July 2013. The Defendant did not advise the Ministry of this change in her circumstances.

On 20 November 2012 the Defendant submitted an application for review to her entitlement benefit. On this form the Defendant stated that she was not working or receiving any other income other than her benefit in the last 12 months.

The Defendant was interviewed regarding the matter on 01 November 2013 and stated she was aware of her obligations, however, had not advised that she was working because she needed the money to pay for her bills.

As a result of the offending the Defendant received an overpayment of benefit during the period 28 December 2011 to 14 July 2013 as follows:

Domestic Purposes Benefit	\$17,082.69 +
Accommodation Supplement	\$3,339.00 +
Temporary Additional Support	\$261.88
TOTAL OVERPAYMENT:	\$20,683.57

3. Evidence of Ms Flowers' two convictions is annexed.

4. Although Ms Flowers notified the Education Council that she had been charged with the above offences in June 2014, she failed to notify the Education Council that she had been convicted of the charges in September 2014, as she was required to do.

Teacher's response

5. On 19 October 2017, Ms Flowers provided a written response to the Investigator (annexed). Ms Flowers also provided a character reference from the Principal at Don Buck Primary School (annexed).

6. In response, Ms Flowers did not deny that the incidents occurred, but provided circumstantial background to them. This included an overview to her personal circumstances leading up to the incidents, stating that her life was tough at the time and "there was no good only bad and worse". Ms Flowers further stated:

"At the time of the said crimes I was a single mother with a young daughter. I had no job I lost a business, bankruptcy". Ms Flowers explained how she was divorced and then had to move house five times in a year before moving back in with her ex-husband. Ms Flowers stated she was "emotionally mentally, physically and spiritually drained".

7. Ms Flowers concluded by describing how her life has changed: "my daughter is now secure in

the knowledge that she has a mother and father who love her so very much" and how she has reduced her outgoings and now has a stable job and salary for the first time in years. Ms Flowers stated "I love my job. My passion and dedication to do right by the kids who are entrusted into my care is paramount. Serving our kids is a source of joy".

6. The contextual explanation of events in the summary of facts is supported by the affidavit that the respondent provided in support of her application for interim name suppression.
7. As well, a reference from the principal of the school in which the respondent was employed as at October 2017 has been provided. This records that the respondent has exhibited professionalism in all her duties and interactions with staff, pupils and agencies connected with the school. It says that she is punctual and always well-organised. Her colleagues speak highly of her and her enthusiasm. The principal says that the respondent is an honest, reliable member of the team and her presence is valued.
8. The respondent does not wish to apply for permanent name suppression.

CAC submissions

9. The CAC submits that an adverse finding should be made and that a penalty consisting of censure, annotation, and conditions requiring the respondent to inform any existing or prospective employer of the convictions for a period of 3 years should be imposed.
10. The CAC notes that where a conviction is referred is that the Tribunal does not need to make a finding of serious misconduct but needs to reach an adverse finding as to the respondent's fitness to practice as a teacher, before exercising its powers to impose orders under section 404 of the Education Act 1989.¹
11. However assessing the teacher's conduct against the "serious misconduct" yardstick may be a useful tool in determining whether an adverse finding is warranted.²
12. in *CAC v Perez*³ the Tribunal noted that benefit fraud is a form of dishonesty and thus by definition raises an issue about fitness to be a teacher. The CAC submits that a teacher who commits dishonesty offending is likely to bring the teaching profession

¹ *CAC v Bird* NZTDT 2017/5

² *CAC v Lyndon* NZTDT 2016/61

³ NZTDT 2015/48

into disrepute, in particular where the person was working as a teacher at the time of offending, as in the present case.

13. As to penalty, the CAC refers again to *CAC v Perez*, noting that the seriousness of the teacher's offending relates to the particular circumstances of the fraud, in the case of benefit fraud. Any teacher convicted of fraud is at risk of losing their registration, as serious dishonesty by definition raises an issue about a teacher's fitness to teach. In turn this raises the question of whether the Tribunal can discharge its responsibilities if it makes an order which falls short of cancellation of registration. Notwithstanding that, in many cases involving dishonesty convictions the Tribunal has imposed a sanction which is less than cancellation. The cases suggest that where a teacher takes an active role in the proceeding, is prepared to acknowledge their wrongdoing and provides a credible explanation, the teacher is more readily able to convincingly contend that they should retain registration. There may be some cases however where the offending is simply too serious for the matter to be dealt with in any other way than cancellation.
14. The CAC notes that the offending here involves a relatively significant amount of money, the respondent worked as a teacher during the offending, the offending occurred over an extended period of time, and the respondent failed to report her convictions to the Education Council, although she did report the charges.
15. The CAC accepts that there are mitigating factors; the respondent expressed remorse and pleaded guilty, the respondent has been cooperative through the CAC and Tribunal processes, she has no prior disciplinary history, she was in a difficult period of her life during the offending, and she has the ongoing support of her employer.
16. The CAC refers to outcomes in other cases, notably *CAC v Perez* where a teacher received \$35,483 overpayment of benefit by making false statements. The Tribunal found that in the circumstances a penalty which enabled the teacher to continue teaching was appropriate. The teacher was censured, the register was annotated and conditions imposed requiring her to inform any future employer of the convictions and of the disciplinary decision for a period of 3 years.
17. The CAC also refers the Tribunal to *CAC v Apineru*⁴ where a social welfare fraud involving overpayments of \$72,032 was not thought to require, in all the

⁴ NZTDT 2014/63

circumstances, deregistration. Similar conditions to those imposed in *Perez* were applied.

18. The CAC consequently submitted that an outcome as noted above would be appropriate in the present case.

Respondent's submissions

19. The respondent's submissions accept that her conduct puts into question her fitness to teach and could be regarded as amounting to serious misconduct were that test to apply.
20. The respondent's submissions go on to refer to the particular and difficult personal circumstances the respondent was experiencing at the time of the offending. These included a marriage breakdown in very unhappy circumstances, significant financial pressures including bankruptcy, and that such income as she was receiving at the relevant time was from relief teaching which was unpredictable and uneven. She also had an unstable housing situation in which she was required to move house 5 times in the course of one year.
21. As to penalty the respondent's submissions request that the proposed condition that she advise employers of the conviction for a period of 3 years should apply only for a shorter period. The respondent refers to the decision in *CAC v Pemberton*⁵ where it was noted that the teacher's rehabilitation must be considered and the Tribunal should identify the least punitive outcome which will reflect the seriousness of the case and at the same time discharge its obligations that the public and to the profession in relation to the protection of the public and the maintenance of professional standards.
22. The respondent submitted that she was in a much more precarious personal situation at the time of offending than was the respondent in *CAC v Perez*, and that the period of reporting to prospective/existing employers should be shorter. The offending of the respondent was for a significantly shorter period than it was in *Perez*, her situation was more desperate and she had no avenues of support. A three-year period of notification would penalise the respondent until the end of 2021. Her submissions urged that a point comes when people "should be able to put the darker parts of their life behind them".

⁵ NZTD 2015/62

Decision

23. In determining what should be the appropriate outcome we have considered the decisions put forward both by the CAC and the respondent.
24. Where convictions are referred to the Tribunal, the Tribunal must consider whether the circumstances and the behaviour that resulted in the convictions reflect adversely on the fitness of the respondent to practice as a teacher. If the Tribunal reaches an adverse conclusion it may exercise one or more of the powers contained in section 404 of the Education Act 1989⁶. It is not necessary that the Tribunal finds the respondent guilty of serious misconduct before exercising the disciplinary powers available under section 404 of the Education Act 1989. Nevertheless the serious misconduct yardstick is important in assessing first whether an adverse finding should be reached at all, and, second, the degree to which the conduct impacts upon the relevant respondent's fitness to teach and thus whether the outcome should be cancellation or some other step. Rule 9(1)(h) of the Education Council Rules 2016 (as they then were) clearly indicates that a teacher who engages in "theft or fraud" will likely cross the threshold of serious misconduct.
25. This offending clearly crosses the threshold of serious misconduct. It was deliberate and it was sustained over a period of time. It involved a significant amount of money.
26. The Tribunal accordingly considers that an adverse finding is appropriate and it should to exercise its powers under section 404. The respondent accepts this.
27. As to penalty, the primary purposes of professional disciplinary proceedings are the protection of the public and the maintenance of professional standards. In discharging its responsibilities to the public and profession, the Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances. It also must seek to apply the least punitive sanction which is appropriate in the particular circumstances. If rehabilitation appears a reasonable possibility that will be a highly relevant consideration.
28. The respondent was subjected to very difficult family and related pressures at the time of the offending. She clearly suffered heavy stress. These pressures are recounted in the summary of facts set out above.
29. The reference from the principal of the school at which the respondent was working speaks very highly of her. She is clearly a person where there is a strong

⁶ CAC v S, Auckland DC, CIV 2008 004001547, 4 December 2008, Judge Sharp

rehabilitative pathway, and someone capable of making a very worthwhile contribution to the teaching profession.

30. While ordinarily a failure to advise the Teaching Council of convictions is regarded as an aggravating factor, in the present case the respondent did advise the council that she had been charged, but says she failed to appreciate that she needed to advise specifically of the convictions. On that basis we regard this factor as neutral.
31. The Tribunal considers that this is not a case which requires cancellation, when set against those cases in which cancellation has been imposed in relation to convictions for dishonesty offending. There are contextual explanations for the respondent's offending. This was not a case of dishonesty solely for reasons of personal greed and advantage, or involving the funding of a gambling or drug habit. There is a clear rehabilitative path for the respondent, and she is capable of making significant contributions to her school and to her community.
32. We therefore consider the appropriate outcome to reflect the seriousness of these convictions is, as submitted by the CAC, that the respondent should be censured, that the register should be annotated, and that there be a requirement to report this decision and the convictions to any future prospective employer for a period after this decision.
33. As to that, despite the submissions of the respondent as to the length for which she should be required to report, we are generally minded to see this case as in line with the other cases cited by the CAC, and to impose a condition that she must report for 3 years. However given the time that has elapsed we consider a requirement to report for a period of 2 years is appropriate.

Orders

34. The Tribunal orders that pursuant to section 404 (1) (b) of the Education Act, the respondent is censured.
35. The Tribunal directs that the register be annotated.
36. The Tribunal imposes a condition on the respondent's practising certificate that for 2 years from the date of this decision the respondent is to inform any prospective employer of her convictions and of this decision, provide a copy of the decision to such prospective employer, and provide satisfactory evidence to the Manager – Professional Responsibility of the Teaching Council that she has done so.

37. As this is a referral of convictions no question of costs arises, since under section 404(2) of the Education Act 1989 the Tribunal may not award costs in relation to conviction referrals.

Date: 4 July 2019



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JGH Hannan
Deputy Chairperson

NOTICE - Right of Appeal under section 409 of the Education Act 1989

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. Subsections (3) – (6) of section 356 apply to every appeal as if it were an appeal under subsection (1) of section 356.