

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Teacher A

NZ Disciplinary Tribunal Decision 2018-53

Teacher A came before the CAC after a Police vet showed he had received a warning for assaulting his son in 2017. The CAC argued that this amounted to serious misconduct, and the teacher agreed.

The result: Teacher A was censured for his serious misconduct and a condition imposed that he provide a copy of the Tribunal's decision to any prospective employer for the next 18 months. There are non-publication orders in place for any identifying details, which includes the teacher's name and his son's.

On an unspecified date in December 2017 Teacher A was arguing with his wife at home. Teacher A's 11-year-old son became involved and Teacher A struck his son in the face, knocking him to the ground, causing him swelling to the eye. Teacher A immediately self-reported to the Police and removed himself from the house for two nights.

The matter came to the Council's attention in February 2018 when it received a Police Vetting Report for Teacher A. Police gave Teacher A a formal warning and advised him that any future conduct of this sort would result in prosecution.

The case was referred to the Complaints Assessment Committee (CAC) of the Teaching Council. The CAC alleged that the conduct amounted to serious misconduct or alternatively amounted to conduct otherwise entitling the Disciplinary Tribunal to use its powers.

The Tribunal found Teacher A's conduct amounted to serious misconduct because it reflects adversely on his fitness to be a teacher and may bring the profession into disrepute, that it amounted to physical abuse, psychological abuse, an act that could be the subject of a prosecution for an offence punishable by imprisonment a term of 3 months or more, and that it was an act that brings discredit to the profession.

The Tribunal confirmed that it could still look into a teacher's conduct outside of school. The Tribunal stated that this type of behaviour is not to be tolerated whether it happens in the classroom or behind closed doors at home.

The Tribunal noted that prior to the incident, Teacher A was emotionally stressed. Teacher A admitted that hitting his son was a poor decision, and a "foolish and hurtful act". He was deeply remorseful and regretful that he hurt his son and took full responsibility for his actions.

Teacher A acknowledged how serious the incident was and advised the Council that he had reconciled with his family and was attending counselling (both with his wife and by himself).

The Tribunal also noted that Teacher A voluntarily notified Police of the incident, and co-operated with the Police and Teaching Council investigations.

Teacher A was censured and had a condition imposed on his practising certificate for a period of 18 months from date of the decision that if he returns to teaching, he must show any prospective employer a copy of the decision.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-53

IN THE MATTER of the Education Act 1989

AND

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

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

AND **[TEACHER A]**
Respondent

TRIBUNAL DECISION

1 May 2019

HEARING: Held on 4 December 2018

TRIBUNAL: Theo Baker (Chair)
Kiri Turketo and Tangi Utikere (members)

REPRESENTATION: Richie Belcher the Complaints Assessment Committee
Craig Tuck for the respondent

1. This was a referral based on the respondent's conduct concerning his own child. It occurred at home, rather than in his capacity as a teacher.
2. The Complaints Assessment Committee (**CAC**) charged that during 2017 he struck an 11-year-old child in his care in the face, pushing him to the ground and causing him swelling to his eye. According to the Notice of Charge, the CAC alleged that the conduct amounted to serious misconduct or alternatively amounted to conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.

Summary of decision

3. We have found that the respondent's conduct amounts to serious misconduct because it reflects adversely on the his fitness to be a teacher and may bring the teaching profession into disrepute (s 378 (a)(ii) and (iii)), and it amounts to physical abuse, psychological abuse, an act that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more, and is an act that brings discredit to the profession (r 9(1)(a), (c), (n), and (o)).
4. We imposed the following penalty:
 - Censure under s 404(1)(b)
 - A condition under s 404(1)(c) on the respondent's practising certificate for a period of 18 months from the date of his decision that if he returns to teaching, he must show any prospective employer a copy of this decision.
5. We made an order under s 405(6) for non-publication of the name of the child and any identifying details, which includes the name of the respondent.

Evidence

6. The evidence in support of the referral was in the form of an agreed summary of facts.
7. The parties agreed that in December 2017, [the respondent] was employed as a [subject] teacher at [the school] on a one year contract which was not renewed. On an unspecified date in December, [the respondent] was arguing with his wife. At some point during the argument [the respondent's] 11-year-old son became involved. [The respondent] struck his son in the face, knocking him to the ground.
8. Immediately after the incident [the respondent] self-reported to the Police. He also removed himself from the house and stayed with friends for two nights. The Police

noticed swelling to the boy's eye.

9. The matter came to the attention of the Education Council (**the Council**) in February 2018 when it received a Police Vetting Report which noted [the respondent] had been formally warned for a charge of assaults child (manually). Police had undertaken an investigation and liaised with social workers from Oranga Tamariki before deciding not to prosecute the respondent in relation to the incident. Police gave [the respondent] a formal warning and advised him that any future conduct of this sort would result in the prosecution. The Police Vet described the respondent as remorseful and recorded that he undertook counselling.
10. In February 2018 when the Council spoke with the respondent, he had reconciled with his family and he was attending counselling both with his wife and by himself. He acknowledged how serious the incident was. The respondent said that various factors had culminated in a "perfect storm" that resulted in him lashing out. Those factors included his contract at the school not being renewed.
11. In a statement sent to the Council, the respondent also said that his son is precious to him and that his relationship with his son was his priority and responsibility. Before the incident, the respondent was depressed and exhausted from the school year, overloaded with responsibility, burnt out and regularly thinking suicidal thoughts. Other factors that led to the incident included grieving over the way he was treated by the School; being unemployed; lacking funds for Christmas; losing the "provider role" in the family; arguing with his wife at the time of the incident; and his son's provocation towards him at the time of the incident. He admitted that hitting his son was a poor decision, and a "foolish and hurtful act"; he caused pain he was still "earning back trust as protector and provider in the family". He had caused pain and let down everyone in his family; he was deeply remorseful and regretful that he hurt his son and took full responsibility for his actions. At that time he was unemployed and on a WINZ disability allowance for acute stress. He was still "earning back trust as protector and provider in the family".
12. The respondent acknowledged that in 2012 the CAC had dealt with another matter where a teacher aide had reported that the respondent had put his hands on a boy's shoulder and said something to him that the teacher aide could not hear. The boy concerned started crying but then sat there and was quiet. The student did not say anything about the incident. She described the teacher's manner as calm but firm. The respondent accepted responsibility for his behaviour, acknowledged that his conduct

was inappropriate and agreed to the CAC placing a condition on his teaching practice that required him to report the CAC decision to any employer for a two-year period. He then went overseas for approximately 6 months of the period of that condition.

Serious misconduct

13. The CAC alleges that the conduct amounts to serious misconduct under s 378 of the Education Act 1989 (**the Act**) or alternatively amounts to conduct otherwise entitling the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989.

14. Section 378 of the Act defines serious misconduct as follows:

serious misconduct means conduct by a teacher –

(a) *that –*

(i) *adversely affects, or is likely to adversely affect, the well-being or learning of one or more students;*

(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 Education Council’s criteria for reporting serious misconduct.*

15. The criteria for reporting serious misconduct are found in r 9 of the Education Council Rules 2016 (**the Rules**), and the CAC relies rr 9(1)(a), (c), (n) and/or (o) of the Rules,¹ which are:

(a) *the physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher):*

...

(c) *the psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment:*

...

¹ The Education Council Rules 2016 were amended by the Education Council Amendment Rules 2018, and their name changed to the Teaching Council Rules by s 12 of the Education (Teaching Council of Aotearoa New Zealand) Amendment Act 2018. Because this conduct occurred before 19 May 2018, the pre-amendment rules apply (see Schedule 1 of the Teaching Council Rules 2016).

- (n) *any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more*
- (o) *any act or omission that brings, or is likely to bring, discredit to the profession.*

16. For the CAC, Mr Belcher submitted that the respondent's conduct meets each limb of the definition in s 37.
17. Mr Belcher also referred to:
- a) the decisions of this Tribunal in 2009/05,² Allen,³ Mackey 2017/1,⁴ Sami⁵, and 2017/16;⁶
 - b) Section 377 of the Act which provides that the purpose of the Education Council (as it was at the time of the conduct) is "to ensure safe and high quality leadership, teaching, and learning for children and young people ..."
 - c) The Tribunal's statement 2009/05:

The legislation is simply not structured in such a way as to draw a line between a teacher's private and professional life. The principal question is never whether some incident took place in a teacher's private or professional capacity. The principal question is always whether the teacher's actions, wherever and whenever they took place, reflect adversely on his or her fitness to be a teacher.
 - d) The importance of ensuring the protection and safety of children in educational settings as reinforced by the enactment of the Vulnerable Children Act 2014 (VC Act), and the amendments to the Act in 2015.⁷
 - e) The relevance of the Council's Code of Ethics for Certificated Teachers (which has now been replaced by the Code of Professional Responsibility) in considerations of serious misconduct.⁸ The Code of Professional Responsibility relevantly provides that teachers "will work in the best interests of learners by promoting the wellbeing of

² NZTDT 2009/05, May 11 2009.

³ CAC v Allen NZTDT 2015/15, 26 May 2015

⁴ CAC v Mackey NZTDT 2016/60, 24 February 2017

⁵ CAC v Sami NZTDT 2017/14, 27 September 2017

⁶ NZTDT 2017/16, 20

⁷ In CAC v Mackey, note 4 above we found that the VC Act reinforced the importance of closely scrutinising the ongoing fitness to teach of any practitioner who faces a disciplinary charge for behaviour of a type that may pose an ongoing risk to students

⁸ NZTDT 2014/18, 5 June 2016 at pp 5–6.

learners and protecting them from harm”.

18. Finally, Mr Belcher traversed the prohibition on the use of force for the purposes of correction or punishment in schools found in s 139A of the Act, and cases involving teachers conduct in the school setting.
19. For the respondent, Mr Tuck accepted that the conduct met the second and third limbs of s 378 but not the first one, because at the time the child was not a student as defined by s 2 of the Act.⁹ It is accepted that the criteria relied on under r 9 are met.
20. Mr Tuck also submitted that reference to s 139A of the Act and the decisions concerning the use of force in schools were not relevant to the case before us..¹⁰

Our decision

21. We agree with Mr Tuck that the first limb of the test for serious misconduct under s 378 does not apply. We are satisfied that the reference to affecting the wellbeing or learning of students in paragraph (a)(i) of the definition in s 378 refers to students at an “early childhood, primary, secondary, and senior secondary school” as referred to in s 377 which sets out the purpose of the Teaching Council. It follows that we do not find that s 139A applies here.
22. We agree that the conduct does reflect adversely on the respondent’s fitness to be a teacher under paragraph (a)(ii) and may bring the teaching profession into disrepute paragraph (a)(iii). In particular, we find that 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 respondent’s offending¹¹
23. In order to make a finding of serious misconduct we must also find that the conduct is of a character or severity that meets the Council’s criteria for reporting serious misconduct under r 9. For the same reason as we find it meets the definition in s 378(a)(iii), we find that it is likely to bring discredit to the profession under r 9(1)(o).
24. We also find that the conduct is an act that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more. Under s 194 of the

⁹ This section says “**student**, in relation to a school or institution, means a person enrolled at the school or institution”

¹⁰ *adversely affects, or is likely to adversely affect, the well-being or learning of one or more students*

¹¹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

Crimes Act 1961, the maximum penalty for assault on a child is 2 years' imprisonment.

25. We have considered whether the criteria in r 9(1)(a) and (c) are meant to apply to conduct that occurs outside the context of the school. They respectively refer to physical abuse and psychological abuse of "a child or young person". These are defined in r 3:

child or young person means a person—

- (a) *who is under the age of 16 years; or*
- (b) *who is, or was at the relevant time, a learner at a school or an early childhood education service*

26. Therefore it appears that reference to a child or young person in rr 9(1) includes children who are under 16 but not necessarily a learner at a school. We are satisfied that the conduct falls within r 9(1)(a).
27. The conduct therefore amounts to serious misconduct on the basis that it is conduct that:
- adversely affects, or is likely to adversely affect, the well-being or learning of one or more students;
 - reflects adversely on the teacher's fitness to be a teacher; or
 - may bring the teaching profession into disrepute; and
 - that is of a character or severity that meets the Education Council's criteria for reporting serious misconduct.

Penalty

28. Our powers to impose a penalty are found in s 404 of the Act, which provides:

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
 - (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
 - (b) *censure the teacher:*
 - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*

- (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
 - (e) *annotate the register or the list of authorised persons in a specified manner:*
 - (f) *impose a fine on the teacher not exceeding \$3,000:*
 - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
 - (h) *require any party to the hearing to pay costs to any other party:*
 - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
 - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

CAC submissions

29. For the CAC, Mr Belcher provided a helpful summary of some cases to assist the Tribunal.¹² We have considered the decisions which involved violence toward family members:
30. In 2009/05, we dealt with teacher's convictions for threatening to kill and assault by a male on a female. We observed that the Act is not structured in a way that draws a line between a teacher's private and professional life. Rather, the principal question is always whether the teacher's actions, whenever and wherever they took place, reflect adversely on his or her ability to be a teacher. However, we acknowledged that often the question of when and where actions take place will be relevant to our decision. After considering all available options, we imposed a penalty of suspension for six months, censure and completion of anger management counselling.
31. The case of 2017/1 involved a teacher who was overseeing the collection of money

¹² 2009-05; *CAC v Allen*, above note xxx; *CAC v Mackey*, above note xx; 2017-1; 2017-16

which went missing from her desk and she panicked. While searching for the lost money, one of the students in her class, who was also the teacher's grandson, displayed silly behaviour and began laughing. She slapped the student in the face. The student started to cry, embarrassed and ashamed to be slapped in front of his peers. We imposed a condition requiring the respondent to undergo mentoring for six months. We also censured the teacher.

32. In *CAC v Sami* we considered a teacher's guilty pleas and subsequent discharge without conviction for assault with a weapon. She had repeatedly struck a member of her family with a vacuum-cleaner pipe. Referring to s 377 of the Education Act to "ensure" that students are provided with a safe learning environment and the purpose of the Vulnerable Children's Act 2014 (considered in Mackey), we considered that the teacher's lack of conviction did not detract from the Tribunal's obligation to assess the teacher's potential risk to those she teaches. We found that the least restrictive and reasonable penalty was censure and conditions for 18 months to work under a teaching mentor and provide a copy of the Tribunal's decision to any prospective employer.
33. In our 2017/16 we considered the conduct of a teacher who, after finding out that his 13 year old son had been arrested for shoplifting, "clipped his son around the ear during an argument."¹³ We noted that the conduct was "very much hovering on the borderline between misconduct and serious misconduct". We ordered censure.
34. Applying these factors to the present case, the CAC submitted that the starting point should be one of cancellation. Mr Belcher submitted that it is relevant that the respondent struck the child on the head, noting that we have previously said that is a "very serious matter".¹⁴
35. Moreover, the respondent was investigated by police and Oranga Tamariki before receiving a formal warning for a specified offence under the VC Act. Mr Belcher submitted that the respondent's conduct is far more serious than the conduct in 2017/16 and Mackey. It is not, as it was in 2017/16, "hovering on the borderline between misconduct and serious misconduct." Rather, the conduct is more analogous to the conduct in 2009/5 and Sami. The strike in this case was to the face with enough force to drive his son to the floor and leave swelling around his eye (in contrast to 2017/16 where

¹³ 2017-6

¹⁴ CAC v Davies NZTDT 2016-28

there was no evidence of injury to the victim).

36. However, it was accepted that this was a single strike and an isolated incident, and Mr Belcher referred to the following mitigating factors. The respondent:
- (a) immediately contacted police and reported the incident;
 - (b) complied with both the police and Oranga Tamariki investigations;
 - (c) displayed considerable and genuine remorse;
 - (d) removed himself from the house and stayed at another address for two nights;
 - (e) attended counselling on his own initiative both alone and with his wife;
 - (f) accepted that his conduct amounts to serious misconduct;
 - (g) offered to voluntarily deregister;
 - (h) displayed a high level of insight into the seriousness of his conduct;
 - (i) engaged with the disciplinary process.
37. Mr Belcher acknowledged that, in making its assessment as to the appropriate penalty, we may consider that the purposes of disciplinary proceedings may be achieved by the imposition of a penalty short of cancellation in this case, having regard to the level of serious misconduct present in this case and the mitigating factors set out above. Therefore he submitted the following penalty was appropriate:
- (a) Censure;
 - (b) Suspension for six months;
 - (c) Annotation of the Register for three years;
 - (d) That the respondent be required to
 - have a mentor (who has seen a copy of the Tribunal's decision and is approved by the Manager, Professional Responsibility, Teaching Council), who is required to provide quarterly reports to the Senior Manager Teacher Practice for a period of 12 months or such lesser time as is agreed with the Senior Manager Teacher Practice;
 - complete an appropriate course anger management, behavioural education or classroom management within 12 months; and
 - that the respondent be required to show a copy of the Tribunal's decision to his current employer and any future employer for the next three years.
38. Although the respondent has indicated that he may not return to teaching and offered to

voluntarily deregister, it was submitted that the orders are still appropriate against the possibility of a return to teaching and to address the seriousness of the conduct.

The respondent's submissions

39. Mr Tuck strongly opposed cancellation as a penalty and disagreed that this case is analogous to NZTDT 2009-5, which involved threats to kill and numerous and various acts of sustained violence. Rather, it is analogous to 2017-16 where a teacher clipped his son around the ear, at home, in a situation of heightened feelings, involving a single occasion of spontaneous physical force, and culminating in a police warning.
40. Mr Tuck also submitted that the present case can be distinguished from Mackey where there was a prolonged use of force coupled with verbal abuse, and the conduct occurred in the teaching context as a form of punishment.
41. Mr Tuck submitted that there was insufficient evidence of the degree of injury sustained by the respondent's son, and noted that the police did not charge and Oranga Tamariki took no action. In contrast to 2017-16 and Mackey, there is no evidence of psychological harm.
42. Acknowledging the Tribunal's statement in 2009-5 regarding the lack of distinction between personal and private, Mr Tuck submitted that this consideration of the context in which the conduct arises may impact on the degree to which the respondent's action reflects adversely on a teacher's fitness to be a teacher or could bring the teaching profession into disrepute. In this case there is no nexus between the teacher's conduct in question and his conduct as a teacher.

Penalty principles

43. In a decision of a case considered on the same day as this one, we set out some penalty principles summarised by His Honour Collins J in *Roberts v Professional Conduct Committee*¹⁵:
 1. *Protecting the public*
44. In the HPDT, the statutory purpose under s 3 of the HPCA Act is referenced. As noted in *CAC v Teacher S NZTDT 2016-69*,¹⁶ unlike some other professional regulatory

¹⁵ *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

¹⁶ 14 June 2017

statutes,¹⁷ the protection of the public or consumers is not an explicit purpose in the Act. There is no doubt that the public protection is nonetheless a fundamental purpose of professional disciplinary proceedings.

45. The disciplinary functions of the Council and Tribunal are found in Part 32 of the Education Act 1989, and the purpose of the Education Council is set out in s 377.

The purpose of the Education Council is to ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.

46. This section calls for the Council to raise the status of the profession, and this in turn means to ensure safe and high-quality leadership, teaching and learning for the children and young people, in other words, the “users” of teaching services. As with the other professional regulatory acts, professional discipline is only one of the means by which this purpose may be achieved.
47. Collins J also observed that part of the function of protecting the public involves the Tribunal setting penalties that will deter other health professionals from offending in a similar way.¹⁸

2. Setting standards for the profession

48. Setting standards for the profession is the special role of the profession’s regulator and the disciplinary bodies. Our examination of the respondent’s behaviour, and imposition of a penalty under s 404 involves a consideration of the expectation of the conduct of teachers in light of the important role and position they hold in society.
49. In *CAC v McMillan*¹⁹ we summarised the role of disciplinary proceedings against teachers as:

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession

¹⁷ For example, Lawyers and Conveyancers Act 2006, s 3(1) and Health Practitioners Competence Assurance Act 2003 and

¹⁸ Paragraph [43]

¹⁹ NZTDT 2016/52, 23 January 2017, paragraph 23.

of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

Punishment

50. The superior courts have emphasised that the purpose of professional disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect.²⁰ The Supreme Court has not specified that the non-punitive nature of disciplinary proceedings arises only where the matter has been the subject of a criminal proceeding, but we note that the leading authorities do involve such circumstances.
51. In the Supreme Court's leading decision of *Z v Complaints Assessment Committee*,²¹ the High Court noted in a case under the Dental Act 1988²² the punitive aspect of disciplinary proceedings under that Act was reflected in the fact that the Dentists Disciplinary Tribunal had the power to fine and censure. Lang J further noted that "such penalties inevitably involve issues of deterrence. They are designed in part to deter both the offender and others."²³
52. In practice, even where the conduct referred to the Tribunal could not be the subject of any type of conviction in the criminal court, it is extremely rare for this Tribunal to impose a fine on a teacher. The censure has been used as a mark of disapproval by the Tribunal, in an effort to reflect the expectations of the public and the profession.

3. Rehabilitation

53. In *Roberts*,²⁴ Collins J, in referring to *B v B*²⁵ observed:

²⁰ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA);

²¹ Above, note 14

²² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818; 13 August 2007. This case was decided before the Supreme Court issued *Z v Dental Complaints Assessment Committee* in 2008 but was not referred to in that latter decision. The punitive aspects of the penalty provisions of the HPCA Act was further acknowledged by Collins J in *Roberts v Professional Conduct Committee* (above note xx0

²³ Above note 14 para [27]

²⁴ Above, note xx

²⁵ HC Auckland HC4/92, 6 April 1993, [1993] BCL 1093.

A reason why rehabilitation may be an important consideration is that health professionals and society as a whole make considerable investments in the training and development of health practitioners. Where appropriate, the Tribunal should endeavour to ensure these investments are not permanently lost, provided of course the practitioner is truly capable of being rehabilitated and reintegrated into the profession.

54. A similar rationale applies to teachers. There is no merit in depleting the profession from experienced teachers where we consider rehabilitation is possible.

4. *Consistency*

55. We should impose a penalty that is comparable to other penalties imposed upon teachers in similar circumstances. We acknowledge Collins J's observations in *Roberts* that each case will require a careful assessment of its own facts and circumstances and rarely will two cases be identical,²⁶ but we should try to treat like cases alike.

56. In *Patel v The Dentists Disciplinary Tribunal*²⁷ Randerson J expressed it like this:

As well, while absolute consistency is something of a pipe dream, and cases are necessarily fact dependent, some regard must be had to maintaining reasonable consistency with other cases. That is necessary to maintain the credibility of the Tribunal as well as the confidence of the profession and the public at large.

5. *The range of sentencing options*

57. Applying the principles in *Roberts*, we must assess the teacher's behaviour against the spectrum of sentencing options that are available, and try to ensure that the maximum penalties are reserved for the worst offenders.

6. *Least restrictive*

58. The notion that the Tribunal should consider the least restrictive penalty is usually discussed in the context of cancellation or suspension. The following passage from *Patel v Dentists Disciplinary Tribunal*²⁸ bears repeating:

[30] The consequences of removal from a professional register are ordinarily severe and the task of the Tribunal is to balance the nature and gravity of the offences and their bearing on the dentist's fitness to practice against the need for

²⁶ Roberts para

²⁷ *Patel v The Dentists Disciplinary Tribunal* HC AK AP 77/02 8 October 2002.

²⁸ Above, note

removal and its consequences to the individual: Dad v General Dental Council [2002] 1 WLR 1538. As the Privy Council further observed at 1543:

Such consequences can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.

[31] I respectfully adopt the observations of the Privy Council and would add that it is incumbent on the Tribunal to consider carefully the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case.

7. Fair, reasonable and proportionate

59. it is important for the Tribunal to assess whether or not the penalty it is proposing to impose is fair, reasonable and proportionate in the circumstances presented to the Tribunal.

Our decision on penalty

60. We fully affirm the statement made in 2009-5 that the legislation is not structured in such a way as to draw a distinction between a teacher's personal and private life. The disapproval of the respondent's peers and the public is reflected in our finding of serious misconduct. This type of behaviour is not tolerated whether it happens in the classroom or behind closed doors at home,
61. We agree with Mr Tuck that the cases involving assault at school are of a different nature. We also accept that this case is not as serious as *CAC v Sami*. We think that the conduct itself appears slightly more serious than in 2017-16 because the child was a little younger (11 as opposed to 13) and the circumstances in which it occurred. We imagine it would have been quite frightening for the boy. We also note there was evidence of swelling to his eye.
62. Despite the serious nature of the respondent's conduct, we find the mitigating factors as outlined in paragraph 43 very compelling in this case. Having lashed out at his son, the respondent reported himself to the police, removed himself from the home and commenced counselling. We are impressed by his demonstration of insight into his own

- actions, recognition of his accountability and need to keep his family safe.
63. We need to consider the range of penalties available in s 404. We do not agree that the starting point is cancellation. There are many cases of the use of force where that has happened, but also many where it has not been imposed.
 64. We may exercise our powers under s 404 in relation to any matter that is referred to us. Taking into account the penalty principles outlined above, the context of the offending can have a significant impact on how we exercise those powers. We do think it is relevant that this matter happened at home. Although the respondent's reaction to his son raises questions about his anger management and ability to ensure the safety of those around him, we accept that the triggers to this behaviour may be different from those in a classroom. This is relevant to our consideration of protection of the public, by which we mean children and young people who may be exposed to the respondent in the course of his teaching career.
 65. In setting standards for the profession, we feel we must mark our further disapproval by imposing a censure under s 404(1)(b).
 66. We have decided not to impose any conditions concerning counselling or classroom management on the respondent's practice. That is because he has already undertaken appropriate rehabilitative steps by organising counselling for himself and also as a couple. We are also not convinced that any conditions regarding classroom management are relevant here or would help prevent a further incident. We encourage the respondent to reflect on his triggers for violence and organise further training or counselling as he sees fit. We feel that any conditions we would have imposed are matters that he has already addressed.
 67. We have insufficient understanding of the matter that came before a CAC in 2012, but note that it appears to concern what he said to a student. While it was appropriate for Mr Ritchie to bring it to our attention, we are not sure to what extent it should influence our penalty decision in the present case.
 68. Assault on a child is a specified offence under the Vulnerable Children's Act 2014. Although not convicted of assault on a child, we think it is appropriate that any prospective employer is aware of his police warning. Therefore we impose a condition under s 404(1)(c) on the respondent's practising certificate for a period of 18 months from the date of his decision that if he returns to teaching, he must show any prospective

employer a copy of this decision.

69. We consider this penalty is the least restrictive in the circumstances, while acknowledging a small risk that the respondent's anger management may pose a risk for students.
70. Complying with this condition will not be in breach of any orders for non-publication.

Non-publication

71. We agree with the parties that an order for non-publication of the respondent's name is required in order to protect his son. We consider that his privacy interests outweigh any public interest in publishing the name of the respondent.
72. Under s 405 (6) in our opinion it is proper to make an order for non-publication of the name of the child and any identifying details, which includes the name of the respondent.



Theo Baker

Chair

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.