

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v John Edwin Cormack

NZTDT 2018-79

Teacher John Cormack was referred to the Disciplinary Tribunal after altering the date of a signed performance appraisal document which he submitted to a school in support of his application to renew his practising certificate.

The result: The Tribunal imposed a censure, annotation of the register and imposed a condition on Mr Cormack. He was also ordered to contribute to the CAC and Tribunal's costs. There are no non-publication orders in this case.

On 24 June 2019 the Tribunal released its decision following a hearing on the papers. Mr Cormack was due to re-apply for a practicing certificate in 2017 and provided his principal with a copy of an appraisal document which was purported to have been signed by the head of departments in December 2016 and relate to an appraisal in 2016. The head of department subsequently advised that he had never signed or dated the document. When the original was received it was clear that the date had been changed using cellotape and twink. Mr Cormack then admitted that he had changed the dates on the appraisal form from 2013 to 2016. He denied doing this in order to deceive anyone.

Mr Cormack did not sign to the statement of facts and appeared to disagree with some factual matters. However, the Tribunal decided that he did not deny that he had altered the date on the document and therefore the charge was proved.

The CAC submitted that Mr Cormack's conduct amounted to serious misconduct. The CAC submitted that Mr Cormack's assertion that he did not intend to deceive anyone is difficult to reconcile. Even if he did not intend to deceive, he still submitted a document that he knew to be false.

Mr Cormack submitted that he regretted his decision but that the school was heavy handed in its response and he was not given ample opportunity to rectify the situation.

The Tribunal was satisfied that Mr Cormack intended to deceive and that his behaviour amounted to serious misconduct. When a teacher alters a document for the purposes of renewing their practising certificate, it brings into question his fitness to practice. The Tribunal considered that reasonable members of the public, informed of the facts and circumstance could reasonably conclude that the respondent's behaviour brings or is likely to bring the teaching profession into disrepute.

The CAC submitted that cancellation was a possible outcome. However, given Mr Cormack's clear disciplinary history, lower level of offending and that he admitted that he falsified the document early in the process it recommended a lower penalty.

The Tribunal agreed with the CAC's proposed penalty, which was censure, conditions to advise future employers of the decision and annotation of the register for two years. Mr Cormack was also ordered to contribute to the CAC's and Tribunals' costs.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-79

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 **JOHN EDWIN CORMACK**

Respondent

TRIBUNAL DECISION

24 JUNE 2019

HEARING: Held at Wellington on 5 March 2019 (on the papers)

TRIBUNAL: Theo Baker (Chair)
David Hain, Simon Williams (members)

REPRESENTATION: Mr E McCaughan for the CAC
Ms A Towgood for the respondent

1. The Complaints Assessment Committee (**CAC**) has referred to the Tribunal a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers.
2. It is alleged that the respondent:
 - a) Prepared a falsified performance appraisal document in March 2017, which had been signed by the Head of Department in December 2013, and which he had altered to read December 2016; and
 - b) Submitted it to the school in support of his application to renew his practising certificate.
3. The CAC contends that this conduct amounts to serious misconduct pursuant to s 378 of the Education Act 1989 (**the Act**) and rr 9(1)(h) and/or (n) and/or (o) of the Education Rules 2016¹ (**the Rules**) or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers under s 404 of the Act.

Evidence

4. Because the respondent did not attend a pre-hearing conference on 12 December 2018, this matter was originally set down for “formal proof”, meaning that the CAC would need to call witnesses to prove the charge. However, Ms Towgood of the PPTA then became involved and following discussions, the parties conferred and filed an Agreed Summary of Facts (**ASF**), which was annexed to Mr McCaughan’s submissions. It is set out in full:

AGREED SUMMARY OF FACTS

Introduction

1. *Mr John Cormack was first granted full registration at the Education Council in 1990. Mr Cormack has now retired and his practising certificate has expired. However he wishes to regain his practising certificate so that he might do relief teaching in the future.*
2. *Prior to his resignation in September 2017, Mr Cormack was employed at St Mary’s College Wellington (**STMW**) as a mathematics teacher.*

¹ The amendments made by the Education Council Amendment Rules 2018 do not apply to conduct before 18 May 2018. See Schedule 1 Part 2.

Events

3. *Mr Cormack's practising certificate was due to expire on 6 May 2017.*
4. *On 19 March 2017 Mr Cormack provided an appraisal document to the Principal of STMW, Mrs Catherine Ryan (**the Principal**), as part of the material required in order to renew his practising certificate.*
5. *The appraisal document:*
 - a. *Purported to have been signed by STMW's mathematics Head of Department, Ms Charmaine Izaz, on 6 December 2016; and*
 - b. *Purported to relate to an appraisal conducted during 2016.*
6. *A copy of the appraisal document is attached to this Summary.*
7. *Ms Izaz subsequently advised the Principal that she had neither sighted nor dated the appraisal document.*
8. *On 17 April 2017 the Principal wrote to Mr Cormack, advising him that the document he had submitted was not the template that was in use at STMW in 2016, and that Ms Izaz had advised that she had not signed a performance appraisal document for him in 2016.*
9. *On 2 May 2017 Mr Cormack met with the Principal. Mr Cormack admitted that the original document had related to an appraisal done in 2013. He admitted he had changed the dates on the document from 2013 to 2016. He denied doing this in order to deceive anyone.*
10. *During that meeting Mr Cormack became upset and blamed the Principal for the incident and accused the Principal of deliberately misleading him regarding his appraisal.*
11. *The Principal wrote to Mr Cormack on 23 May 2017, advising Mr Cormack that she was not satisfied with his explanation and had referred the issue to the Board of Trustees.*
12. *On 26 June 2017 Mr Cormack wrote a letter to the Board of Trustees stating, "I have clearly made a mistake in altering the date on the cover sheet for my teacher appraisal form and should not have done so."*

13. *He denied that he was trying to deceive anyone and claimed that the date on the form (i.e. 6 December 2016) was the date that he had submitted the form to the Principal.*
14. *He also stated:*
 - a. *In meetings held in late 2016 the Principal had informed him that the evidence he had provided to date in support of his renewal application was not sufficient.*
 - b. *He was “perfectly happy” to do whatever she wanted in the way of documentation.*
 - c. *He requested a template for something that could be filed and she agreed to provide it, but did not do so.*
 - d. *He submitted the amended set of material due to frustration at her lack of help.*
15. *By letter dated 29 June 2017, the Principal replied. She stated:*
 - a. *The form had not been submitted on 6 December 2016. Instead, she had only received it in her pigeonhole on 19 March 2017.*
 - b. *The date “6 December” referred to “6 December 2013”, being when Charmaine Izaz had signed off the appraisal in 2013.*
 - c. *In response to Mr Cormack’s claim that he was perfectly happy to provide any documentation, she said this only occurred after a lengthy period of very loud condemnation from Mr Cormack about the Education Council, and his claims that the evidence needed for the Practising Teacher Criteria (PTC) was “utter nonsense” and “absolute rubbish”. The Principal advised Mr Cormack that he could think and say this but if he acted on this belief, then his employment in a New Zealand school would be jeopardised, as this was a requirement for every New Zealand teacher.*
 - d. *In the Principal’s view, it was Mr Cormack’s responsibility to identify the material that was required for renewing his practising certificate.*
 - e. *The Principal denied that she had agreed to provide Mr Cormack with a template for the PTC’s. Rather she believed that she agreed to provide him with some evidence of what an appraisal inquiry reporting might look like.*
 - f. *The Principal denied that she had asked Mr Cormack to submit what he had already completed. In her view, she told Mr Cormack to show her his documentation for comment and feedforward, in an attempt to help him.*

Mandatory report

16. *On or about 8 September 2017 the Principal submitted a mandatory report to the Teaching Council. The Principal advised that Mr Cormack had resigned before the Board of Trustees could complete its inquiries.*

Information obtained by CAC

17. *On 18 April 2018 Mr Cormack provided a response to the mandatory report. He stated:*
- a. *At a meeting with the Principal in late 2016 he told her that he was prepared to do anything that was required to obtain renewal of his registration.*
 - b. *She stated that she would send him a template of what was required but she did not.*
 - c. *“In desperation I (foolishly) amended the old registration form”.*
 - d. *He denied that this was done with the purpose of deceiving anyone. He considered this was evidenced by the names of the girls involved on the form, who had either progressed well up the school or had left.*
 - e. *In February 2017 he had taken out a “low level” personal grievance against STMW, complaining that despite an earlier edict from the Principal, he had not been consulted concerning his teaching programme for 2017.*
 - f. *This “latest skirmish” with STMW occurred just after the personal grievance was lodged.*
18. *On 23 July the Principal advised the CAC that:*
- a. *Originally Mr Cormack provided her with a photocopy of the original appraisal form.*
 - b. *She subsequently obtained the original appraisal form. The relevant dates had been cellotaped over and twinked to look as though it was signed in 2016.*
19. *In an email dated 31 July 2018 Mr Cormack repeated his earlier explanation, and claimed that the Principal had used the alteration to get back at him for taking out a personal grievance against the school earlier in 2016.*
5. The ASF is not signed by the parties.
6. In a letter dated 13 December 2018 from Mr Cormack’s PPTA representative, the Tribunal was advised that the PPTA was assisting the respondent with his response to the Tribunal and in particular the following points were made:

- a) Mr Cormack does not wish to personally appear at the hearing.
 - b) Mr Cormack regrets the decisions he made, under pressure, regarding his documentation for appraisal at St Mary's.
 - c) Mr Cormack feels the response by the school was heavy handed and he was not given ample opportunity to rectify the situation.
 - d) Mr Cormack believes that in his responses to the school and the Council he has made clear the reasons behind the actions taken and his responses remain the same today.
 - e) Mr Cormack has retired from all forms of teaching after leaving St Mary's.
7. The final sentence of the letter read, "On behalf of Mr Cormack the PPTA requests that the DT undertake the hearing on the basis of the information that it has already and communicate any outcome to Mr Cormack and the PPTA."
 8. In an email dated 20 December 2018 from Ms Towgood to Mr McCaughan and to the Council, Ms Towgood set out a verbatim response from Mr Cormack. This is a commentary on the Summary of Facts that had been filed as an "Agreed Summary of Facts".:
 9. It is difficult when a party advises that they do not wish to be heard in person, but then files information disagreeing with the facts that we had been told were agreed. If a respondent does not agree with the facts then we would expect either to have them attend a hearing and give evidence under oath or affirmation, or at least, leave the CAC to prove its case based on sworn or affirmed witness statements.
 10. The matters the respondent took issue with concerned events after the appraisal form had been submitted. In particular the respondent did not take exception to the matters set out in paragraphs 4, 5 and 9 of the ASF.
 11. However, the respondent refers to paragraphs 15 (c), (f) and (h), but there is no paragraph 15 (h) in the documents before us. This suggests that he is referring to a different draft of the summary of facts from the one submitted to the Tribunal. We have to assume that the CAC has submitted a summary that has been agreed to by the respondent. It is preferable that any agreed summary of facts is signed by both parties, and in particular that the respondent teacher (rather than their representative) signs.
 12. There is nothing in the respondent's email that leads us to believe that he has at any

stage denied that he altered the date of an appraisal document from 2013 to 2016 and that he submitted it to the school in support of his application to renew his practising certificate. The charge is therefore proved.

Serious misconduct

13. We must now decide whether the established conduct amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).

14. Section 378 of the Act provides:

serious misconduct means conduct by a teacher—

(a) *that—*

(i) adversely affects, or is likely to adversely affect, the well-being 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 Education Council's criteria for reporting serious misconduct.*

15. The criteria for reporting serious misconduct are found in r 9 of the Rules. The CAC relies on rr (h), (n) and (o) that were in place at the time of this conduct.²

Criteria for reporting serious misconduct

(1) *The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:*

...

(h) theft, or fraud;

(n) any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more;

(o) any act or omission that brings, or is likely to bring, discredit to the profession.

² Clause 3 of Schedule 1 of the Teaching Council Rules 2016 provides that possible serious misconduct by a teacher that occurred before 19 May 2018 must be reported and dealt with in accordance with the principal rules that were in force immediately before that date.

CAC submissions

16. The CAC submitted that all three limbs of the definition in s 378 were met and that for the same reasons, it was of the character that meets rr 9(1)(h), (n) and (o) of the Rules.
17. For the CAC, Mr McCaughan submitted that the respondent's conduct was similar to conduct discussed in two cases:
 - *CAC v Leach* NZTDT 2016/66;³ and
 - *CAC v Clark* NZTDT 2017/4.⁴
18. *CAC v Leach* concerned a Principal at an intermediate school. In order to apply for her practising certificate renewal, Mrs Leach submitted an appraisal to her Board of Trustees, which purported to be signed by her husband, when in fact it had been prepared by herself. We stated that her actions were dishonest and a breach of her obligations under the Education Council's Code of Ethics. We noted that one of the fundamental principles underpinning professional interactions of teachers is truth – to be honest with others and self. We considered that her actions undermined the integrity of the Board of Trustees Chairperson's endorsement of her application to renew her practising certificate, and undermined the integrity of the ERO audit of the appraisal.
19. In that decision agreed that the threshold for serious misconduct was "readily met". We found that the conduct reflected adversely on the teacher's fitness to teach and was of a nature that brought the teaching profession as a whole into disrepute.
20. We considered the conduct amounted to theft or fraud in terms of r 9(1)(h) and could be compared with the criminal offence of "obtaining by deception" under s 240 Crimes Act 1961 (the most relevant benefit being the renewal of her practising certificate).
21. The penalty imposed was censure, cancellation and annotation. We noted the conduct was a "clear cut example of the worst kind of misconduct for which the maximum penalty of cancellation is reserved".
22. In *CAC v Clark*, again the teacher was a Principal. When she applied to renew her practising certificate she fraudulently signed and dated one part of the form as being

³ *CAC v Leach* NZTDT 2016/66, 26 April 2017

⁴ *CAC v Clark* NZTDT 2017/4, 18 September 2017

completed by someone else (referred to as “Ms B”). When the Council requested a further endorsement from the current Principal of the school, the teacher completed an endorsement in the name of that Principal, fraudulently signing and dating the document. She also produced a fraudulent letterhead in the name of the school and prepared a letter in the name of the current Principal, dishonestly claiming that the Principal was prepared to sign off her endorsement forms.

23. When the Council queried the documents, Ms Clark initially denied any involvement in preparing the forged documents. We were satisfied that Ms Clark used false representations to gain an unjust advantage and therefore had committed fraud in terms of r 9(1)(h). We noted that the application to renew a practising certificate was intended to promote high quality teaching and leadership, and that the Council must be able to trust the documentation filed by teachers in the registration process. We said that Ms Clark had attempted to subvert the means by which the Council assures the ongoing suitability of its registered teachers to teach.
24. We had no hesitation in finding that her conduct brought discredit to the profession and it reflected adversely on her fitness to be a teacher and may bring the profession into disrepute. We ordered censure and cancellation.
25. In the present case, Mr McCaughan pointed to two false assertions in the document:
 - a) That it was signed by the relevant Head of Department on 6 December 2016; and
 - b) It related to an appraisal conducted during 2016.
26. Mr McCaughan submitted that the respondent’s claims that he did not intend to deceive anyone are difficult to reconcile with the following matters:
 - a) The respondent had gone to some trouble to disguise the date of the appraisal. Two dates on the appraisal had been amended to read 2016 rather than 2013, and the respondent submitted a copy of the appraisal, rather than the original (where the amendments would have been obvious due to the twink and cellotape).
 - b) If the respondent was merely filing the 2013 appraisal again, there was no need for him to disguise the dates in the way that he did. He could have simply made it clear on the form that he was refiling the old appraisal.
 - c) The respondent’s claim that the change of dates related to when he submitted to

the Principal is denied by the Principal, who has stated that she received the document on 19 March 2017, not 6 December 2016.

- d) Based on the correspondence between the respondent and the Principal and the heated responses at a meeting with the Principal on 2 May 2017, an inference is available that the respondent did not consider it was necessary for him to file up-to-date documentation to support his application for renewal and therefore found the process frustrating and a waste of time.
 - e) It also appears that the relationship between the respondent and the Principal at the time was acrimonious and that the respondent felt victimised because of a personal grievance he had previously taken against the school.
27. In summary the CAC submitted that it would not be surprising if the respondent deliberately attempted cut corners by altering the 2013 appraisal document and submitting it as if it were a 2016 appraisal document.
28. The CAC submitted that irrespective of any intention to deceive, the respondent submitted a document which he knew to be false, and therefore this reflects adversely on his fitness to be a teacher and brings the teaching profession into disrepute.
29. Mr McCaughan referred to the former Code of Ethics for Certified Teachers and its replacement, the Code of Professional Responsibility. In the former, teacher commitment to society included to “teach and model those positive values that are widely accepted in society” and teacher commitment to the profession included “be[ing] truthful when making statements about their qualifications and competencies.” Under the new Code, teachers make a commitment to the teaching profession to “maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.”
30. As for the second limb of misconduct, the CAC submitted that the respondent’s conduct falls within the concept of fraud as discussed in *Clark*.⁵ In particular the respondent used false representations to gain an unjust advantage (i.e. continuation of his registration as a teacher, without actually complying with the requirements).
31. The CAC acknowledged that the level of fraud was not as significant as in either *Leach*⁶ or *Clark* and that the deception was relatively easily identified but that this fact

⁵ Above, note 4

⁶ Above, note 3

does not change the underlying nature of the conduct; rather it is relevant to the extent of any penalty orders required.

32. The CAC submitted that this was conduct that could have been the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more (under r 9(1)(n)). The offences in question are:
- a) Making a false document (s 25(1) Crimes Act 1961).
 - b) Using a forged document (s 257(1)(b) Crimes Act 1961).
33. Finally, it was submitted that this was conduct that brings or is likely to bring discredit to the teaching profession under r 9(1)(o).

Respondent's submissions

34. As noted above, the respondent's PPTA representative, Ms Towgood made the following succinct submissionsL
- a) Mr Cormack does not wish to personally appear at the hearing.
 - b) Mr Cormack regrets the decisions he made, under pressure, regarding his documentation for appraisal at St Mary's.
 - c) Mr Cormack feels the response by the school was heavy handed and he was not given ample opportunity to rectify the situation.
 - d) Mr Cormack believes that in his responses to the school and the Council he has made clear the reasons behind the actions taken and his responses remain the same today.
 - e) Mr Cormack has retired from all forms of teaching after leaving St Mary's.
35. The final sentence of the letter read, "On behalf of Mr Cormack the PPTA requests that the DT undertake the hearing on the basis of the information that it has already and communicate any outcome to Mr Cormack and the PPTA."
36. As indicated above, in an email dated 20 December 2018 from Ms Towgood to Mr McCaughan and to the Council, Ms Towgood set out a verbatim response from Mr Cormack. It reads:

Hi Adele, I have just been thru the statement of facts as you advised.

Point 15(c) is misleading. I did say to Mrs Ryan that the evidence of providing a photograph of me teaching in a classroom was utter nonsense as that proved nothing about my teaching ability. I had provided student evaluation sheets of my

courses which were in my opinion much better evidence of my abilities. Mrs Ryan did not seem to think this was so and despite other teachers (I could name) doing very little to provide evidence of their ability Mrs Ryan seemed intent on trying to catch me out.

Point 15(f) is untrue. Mrs Ryan had promised me in late 2016 a template for what was required for the renewal of a practising certificate. She never did so and in fact told me she had been too busy. I had never been appraised as to my teaching ability by anyone including the HOD Mathematics since 2013.

Point 15(h) is untrue. It had been explained to Mrs Ryan why I had (foolishly) changed the date on the document submitted, namely to get the appraisal documents ready before my expiry date of May 2017.

Point 16 is untrue. The BOT had from 30 June when I was surprisingly informed that I was to leave the school.

*Point 17(d) should have the added point that I was intending to provide the Principal with an amended appraisal form but with no intent to deceive either her or the HOD Mathematics. Evidence for this is that (a) it had all been discussed with the Principal in December 2016 and the girls mentioned in the document had by then moved further up the school. I hope this suffices. Yours sincerely
John Cormack.*

Discussion

37. We must be satisfied that the respondent's conduct meets one of the definitions of serious misconduct in s 378 of the Act, and that it is of a character or severity that meets the criteria for reporting serious misconduct contained in r 9. The CAC relies on rr 9(1)(h)(n) and 9(1)(o).

Intent to deceive

38. If we find that the respondent's intention was not dishonest, then it is unlikely that we can find his conduct amounts to serious misconduct. It is difficult to see how erroneous documentation without an intention to deceive could meet either of the other two limbs or any of the r 9 criteria cited.
39. The only reason for changing a date on a document is to represent that the new amended date is correct. We agree that it was a clumsy attempt and was unlikely to succeed, but that does not mean that there was no intent to mislead. If it was simply to

get documents ready for the appraisal, then there was no need to change the date. We agree with the CAC's submissions. We find the respondent's explanation illogical and obtuse. We are satisfied that the respondent intended to deceive.

Section 378

40. We do not agree that the first limb of the definition of serious misconduct is met. Although we accept that it is important for the learning and wellbeing of learners that the Council maintains a register of professional teachers who are fit and competent to teach, and this relies in part on the appraisal process for the renewal of annual practising certificates, we do not think that the respondent's conduct in isolation adversely affects or was likely to adversely affect the wellbeing or learning of any student.
41. Having found that the respondent submitted the altered document with the intention to deceive, we find that his conduct reflects adversely on his fitness to practise. According to the Code of Ethics for Registered Teachers which was in place at the time of this conduct, the professional actions of teachers are governed by four principles, one of which is "Truth: to be honest with others and self". As the CAC submitted, as part of their commitment to society, teachers are to "teach and model those positive values that are widely accepted in society" and teacher commitment to the profession includes "be[ing] truthful when making statements about their qualifications and competencies."
42. When a teacher alters a document for the purposes of renewing their practising certificate, it brings into question his fitness to practice. We also find that reasonable members of the public, informed of the facts and circumstance could reasonably conclude that the respondent's behaviour brings or is likely to bring the teaching profession into disrepute.⁷

Rule 9 criteria

43. The CAC submits that the respondent's conduct amounts to fraud and therefore meets the criterion in r 9(1)(h). As Mr McCaughan observed, we discussed the meaning fraud in *Clark*.⁸ Although the respondent's dishonesty was not as sustained as in *Clark*, we agree that this was a case of attempted fraud.

⁷ Applying the test in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

⁸ Above, note 4

44. To satisfy the r 9(1)(n) criteria, we need to find that the conduct was *any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more*. In *Clark*, the teacher had been convicted of two charges of making a false document and two charges of forgery. We are satisfied that the respondent's conduct meets this criterion.
45. Finally, for the same reasons that we find the conduct brings the profession into disrepute, we find that the conduct is likely to bring discredit to the profession.

Penalty

46. In *CAC v McMillan*⁹ 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 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.

47. Section 404 of the Act 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:*

⁹ NZTDT 2016/52, 23 January 2017, paragraph 23.

- (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.*

48. The CAC submitted that if the Tribunal agrees that the respondent intentionally acted to deceive his Principal, it is possible that we may wish to cancel the respondent's registration.

49. Mr McCaughan submitted that at the very least the conduct showed a lack of acknowledgement of the importance of the appraisal process and the attestation process for a renewal of practising certificates.

50. The CAC referred to the following mitigating factors:

- a) The respondent has been a registered teacher since 1990, and has no previous disciplinary history.
- b) The respondent's conduct was at a lessor level than that discussed in both *Leach* and *Clark*. In both of those cases, the level of deception was more significant and sustained, and the benefits sought were greater. By way of comparison, the respondent forged two dates on a single document, in circumstances where the fraud was easily detected.
- c) Unlike in *Clark* the respondent admitted at a very early stage he had falsified the document.

51. It was submitted therefore that the Tribunal may wish to view this matter as a one off (albeit serious) slip, committed by a teacher with no previous disciplinary findings in a lengthy teaching career, in circumstances where the risk of repetition appears to be relatively low, given that the respondent has retired and wishes to regain his practising

certificate so that he might do relief teaching in the future.

52. Therefore the CAC submitted that the following penalty may be appropriate:
- a) Censure under s 404(1)(b).
 - b) A condition to advise any prospective employers of the Tribunal's decision, and provide them with a copy of the decision (for two years) under s 404(1)(c).
 - c) Annotation of the register for two years.under s 404(1)(e).
53. We agree with the CAC submissions. Our reservation with the proposed penalty is the lack of insight shown by the respondent. He continues to try to minimise and justify his actions. He does not seem to appreciate the seriousness of his decision to alter the document in two places. However, we agree that his early admission is a mitigating factor and we therefore impose the penalty out lined above in paragraph 52.

Costs

54. The CAC sought a contribution of 40% of its costs under s 404(1)(h).
55. The Tribunal orders the respondent to pay 40% of the CAC's actual and reasonable costs under s 404(1)(h) and the Tribunal's costs under s 404(1)(i), The Tribunal delegates to the Chairperson authority to determine the quantum of those costs and issues the following directions:
- a) Within 10 working days of the date of this decision:
 - i. The Secretary is to provide the Chairperson and the parties a schedule of the Tribunal's costs
 - ii. CAC to file and serve on the respondent a schedule of its costs
 - b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions she wishes to make in relation to the costs of the Tribunal or CAC.
56. The Chairperson will then determine the total costs to be paid.

Non-publication

57. There were no applications for non-publication.



Theo Baker

Chair

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

1. This decision may be appealed by teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).