

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Benjamin Alexander

NZ Disciplinary Tribunal Decision 2018-43

Mr Alexander's conviction relating to a charge of driving with excess blood alcohol was referred to the Disciplinary Tribunal.

The result: The Tribunal agreed that the conduct warranted an adverse finding and found a penalty short of cancellation was appropriate. Mr Alexander was censured, and conditions were imposed on his practicing certificate, as well as annotation of the register for two years.

On 27 September 2017, as Mr Alexander was driving home, his driving behaviour was reported to Police by a member of the public. He was subsequently arrested and charged with driving with excess breath alcohol. He had a reading of 967 micrograms of alcohol per litre of breath. Mr Alexander reported the conviction, as he was required to do.

Mr Alexander had previous convictions for driving with excess breath alcohol, careless driving, offensive language and disorderly behaviour.

The Tribunal agreed an adverse finding was warranted. The Tribunal noted this was his third driving related conviction. The aggravating factors considered were the high level of alcohol involved, the nature of the driving, his relevant convictions, and indications of his problematic relationship with alcohol.

The Tribunal was encouraged by Mr Alexander's willingness to explore his use of alcohol and recognise the need for abstinence. His commitment to self-improvement was evidenced by his attendance at counselling, post-graduate study, and transparency with his new employer about the matter.

Accordingly, the Tribunal found a penalty short of cancellation was appropriate and imposed censure, a condition to disclose this decision to his employer for two years and annotation on the register for two years. The Tribunal did not make any orders regarding counselling, as the Tribunal noted it would be for him to decide, in consultation with his current counsellor what support he needed.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-43

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 **BENJAMIN KEITH ALEXANDER**
Respondent

TRIBUNAL DECISION
DATED: 6 NOVEMBER 2019

HEARING: Held at Auckland on 3 April 2019 (on the papers)

TRIBUNAL: Theo Baker (Chair)
David Hain and Sue Ngārimu (members)

REPRESENTATION: Ms Van Echten for the CAC
Ms King for the respondent

1. The Complaints Assessment Committee (**CAC**) referred to the Tribunal the respondent's conviction on 4 October 2017 for driving with excess breath alcohol. According to the referral, the respondent had previously been convicted of EBA and careless driving on 14 September 2010. He also had some historic convictions for disorderly behaviour (26 April 2002); and offensive language (20 October 2003).
2. On 18 October 2017, the teacher reported his latest conviction to the Council¹ as he was required to do under s 397 of the Education Act 1989 (the Act).
3. The Tribunal convened on 3 April 2019 to consider the referral. We determined that we wanted some further information which has now been received.

Evidence

4. The parties conferred and agreed on a Summary of Facts (**ASF**). They agreed that on 4 October 2017, the respondent was convicted of driving with Excess Breath Alcohol (**EBA**) under s 56(1) of the Land Transport Act 1998. The maximum penalty for this offence is six months' imprisonment or a \$4,500 fine, in addition to a mandatory disqualification period for at least six months.
5. The respondent reported his conviction to the Education Council on 18 October 2017, as required to do under s 397 of the Education Act 1989.
6. The respondent has changed schools twice since then and has disclosed his conviction to those schools.

Circumstances of the conviction

7. As the respondent was driving home on 27 September 2017, his driving behaviour was reported to Police by a member of the public. He was subsequently arrested and charged with driving having a reading of 967 micrograms of alcohol per litre of breath. He pleaded guilty to the charges and was fined \$970 and ordered to pay court costs of \$130. He was disqualified from holding or obtaining a driver's licence for eight months.

Previous incidents

8. At the time the respondent was registered as a teacher the Council considered the

¹ In this decision the Teachers Council, the Education Council and the Teaching Council are all referred to as "the Council". The Teachers Council was replaced by the Education Council from 1 July 2016 as a result of various provisions in the Education Amendment Act 2015. The Education Council was renamed the Teaching Council on 29 September 2018, by s 10 of the Education (Teaching Council of Aotearoa New Zealand) Amendment Act 2018.

following four previous convictions:

- a. driving with EBA (14 September 2010);
 - b. operating a vehicle in a careless manner (14 September 2010);
 - c. offensive language (20 October 2003); and
 - d. disorderly behaviour (26 April 2002).
9. The Council granted provisional registration and advised the respondent that the convictions were of concern and that further convictions would call into question whether he continued to meet the Council's Criteria of "Good Character" and "Fit to be a Teacher".

Response

10. The respondent advised the CAC that he has abstained from alcohol since 28 September 2017 (the date of his arrest). He said that he had quit drinking permanently and that he would never return to drinking. He wanted to be a positive role model for young men. He felt a sense of relief knowing that "the bad mistakes made will never happen again". He was engaging in counselling.

Adverse finding

11. Section 404(1) of the Act provides that we may exercise various powers "following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee...". An adverse finding is first required before we make any of the orders in s 404.²

CAC submissions

12. The CAC summarised the Tribunal's approach to EBA convictions, and submitted that the respondent's conviction for driving with excess breath alcohol, warrants an adverse finding.
13. The CAC submitted that it is concerning that the respondent, who as a teacher is expected to model positive values for the students he teaches,³ has failed to model even the most basic values widely accepted in society, such as adherence to the law.

² Confirmed by the District Court in *Complaints Assessment Committee v S*, Auckland DC, CIV 2008 004001547, 4 December 2008, Judge Sharp, at [47].

³ Council Code of Ethics for Certificated Teachers, which was replaced by the Code of Professional Responsibility from 30 June 2017

The respondent's conduct, in light of the aggravating features identified, reflects adversely on his fitness to teach and brings the teaching profession into disrepute, pursuant to ss 378 (ii) and (iii) of the Act.

Respondent's Submissions

14. The respondent did not dispute that an adverse finding was warranted.

Discussion

15. Referring to the Council Code of Ethics for Certified Teachers, we noted in *CAC v White*, “[p]ractitioners have an obligation to both teach and model positive values for their students, and driving while intoxicated does not mirror that expectation”.⁴ The Code of Professional Responsibility which had taken effect some three months before this offence was committed captures a similar sentiment:

*As teachers, we respect our trusted position in society and recognise the influence we have on learners, their understanding of the world and the future wellbeing of our society.*⁵

16. In *CAC v Fuli-Makaua* NZTDT 2017-40⁶ there is a comprehensive summary of the factors to consider when determining referrals of EBA convictions. In general:
- all convictions punishable by three months’ imprisonment or more must be reported to the Education Council, both by the teacher under s 397 of the Education Act 1989 (the Act) and by the employer.⁷
 - Even one conviction may result in an adverse finding.⁸ and “places a teacher’s registration in jeopardy”.⁹ A series of convictions will certainly do so.¹⁰
 - Driving while intoxicated poses danger to the public.¹¹

⁴ *CAC v White* NZTDT 2017/29, 28 November 2017

⁵ Our Code Our Standards: Code of Professional Responsibility and Standards for the Teaching Profession.

⁶ *CAC v Fuli-makaua* NZTDT 2017-40, 5 June 2018

⁷ Rule 9(1)(n) of the Education Council Rules 2016 requires an employer to report any 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.

⁸ *NZDT2009/4* and *NZDT2011/16*.

⁹ *CAC v Korau* NZTDT2017/17 26 August 2017 at [23] citing *CAC v Teacher* NZDT2014/1 21 January 2014) at 7.

¹⁰ *NZDT2009/4* and *NZDT2011/16*

¹¹ Above, note 6 at [14].

17. This is Mr Alexander's first EBA conviction since registered, but his second in total. He now has three driving-related convictions. We agree an adverse finding is warranted and that we should exercise our disciplinary powers.

Penalty

18. 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.*

19. In *CAC v McMillan*¹² 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.

CAC submissions

20. The CAC submitted that the following factors, confirmed in *Fuli-Makaua*,¹³ are relevant to assessment of the conduct and appropriate penalty:
- (a) **Level of alcohol involved:** The CAC submitted the level of alcohol involved 967 mcg of alcohol per litre of breath should be considered relatively high, and should be treated as a seriously aggravating factor.
 - (b) **Nature of the driving:** The CAC submitted the manner in which the defendant was driving was unsafe such that it attracted attention, and which further aggravates the respondent's conduct.
 - (c) **Prior relevant convictions:** The respondent's previous convictions were considered by the Council before he was registered as a teacher and he was advised that the Council viewed the convictions with concern and that further convictions would call into question whether he continues to meet the Teaching Council's Criteria of "Good Character" and "Fit to be a Teacher". While the previous convictions occurred over eight years ago, the CAC submits they are a relevant consideration to the assessment of the respondent's conduct.
 - (d) **Problem with alcohol:** The CAC submitted that the very high alcohol reading, coupled with his previous conviction for driving under the influence of alcohol, indicate that the respondent has a problematic relationship with alcohol. The

¹² NZTDT 2016/52, 23 January 2017, paragraph 23.

¹³ Above note 6

respondent chose to drink and drive, despite the previous caution by the Council.

21. The CAC submitted that the respondent lacks insight into how his behaviour impacts on his teaching practice and the profession as a whole. In the respondent's written explanation, which was included in the material before us, there was no recognition that his conduct breached the Code of Professional Responsibility and the fact that such behaviour impacts on the profession as a whole.
22. The CAC acknowledged that the respondent did accept the incidents as set out in the summary of facts and appears to accept that he has a drinking problem, and has attended counselling and Alcoholics Anonymous meetings. He has also reported complete abstinence from alcohol since 28 September 2017. The CAC submitted that the respondent does not appear to have yet implemented a robust prevention plan, but he shows remorse and willingness to address the issue.
23. The CAC therefore sought the following penalty:
 - a) Censure; and
 - b) Conditions that he:
 - (i) Undertakes and completes drug and alcohol counselling for a minimum of two years including developing a prevention plan; and
 - (ii) Discloses to his current employer, and any future or prospective employer, a copy of the Tribunal's decision for a period of two years from the date of conviction.
 - c) Annotation of the register for two years.

Respondent's submissions

24. In response, Ms King submitted that the respondent has clearly acknowledged that he has a problematic relationship with alcohol. She took issue with the CAC's statement that the respondent "appears" to acknowledge that. He has also recognised that he needs help and has sought assistance. She said that he has mechanisms in place to assist him and he is willing to continue to be abstinent.
25. The respondent had no objection to the proposed penalty and thought that it would be of assistance to him.
26. We asked for some more information about the respondent's rehabilitation, in particular he had referred to a evidence of counselling at Canterbury Men's Centre and

attendance at AA, but it had not been included in the documents. That has now been provided, along with a more recent letter confirming some further counselling and progress in his reflection on his relationship with alcohol. He has also enrolled in post-graduate education.

Discussion

27. In *CAC v White* NZTDT 2017/29, 28 November 2017 where we noted that whether cancellation is required “almost invariably” turns on the teacher’s rehabilitative prospects. In *CAC v Fuli-Makaua* we endorsed the point that cancellation is required in two overlapping situations:
- (a) Where the conduct is sufficiently serious that no outcome short of deregistration sufficiently reflects the adverse effect on the teacher’s fitness to teach, or its tendency to lower the reputation of the profession; and/or
 - (b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. The apparent ongoing risk in these circumstances leaves us no option but to deregister.
28. We are encouraged by the respondent’s willingness to explore his use of alcohol and recognise the need for abstinence. It is a confronting exercise and one which many people including some teachers avoid. His commitment to self-improvement is evidenced not only by his attendance at counselling and his post-graduate study, but also his transparency with his new employers about his situation.
29. We are not critical of the absence of reference to the Code of Professional Responsibility in his personal statements. The most important thing is that he understands his responsibilities as a teacher, regardless of whether they are encapsulated in a code of ethics. In his letter dated 7 May 2018, he said, “I want to be a positive role model for young people – the mistakes I have made due to alcohol will not happen again and this gives me a huge sense of relief and most importantly, learning from these mistakes helps me become a better role model.”
30. We impose the following penalties:
- a) Censure under s 404(1)(b); and
 - b) A condition under s 404(1)(c) that he discloses to his current employer, and any future or prospective employer, a copy of the Tribunal's decision for a period of

two years from the date of conviction.

c) Annotation of the register for two years under se 404(1)(e).

31. We have not made any orders regarding counselling. We leave it to him to decide, in consultation with his current counsellor what support he needs. He may continue counselling for two years, and that counselling may focus on his use of alcohol. We do not have sufficient information or expertise to direct him to do that. It is for him to ensure that any consumption of alcohol does not lead him to break the law again or in any other way affect his fitness to be a teacher.

Costs

32. Because this referral arose out of a report under s 397 of the conviction of a teacher, s 404(2) therefore prevents an order for costs being made.



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).