

***Convenor's Determination of a complaint about the behaviour of a Member,
managed according to the Standing Orders relating to the Complaint
Procedures of the Aotearoa New Zealand Association of Social Workers,
effective from 01 July 2015***

Complainant

A NFP Agency social worker

Member

A NFP Agency social worker

Convenor

Mike Doolan, under contract to ANZASW as Complaint Convenor pursuant to the
Standing Orders relating to ANZASW Complaint Procedures

Date of Determination

31 July 2017

Overview

1. The Chief Executive of the Association received information from the Agency that an employee, a Member of the Association, had resigned following a complaint made against her by a colleague of the Agency. The matter was referred to the ANZASW Complaint Convenor on 11 April 2017, and the Convenor confirmed with the Member's colleague that she wished to be the complainant in this matter, in relation to the Association's complaint procedures.
2. The Convenor investigated the matter and determined that the complaint could be resolved, without resort to formal methods of disciplinary action, pursuant to the "Early Resolution" provision of paragraph 17 of the Association's Standing Orders for Complaint Procedures. The Member and the complainant agreed to this approach.
3. This Final Determination has been agreed by the Association, the complainant and the Member. The Member cooperated fully in resolving this complaint.

The Member

4. The Member is a woman of middle years who was engaged as a Field Worker by the Agency. She applied for membership of ANZASW on 11 July 2014 and was confirmed as a Provisional Member in July 2016 (the CE advises that her application had been cancelled for non-payment of fees, but was re-instated when payment was received and she was granted Provisional Membership). She submitted her competency assessment in July 2016, and competency was assessed and approved in August 2016. While having no formal social work qualification, the Member claimed in her initial response to me "over 30 years of social work experience". There is little doubt that she has been involved with the social services sector over several years: as a Programme assistant and supervisor; as an agency volunteer; carrying out youth resource

work; as a single foster-parent and fostering her own “high needs” son; and through her church work. She initiated a Voluntary Association and was President for its first 4 years. She resigned her position with the Agency on 24 February 2017 and is not currently employed, but has again assumed presidency of the Voluntary Association.

5. The Member is in the process of seeking Registration as a Social Worker pursuant to the Social Workers’ Registration Act 2003, under the provisions of s.13 of that Act, as she has no professional qualification. Although she has been advised by the Registration Board that she is eligible to proceed with a s.13 application, she has chosen to place her application on hold pending the outcome of this complaint about her. She will be ethically obliged to inform the Registration Board of this complaint and its resolution should she proceed with a s.13 application for registration.
6. While acknowledging her many years of sector involvement in one capacity or another, I think it is fairer to the Member to regard her as a relatively new entrant to the social work profession. In situations such as hers, membership of ANZASW and ANZASW Competency certification can convey professional legitimacy, and provide agency clients with the assurance that she meets core standards of professional activity.
7. The Member commenced work as a field worker for the Agency in October 2006. She and the complainant in this matter were the Agency’s only field workers. Both attended the office for an hour every morning to complete administration before carrying out their visiting assignments. The Member believes there were no major issues in the working relationship between them but they were not particularly close. While so employed, The Member had external professional supervision with an experienced and well regarded local supervisor.

The Complainant

8. The complainant was a Field Worker for the Agency and colleague of the Member. She is a member of the NZ Association of Counsellors. She had had about 6 years of service with the Agency before deciding to resign earlier this year to return to her own private practice interests. Her resignation was not because of the Member's behaviour towards her, but coincided with her first awareness that the Member was responsible for what had been happening to her over almost 18 months.

The Complaint

9. The complainant began receiving "secret admirer" cards at her workplace address, the first being received on Valentine's Day, 14 February 2015. A total of 9 cards was received between February 2015 and July 2016, when they ceased after the complainant had indicated in the office that she was consulting Police about them. She states that the cards "grew from strange to creepy, with the last few implying stalking activity". She says she twice asked the Member whether she was responsible for the cards, after the first one was received and after one of the latter cards was received, and on each occasion the Member denied being responsible.
10. On 24 January 2017, after she had decided to resign and some 6 months after the last card was received, the complainant was contacted by a former Agency client not known to her, L, for whom the Member had been responsible and with whom the Member had subsequently developed a friendship. L said she was upset about something she knew was happening involving the complainant. She had heard of a scheme between the Member and one of her current Agency clients, M, whereby the Member bought cards and had M handwrite the contents that the Member had wanted written, and then posted these to the complainant at work. L had had counselling about what was happening and decided to tell the complainant what she knew.

11. The complainant also alleged that the Member, in managing an Agency group made up of clients of both workers, had allowed the matter of the cards to be raised and discussed. The complainant understood that the Member regarded the matter as humorous on this occasion.

12. On 04 February 2017, the complainant laid a complaint about the Member to the Agency's Board of Trustees. the Agency commenced an employment investigation on 17 February 2017, placing before the Member the allegations that:
 - i. She may have written up to 10 cards containing rude and inappropriate comments, some of which were left in the complainant's vehicle while she was an employee; and
 - ii. She may have used an Agency client, M, to write those cards and that this may have been done to disguise her involvement.

13. The Member wrote a letter to the complainant on 21 January apologising for "a very silly and immature joke that got out of hand" and that she "was very embarrassed that this occurred and that [she] was not honest enough to own up to this at the time". She told the complainant that she was resigning immediately and her resignation was received by the Agency on 23 January 2017. The Agency ceased any further investigation and reported to ANZASW the circumstances of the Member's resignation on 05 April 2017.

14. When I contacted the complainant after the circumstances of the Member's resignation from the Agency were referred to me by the Chief Executive of ANZASW, the complainant confirmed that her complaint to the Agency's Board could now be regarded as her complaint to ANZASW. As the Agency was only interested in the outcome of any investigation by ANZASW, I determined that the complainant was the complainant in this matter.

My Investigation

15. The Member advises that the provisions set out in sub-paragraph vi, vii and viii of paragraph 3 of the Standing Orders¹ do not apply to her.
16. I limited the scope of my investigation to enquiries of: the Member; the complainant; the documents provided by the Employer (excluding those provided to the Employer by the former client – see my reason for this below) gathered in the context of the aborted employment investigation; and those persons involved in the Member’s Competency Certification in August 2016. I have sought clarification of matters from all parties and this has been freely given.
17. I did not invite submissions from either of the two Agency clients, L and M, whose names have arisen as being involved in the sending of the cards and/or the reporting of what was happening to the complainant. Rather, I decided to proceed with what the Member acknowledged had occurred and to determine whether the complaint can be resolved on that basis.

Matters agreed by the Member

18. The Member agrees that:
- i. She organised the sending of 9 “secret admirer” cards to the complainant between February 2015 and July 2016. The last card was sent before the Member learned that the complainant intended to lay a complaint with Police. She did not own up to sending the cards at this point;
 - ii. She discussed sending the cards with L, who had been her previous client (and had become her friend subsequently through their

¹ Principles relating to cultural safety for Maori or persons from any other cultural or ethnic group, and the use of any official language other than English.

association with The Voluntary Association) and who did not know the complainant;

- iii. She involved her current client, M, in writing the messages on the cards, which the Member then sent. the Member takes full responsibility for the decision to send the cards;
- iv. She continued to send the cards over the following 18 months, she says with the encouragement of her former and current client, L and M, with the aim of poking a bit of fun at the complainant. She acknowledges that this got out of hand as the cards continued;
- v. The Member confirms that an intern raised the matter of the cards at group run by an Agency and later apologised to complainant for allowing this. She denies sharing the matter herself or promoting humour in the group about what was happening. She says she told the intern afterwards that it was inappropriate to bring the matter up in front of clients;
- vi. She was unaware that the cards were causing the complainant distress, and stopped them when she became aware of this. She says that, possibly, the encouragement of her friends (former client L and current client M) prevented her from recognising this behaviour as inappropriate;
- vii. She advances some personal circumstances that may have prevented her from applying proper judgement and perspective at the time;
- viii. the Member had occasions between February 2015 and 2016, including twice when asked by the complainant, when she might have acknowledged her responsibility for the cards to the complainant, but did not do so.

19. In her submission, the Member asked me to consider:

- i. References provided by her external Supervisor and a colleague from another agency with whom she had co-worked;
- ii. Her more than 30 years of social work experience;

- iii. That her actions be viewed as an error of judgement [...] which were behavioural and did not involve her social work practice as such;
- iv. Her deep regret and remorse for her actions;
- v. Her willingness to undergo mediation with the complainant and that she has already apologised by letter to the complainant;
- vi. Her need for further training in ethics, (which was raised in the context of her Competency Certification, and which I have confirmed);
- vii. Her commitment to being a social worker and to improving her social work practice;
- viii. That this error of judgement has resulted in the loss of her job.

My considerations of significant aspects of the complaint

20. There are two key aspects to this complaint, one of which the Member acknowledges, and the other about which she appears to have limited insight. A third matter I wish to refer to relates not to the complaint itself, but the Member's passage through the Competency Assessment process until her certification assessment in August 2016, during which issues relating to appropriate boundary management with clients were canvassed.

Harassment of a colleague, by sending "secret admirer" cards over a period of 18 months or so.

21. There is little doubt that the complainant felt harassed by the cards, even to the point of seeking Police assistance. The complainant never regarded these cards as a joke, especially when she perceived them to become "creepy and in the manner of stalking". The Member says she only became aware of the level of distress the cards were causing the complainant when she learned she was involving Police. On this, and other, occasions when she might have admitted her responsibility for the cards, she did not do so and acknowledges her error in this. The Member does somewhat minimise her responsibility (even while accepting it) by seeing herself as being encouraged by her "friends", one of whom was a current,

and the other a former, client. She says that “possibly the encouragement of her friends prevented her from realising that this behaviour was inappropriate”. I note, however, that she does acknowledge responsibility now and did resign from her employment.

22. The Member views her sending of “secret admirer” cards to a colleague as a behavioural, as distinct from a practice, issue. She says that “while clearly inappropriate and damaging to the complainant, her behaviour did not involve her social work practice as such”.

23. The ANZASW Code of Ethics includes the following about responsibility towards colleagues, which is apposite in this case:

- Members relate to colleagues with integrity, respect, courtesy, openness and honesty (5.1).

Involving her clients in a secret prank against a colleague.

24. While not seeing the sending of the cards as an issue of her practice, the Member does acknowledge in her submission that her involvement of her clients in a prank against a colleague must reflect on her social work practice. The Member formed an ongoing friendship with one of her former Agency clients, L, when they met again through the Voluntary Association. She also referred to her current client, M, as her friend. The appropriateness of encouraging any ongoing personal relationship with a former client and engaging a current client in worrying behaviour towards a colleague did not seem to occur to her until matters had come to a head.

25. Without diminishing in any way, the seriousness of this matter for the complainant and while the behaviour towards her was well outside anything I would have expected to occur in normal collegial relationships, this aspect of boundary management with her clients is the most

egregious aspect of the complaint about the Member and this is a core practice issue. In her response to me the Member has talked about the impact this matter has had on her but makes no reference to what impacts her behaviour may have had on the complainant and, as importantly, on her former and current client. It is this apparent lack of critical reflection on her own behaviour and practice which concerns me most, but I note that the references from both qualified professionals the Member has tendered in her support, balance my concern somewhat.

26. The ANZASW Code of Ethics includes the following about responsibility towards clients, which is apposite in this case:

- Members do not abuse their relationships with clients for personal, professional, political, financial, or sexual gain (3.5);

The Competency Certification process

27. I asked the Member to comment on the fact that she underwent preparation for Competency Certification while the behaviours complained about were happening. She acknowledged “that her studies should have assisted her to recognise that her actions were inappropriate”. She says further that she “did identify during her studies that further training in ethics would be beneficial to her”.

28. The Competency Assessor has advised me that the Member’s panel assessment was conducted by means of a SKYPE interview, at which she was accompanied by her external supervisor. In a discussion about managing boundaries, the Member volunteered having an uncertainty about managing the dependency of a client who was texting her after hours and gave the impression that she may see clients as “friends”. The panel talked with her generally about how she understood her relationship to her clients and had no concerns about the answers she then gave. They assessed her as meeting the standard but, as she did not

have a social work qualification, recommended she engage in readings on boundaries relating to the profession of social work.

29. The Competency process is highly dependent on applicant transparency and willingness to expose their practice to scrutiny. Candidates for certification, and re-certification every 5 years, have an obligation, in the interests of their future clients and the agencies for which they work, to ensure every aspect of their practice, even that which can be embarrassing, is available to the panel tasked with assessing competency. The Member did discuss a client boundary issue she had with the panel, but seems not to have made a connection in this context with her behaviour towards the complainant and her current and former clients.

30. the Member's competency assessment is outside the complaint made by the complainant and I do not need to reach a determination about her involvement in it. Rather, I raise it here as an alert to the Member. The safety and wellbeing of social work clients is dependent on the willingness of helping professionals to undertake self-evaluation rigorously and openly. In this way, supervisors and others (such as competency assessors) can put in place practice improvement strategies that will enhance performance and client protections over time.

Findings

31. In relation to the components of the complaint about the Member, I find as follows:

- i. The Member failed to discharge the professional responsibility she had to her colleague. However, the sending of anonymous cards to her colleague probably does not reach the threshold of professional misconduct, which a finding of a breach of ethics relating to Code 5.1 would entail. Rather, I find that the Member

has engaged in conduct that is unbecoming of a social worker (Standing Orders 4(ii)(a)).

- ii. The Member failed to maintain appropriate boundaries between herself and a former client and between herself and a current client and this failure contributed to causing hurt to a colleague over a sustained period. Not only did she allow these personal relationships to develop, but she admits that she may have been influenced by them in behaving inappropriately to a colleague. She breached an ethical obligation by using a client or clients to assist her in executing an activity that was personal to her (playing a prank on a colleague) and clearly outside the bounds of Agency business and proper professional relationships. I find the Member in breach of Code of Ethics 3.5 and this constitutes professional misconduct.
- iii. The Member's behaviour, while inappropriate as she describes, did not derive from improper motives, but rather was a silly, immature joke that was unworthy of a person in a professional context. While the findings of "behaviour unbecoming" and "professional misconduct" are appropriate in these circumstances, I record that I assess the behaviours at the lower end of each of these categories of disciplinary offence, and my findings should not be taken as an indication that the Member should not continue to practice, nor to seek registration as a social worker under the provision of the Social Workers Registration Act 2003.

32. Notwithstanding the personal circumstances that she proposed as possible explanatory factors, on the facts agreed by the Member, I determine that there is sufficient substance to the complaint, to proceed to the complaint resolution process (Standing Orders 15 (ii)(a)).

Consideration of Suspension of Membership

33. In terms of Standing Orders 15 (iv) I am required to determine whether the circumstances of the complaint, and/or the interests of the Member, the public or any member of the public and the Association, require the membership of the Member concerned to be suspended during the complaint resolution process. I have determined that this step is not necessary:

- i. Because of the admission of culpability by the Member; and
- ii. Because she is not currently in social work employment.

34. However, I do intend to restrict one aspect of the Member's membership until the Determination I make is discharged (See paragraph 45(a) below).

Complaint resolution pathway

35. The Association's Standing Orders for the management of complaints seek resolution at the earliest possible stage and with the least intervention or compulsion. There is no provision for any other pathway towards resolution, apart from those occasions where the Chief Executive makes a complaint (Paragraph 13 of the SO) when a Disciplinary Hearing must be convened.

36. Accordingly, in the first instance I need to seek an Early Resolution through any process I think fit (Standing Orders 17). If either or both parties decline this approach, or the attempt is unsuccessful in resolving the matter, the process moves to the Alternative Complaint Resolution phase, incorporating the appointment of an independent facilitator, an ANZASW Member and a Lay Person (Paragraph 19). If either or both parties decline this approach or the attempt is unsuccessful in resolving the matter, I can convene a Disciplinary Hearing (Paragraph 21).

37. The outcomes able to be reached through Early Resolution or Alternative Resolution processes are not prescribed (as they are for Disciplinary Hearings set out in Schedule II of the Standing Orders). Rather, the processes seek agreement between the parties about how the complaint should be resolved. Neither method has the power to discipline or punish members or revoke their membership of the Association, powers which are confined to Disciplinary Hearings.

38. I monitor the Determinations arising from all three options, on behalf of the Association. In all resolution options, the principles of natural justice apply.

Resolution Proposal

39. The complainant's motivation in bringing this complaint is the protection of clients. She does not seek retribution for what happened to her but considers that the Member's involvement of clients or former clients in her "in-house joke" breached boundaries that should be preserved between clients and workers. She considers that any resolution should contain elements of formal instruction on ethical frameworks with emphasis on the maintenance of appropriate professional boundaries.

40. The complainant does not wish to have any face-to-face involvement with the Member in the resolution of this complaint. Her view is that: she has moved on from this relationship; she has no investment in any further contact with the Member; and she does not seek punishment but rather seeks the protection of any future clients the Member may have while employed in social work under the aegis of ANZASW.

41. The choices open to me are:

- i. to seek an early resolution of the complaint directly with the Member and the complainant, pursuant to paragraph 17 of the Standing Orders; or

- ii. to Convene a Disciplinary Hearing, pursuant to paragraph 21 of the Standing Orders.

42. Though there remain some differences in the perspectives of the Member and the complainant about all that happened, I do not believe these are substantive or sufficiently important to warrant a formal legal evidence-hearing process that might involve the Agency's clients, given that the Member has acknowledged her responsibility for sending the cards and for using Agency clients in her scheme.

43. I have a concern, outlined in paragraph 25, about the Member's capacity for critical reflection of self in the context of her social work practice, even allowing for the balance brought by her two referees. Nonetheless, I assess that, given the Member's frank admissions of culpability for what happened and her desire to continue her development as a professional social worker, as well as considering what the complainant seeks, an early resolution process is the better option to put in place strategies that will be beneficial to the Member, her clients and her future colleagues and protect them all into the future.

Resolution

44. Over the course of several weeks, I put my recommended resolution proposals to the complainant and the Member separately. This was a helpful process and enabled all parties to become clearer about the issues. The final Determination is adopted by consent of the parties – the complainant, the Member and the Chief Executive of the Association.

Determination

45. I determine that:

- a. The Member's Competency Certification is suspended until the Convenor notifies the Chief Executive that the Member has

complied with the Final Determination and the Final Determination is discharged (pursuant to Schedule I (4)(iv) of the Standing Orders;

- b. the Member undertake, at her own expense (estimated at \$850.00, GST inclusive) four sessions of clinical supervision (total of 6 hours, allowing time for recording) with an independent person nominated and briefed by ANZASW. The sessions will focus on the issues of: collegiality; boundaries with clients; the general ethical framework encompassing social work; and critical self-reflection. The Supervisor will provide a report to the Member and the Convenor within 3 months of the date of the Final Determination, confirming the Member's compliance with this provision and setting out what steps the Member might take to develop her competencies over time;
- c. The Member pay a sum of \$250.00 to a charity nominated by the complainant
- d. The Member pay a sum of \$250.00 towards the Association's costs in these proceedings;
- e. An anonymised version of the Final Determination is placed on the Association's website



Mike Doolan
Complaint Convenor