



**EDUCATION COUNCIL**  
NEW ZEALAND | Mātātū Aotearoa

## **Complaints Assessment Committee (CAC) v Kym Green**

NZ Disciplinary Tribunal Decision 2015/25

Teacher Kym Green was referred by the Education Council's Complaints Assessment Committee (CAC) to the New Zealand Teachers Disciplinary Tribunal (Tribunal) for taking a significant number of absences from work in the six years she taught at Auckland Girls Grammar School.

The allegation was that her absences, taken as sick leave, were not legitimate sick days, and that she was well enough to work. Ms Green contested the allegations and said that the absences were legitimate.

During the course of the hearing, Ms Green was referred to the impairment committee. The impairment committee concluded that Ms Green was not suffering an impairment at the time of the absenteeism.

The teacher had provided a number of medical certificates for some of the days she was sick. The Tribunal noted that these certificates appeared to have been accepted by the school, and the school did not appear to seek any additional information.

The Tribunal found there was insufficient evidence to satisfy it on the balance of probabilities that Ms Green was in fact well enough to work. On that basis, it found the charge was not proven.

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2015/25**

**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** **KYM GREEN**

**Respondent**

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**TRIBUNAL DECISION**

**26 April 2018**

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**HEARING:** Heard in part at Auckland on 12 April 2016  
Resumed at Auckland on 12 December 2017

**TRIBUNAL:** Kenneth Johnston (Chair 12 April 2016) Theo Baker (Chair 12 December 2017)  
Graeme Gilbert and Stuart King (members on both hearing dates)

**REPRESENTATION:** Mr Stefan Kaminski for the CAC

The respondent represented herself, with Mr Bradley in support

1. The respondent faces a charge of serious misconduct arising from a significant number of absences from her employment over a period of six years while a teacher at Auckland Girls Grammar School (the School). The case for the Complaints Assessment Committee (**the CAC**) is that the respondent was absent from teaching when not truly unwell, and so she is guilty of misconduct or serious misconduct. At the reconvened hearing on 12 December 2017, Mr Kaminski advised that the matters for the Tribunal to determine were the allegations contained in particulars 7 of the Notice of Charge which alleges:

*7. If the teacher was not truly unwell for the majority of her absences, then the CAC contends she has committed misconduct or serious misconduct.*

### **Summary of findings**

2. For the reasons set out in paragraphs 72 to 80, the charge is not upheld.
3. Under r 32(1)(c) of the Teachers Council (Conduct) Rules 2014, there are orders for non-publication of the:
  - names of the respondent's two general practitioners, [REDACTED]
  - names of two teachers, [REDACTED]
  - details of any settlement offers made in the course of the respondent's employment dispute.
4. There are no orders for costs.

### **Introduction**

#### Matters not in dispute

5. The respondent started working at the Auckland Girls' Grammar (**the school**) on 28 January 2003 as a teacher of science and biology. There was an initial issue with her registration because of two convictions which concerned the Council, but the respondent was given provisional registration on 22 September 2004.
6. Until 2008, there were no concerns about the respondent's performance. She had an excellent rapport with her students, and high standards in the classroom. Ms Thomson (the principal) was satisfied that the respondent met all the registered teacher criteria.
7. From 2008 there were concerns about the respondent's level of absence. There was no

dispute that the respondent was absent on the dates alleged by the CAC. She was eventually dismissed in December 2014.

#### Issues to determine

8. Before we consider whether there are grounds to exercise our disciplinary powers, we must first be satisfied on the balance of probabilities that the CAC has proved the facts. For the CAC, Mr Kaminski confirmed at the beginning of the reconvened hearing on 12 December 2017 that the CAC's position is that on the basis of the Impairment Committee's report, there is insufficient evidence to say that the respondent was truly unwell at the time of her absences from school. The respondent maintained that she was. This was the main factual dispute for the Tribunal to determine.

#### **Course of hearing of charge**

9. Because this matter was originally referred to the Council before 1 July 2015, it falls under the provisions of the Education Act 1989 (**the Act**), before it was amended by the Education Amendment Act 2015. Section 139AB provided that:

***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; and*

(b) *that is of a character or severity that meets the Teachers Council's criteria for reporting serious misconduct.*

10. The CAC's case was that the respondent's absenteeism adversely affected students' learning and produced comparisons of exam results to support this. The respondent disputed the appropriateness of the comparisons of results and did not accept that students were affected by her absences.

11. Rule 9 of the Teachers Council (Making Reports and Complaints) Rules 2004 contains the 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:*

- (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):*
- (b) *the sexual abuse of a child or young person (which includes sexual 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:*
- (d) *being involved in an inappropriate relationship with any person under the age of 16 years:*
- (e) *being involved in an inappropriate relationship with a student with whom the teacher is, or was when the relationship commenced, in contact with as a result of his or her position as a teacher:*
- (f) *the neglect or ill-treatment of any child or young person in the teacher's care:*
- (g) *the neglect or ill-treatment of any animal in the teacher's care:*
- (h) *theft, or fraud:*
- (i) *involvement in the manufacture, cultivation, supply, dealing, or use of controlled drugs:*
- (j) *permitting, or acquiescing in, the manufacture, cultivation, supply, dealing, or use of controlled drugs by any child or young person:*
- (k) *viewing, accessing, or possessing pornographic material while on school premises or engaged on school business:*
- (l) *viewing, accessing, or possessing pornographic material that depicts children or young persons or that depicts animals engaged in sexual acts with humans:*
- (m) *breaching the school's standards or rules concerning the use of alcohol at the school or while on school business:*
- (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.*

12. The laying and hearing of this charge has not taken the usual course. On 10 February 2015 the Teachers Council, as it then was (**the Council**),<sup>1</sup> received a mandatory report (under s 139AK of the Act) the school following the respondent's dismissal from her position there. According to the report, the respondent was dismissed in December 2014 because of an unacceptably high level of absenteeism.
13. A CAC considered the matter and a referral to an impairment process under s 139AT(2)(c) was proposed, but the respondent then withdrew her consent.
14. Under s 139AT(4) the CAC then filed a Notice of Charge dated 11 May 2015 alleging serious misconduct. In particular, it was alleged that the respondent was regularly absent from school, the medical certificates were unsatisfactory as they were dated several days after her absence, and that her regular absences had a negative impact on her students' achievement and required her colleagues to undertake extra duties to cover her absence.
15. In the absence of any opposition from the respondent, the charge was amended on 30 November 2015. The amended charge provides details of the alleged shortcomings of the medical certificates and the periods not covered. At the reconvened hearing on 12 December 2017, Mr Kaminski advised that the matters for the Tribunal to determine were the allegations contained in particulars 7 which alleged:
 

*7. If the teacher was not truly unwell for the majority of her absences, then the CAC contends she has committed misconduct or serious misconduct.*
16. A hearing had been commenced on 12 April 2016 but was then adjourned part-heard to enable a referral by consent to the impairment process. This is recorded in a decision dated 21 April 2016, in which it was also noted that no conclusions had been reached on the question of serious misconduct.
17. At a pre-hearing conference on 6 July 2017, Mr Kaminski advised that the Impairment Committee was unable to conclude that the respondent had been suffering from an impairment at the time of the events that are the subject of the charge, and that it had concluded that at the time of the assessment, the respondent was not suffering from an

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<sup>1</sup> The name was changed to the Education Council of Aotearoa New Zealand on 1 July 2016 by ...

impairment. The matter was set down for hearing on 12 December 2017.

18. The Chair of the original part-hearing in 2016 is no longer a Chair of this Tribunal. At a pre-hearing conference in July 2017 the current Chair did not agree to adjourn the matter *sine die* (indefinitely). Having heard objections from the respondent as to the proposed composition of the Tribunal, the matter was nevertheless set down for a reconvened hearing with two original panel members and a different Chair. The reasons are recorded in a decision dated 20 November 2017.

### **Evidence considered by the Tribunal**

19. We have now considered all papers that were before the Tribunal for the hearing on 12 April 2016 (Part One), the transcript of evidence for that hearing which lasted less than two hours, further documents received for the hearing on 12 December 2017 (Part Two), and oral evidence and submissions given on 12 December 2017. This evidence was also transcribed.

#### *Part one hearing documents*

20. The following documents were before the Tribunal for Part One of the hearing of this charge on 12 April 2016:
- (a) Original notice of charge
  - (b) Amended notice of charge
  - (c) Minutes of teleconferences in 2015
  - (d) Signed briefs of evidence from the following witnesses:
    - Michal Denny, Head of Science at the School
    - Liz Thomson, Principal at the School
  - (e) Schedules of the respondent's absences for 2008 to 2014
  - (f) Twenty medical certificates of various dates from 2012 to 2014, and one tax invoice from the respondent's GP
  - (g) Work and Income Work Capacity Medical Certificate dated 6 May
  - (h) A series of emails between the respondent and other staff about her work plans, reports and student achievement
  - (i) Charts showing grades for Year 12 Science and Year 11 Science classes taught by the respondent
  - (j) Charts showing grades for Year 11 Science classes taught by a different teacher
  - (k) Application to Renew Practising Certificate signed 19 August 2013 and endorsed

by Ms Thomson

- (l) Letter dated 16 December 2014 from the Chair of the Board of AGGS terminating the respondent's employment
  - (m) Mandatory report to the Education Council (the Council)
  - (n) A timeline of events, headed "Kym Green – Summary of Issues and Communication"
  - (o) Email dated 17 November 2015 from the respondent to the Secretary of the Tribunal
  - (p) CAC submissions dated 3 March 2016 (which were no longer relevant for the resumed hearing)
  - (q) Emails from the respondent attaching photo images of emails, which are not legible
  - (r) Record of a meeting between the respondent, the Principal, the Chair of the Board of Trustees, with the Principal's PA in attendance
  - (s) An email dated 22 March 2016 from the respondent, setting out her answer to the charge and producing various documents relevant to her employment and termination
  - (t) Copies of some emails from 2014 between the respondent and Ms Thomson which she forwarded to the Tribunal Secretary in March 2016
  - (u) The respondent's time line of events from 19 August 2013 to 5 December 2014.
21. Item (f) refers to medical certificates. We viewed 20 medical certificates. In one certificate dated 2 July 2014 the respondent's GP has recorded that she had examined the respondent and that the respondent had needed time off over the previous two months due to a severe case of influenza and also some anxiety issues aggravated by work stress. In the next certificate, dated 19 August 2014 it is recorded that the respondent was examined that day and that she had been suffering from depression and anxiety in the last year or so.
22. There was no mention of the nature of the respondent's incapacity in the remaining 18 medical certificates, which simply said that she was "unfit for work" between certain dates. In only four certificates, including the two referred to above, the doctor recorded that the respondent had been seen and examined.

*Impairment process*

23. The Tribunal was also provided with copies of:
- a) Email correspondence between the respondent and Mr Dodd, Impairment Advisor, of the Education Council between July and November 2016, an February to June 2017.
  - b) Impairment Committee Report dated 13 December 2016
  - c) Email correspondence between Mr Dodd and Mr Kaminski in February 2017
  - d) Impairment Committee Final Report dated 19 June 2017.
24. The Impairment process did not run a smooth course.
25. In the first report, dated 13 December 2016, it was recorded that the respondent had said that she was currently well, but did not consent to the release of any medical information or further assessment regarding the concerns from the mandatory report. It was also recorded in the report that Ms Green had said that her understanding of the impairment process was that it would look at what happened at the time in deciding if she was impaired due to stress because of the “illegal treatment” by the School. She said that she had never been on any medication apart from the contraceptive pill in years gone by.
26. Paragraph 33 of that Impairment Committee Report states:
- The Impairment Committee is therefore unable to determine whether Ms Green is/was suffering from an impairment or how this may impact on her teaching now or at any time of the events in the mandatory report.*
27. In an email dated 21 February 2017 to Mr Dodd, Mr Kaminski recorded that he had spoken with the respondent and that she realised she had “messed up” and did not maintain the requisite communication with the Impairment Committee. She was willing to cooperate with the process, including the Committee having full access to her medical records.
28. In an email dated 22 February 2017 to Mr Dodds, the respondent said:
- I will sort this with my doctor next week. I already gave them signed consent to share any of my information with the council before the tribunal hearing last year in April. I will reconfirm this with them when I go next week. Perhaps it would be best that I get one of my two doctors to call you so you can give them a more precise understanding of what you require from them; of course I will explain it*

*myself also.*

29. Following a further exchange between the two, the respondent sent Mr Dodd an email on 13 March 2017 in which she set out her list of grievances against the school in a narrative covering events from her return to school in 2013. She concluded with saying that she was in tip-top health, not on any medication, has not drunk alcohol in almost seven years and does not use drugs. She said that she ate well, slept normally and was happy, fit and healthy and not impaired at all.
30. There were further email exchanges in which the respondent denied being prescribed antidepressants, reiterated her dissatisfaction with the School, expressed her frustration generally and declared she was well.
31. In its final report dated 19 June 2017, the Impairment Committee recorded that in a letter dated 1 March 2017 from the respondent's GP, it was confirmed that the respondent was currently "in very good health and fit to resume work". In the Executive Summary, the Committee said:
- 5. The Impairment Committee remain unable to make clear findings on the 2014 matters from the mandatory report.*
- 6. Ms Green's GP provided further information about her medical treatment in 2014. A diagnosis of anxiety was confirmed, with physical symptoms including migraines and skin infections. These were treated with medications.*
- 7. The Impairment Committee cannot confirm the level of anxiety Ms Green was experiencing in 2014.*
32. According to paragraph 29 of the report, the respondent's GP provided a medical certificate dated 1 March 2017, in which she said that she had seen and examined the respondent on 1 April 2017. It is not clear whether the apparent anomaly in the dates was clarified. In any event, it was recorded that the respondent was
- treated for a stress disorder causing anxiety in 2014. She was under excess work stress at that time. She has made a full recovery and has not required any antidepressant medication or input from a psychiatrist.*
33. There was further communication between the Impairment Advisor and the doctor who confirmed that during 2014 the respondent had suffered from stress causing migraines and skin infections in February. The Impairment Committee recorded in its report that in

May, June and July 2014 the respondent had reported significant work stress. In July she had flu and also reported work stress. She was directed to websites for Cognitive Behavioural Therapy and referred to a psychologist, who was unable to make contact with the respondent, who decided that she did not need to see him at that stage. In August the respondent attended an appointment and was diagnosed with an adjustment disorder with anxiety and low mood symptoms, as a direct result of excess work stress. She was prescribed an anti-depressant but decided that she did not need the medication and did not fill the prescription. There were further telephone consultations in October, November and December 2014.

*Evidence from Part One of the hearing*

34. The Tribunal also reviewed the transcript of evidence from the first part of the hearing. There was approximately two hours of hearing on 12 April 2016.
35. In Part One of the hearing, Ms Elizabeth Thomson read her brief of evidence and answered questions from the respondent and the Tribunal. Ms Thomson was the Principal of the school, having held that position since 1997.
36. Most of Ms Thomson's evidence was not in dispute. The respondent challenged the percentage calculation of her absenteeism. Ms Thomson told us that the respondent's absences hovered around 20%. Ms Thomson acknowledged that the accuracy of the records may be in doubt, but she suspected that there were just as many errors in the respondent's favour as against. Even if there was an error rate of 10% in those records, she was still absent for 18% of the time. This averages at one day per week. We did not find that any discrepancy of percentages was relevant to our decision.
37. Ms Thomson also advised there were issues with the regularity with which the respondent supplied medical certificates to verify the reason for her absences, and she would claim that many she had given the school went missing.
38. Ms Thomson said that the content of the medical certificates was not illuminating, and they were nearly all the same. She said that in retrospect she probably should have demanded the respondent authorise her general practitioner to supply the school with something more specific. There was some speculation about the reason for the respondent's absences, with the respondent blaming her work environment, but Ms Thomson observed that other teachers managed.
39. The School granted the respondent a year's Refreshment Leave from 28 May 2012 to

27 May 2013. Towards the end of that leave period, the respondent provided a WINZ work capacity certificated dated 6 May 2013.<sup>2</sup> This describes the respondent as suffering from a stress related problem and receiving active treatment under the care of a specialist. The inability to work was said to dated from 14 April 2013, which was during her period of leave. It was predicted that she would be unable to work for a further 3 to 6 months.

40. The respondent returned to work on 31 July 2013. Within a month she was not at work because of illness. Ms Thomson referred to the following medical certificates which were before the Tribunal:

<b>Date of certificate</b>	<b>Period covered</b>	<b>GP Comment</b>
16 September 2013	30 August 2013 to 5 September 2013	<i>Reported to me</i>
16 September 2013	11 September to 13 September 2013	<i>Reported to me</i>
31 October 2013	23 October 2013 29 September to 31 October 2013	<i>Was seen and examined by me</i>
4 November 2013	1 November to 7 November 2013	<i>Was seen and examined by me</i>
27 November 2013	28 November to 29 November 2013	<i>Reported to me</i>

41. When the respondent's practising certificate expired on 4 October 2013, Ms Thomson did not feel she could tick all the endorsements required on the annual practising certificate renewal form, and so the respondent continued on a series of temporary extensions while the School and the respondent or her legal representative debated whether Ms Thomson should be required to affirm that the respondent qualified for renewal on all four grounds required.
42. In the meantime. the respondent continued to be absent from school. From 20 January 2014 to 5 December 2014 she was absent for 105.8 days. The reasons for all but 4.6 of those days were recorded as sickness or medical appointments. There were medical certificates for some, but not all of those days.

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<sup>2</sup> The certificate referred to above at paragraph 20 g).

*Michal Denny*

43. At Part One of the hearing, Ms Denny read from her Brief of Evidence. She was the Head of Science at the School, and so the respondent, as a biology teacher was part of Ms Denny's faculty. She described the respondent as able in the subjects she taught, but Ms Denny also noticed that the quality of her contribution to her students' education began to decline.
44. Because of the frequency of the respondent's sudden, unscheduled absences, her absence would often coincide with that of another science teacher, making cover very difficult. Ms Denny said that the respondent stretched their time and resources, with the school having to resort to bringing in relievers with little or no grounding in biology or science.
45. According to Ms Denny, after the respondent's return from refreshment leave, she struggled with tasks such as setting work for her classes, marking her students' work, engaging in moderation of marks, entering student data, and writing reports.
46. Ms Denny said that the students lost motivation, were not punctual and did not always remain for the whole of a class. Ms Denny referred to approximately 20 emails which were included in the Tribunal's Bundle of Documents, in which staff set out their complaints or concerns about the respondent. Seven of these refer to concerns raised by parents.
47. Ms Denny also produced statistics showing that 70% of the respondents' Year 12 students in 2014 failed one standard, despite the respondent having taken longer than the usual 5 to 6 weeks to complete it. The previous year another Year 12 class with a different teacher had a 36% failure rate, and the following year (2015), a 34% failure rate.
48. We were also shown results for the respondent's Year 11 science class, which like Year 12, was completely internally assessed. The respondent taught and assessed two standards which had failure rates of 86% and 89%. We were also given the failure rates for two other Year 11 classes which were a similar cohort of students, taught by other teachers. One class had a failure rate of 23% and 29%, and the other a failure rate of 70% and 53%. The teacher who took over the respondent's Year 11 science class taught and assessed the remaining three standards with failure rates of 0%, 39% and 36%.

### Evidence for the respondent – Part One

49. Prior to Part One of the hearing, the respondent had filed a timeline of events from 19 August 2013 to 5 December 2014, with her commentary on conversations that had taken place with other teachers. This evidence has not been traversed here because we do not find it relevant to our first factual finding.
50. The respondent was sworn in on 12 July 2016 and disputed that her classes were behind on their curriculum. Very little was said before the Chair asked her what decision she would like from the hearing. She wanted it to be seen that she was treated unfairly and that her registration had been offered to her if she resigned and went to another school. It was explained to her that this Tribunal's jurisdiction did not extend to matters under the Health and Safety at Work Act or whether she was treated fairly at work.
51. It was explained that the CAC was seeking a referral to the Impairment Process and after some discussion and an adjournment, the respondent agreed to this referral.

### Impairment Report

52. In a report dated 19 June 2017, the Impairment Committee found that there was no current impairment and was unable to make clear findings on the 2014 matters.

### Evidence for the respondent Part Two

53. Before the reconvened hearing on 12 December 2017, the respondent provided some recordings of parts of some meetings she had with the principal and the Chair of the Board. She said that they were evidence of her being bullied, and this was relevant to the reason she was unwell: she was stressed because of the way she was being treated at work. We listened to the recordings and did not hear evidence of her being bullied, but in any event, that is not a finding we needed to make. We did not find these recordings relevant in our consideration of the charge.
54. The only oral evidence at Part Two of the hearing of this charge was from the respondent. She referred to Mr Kaminski's submission that she had had two opportunities to prove that she was clinically unwell or truly unfit. Noting that he had said that there was no finding from the Impairment Committee, she referred the Tribunal to paragraph 43 of the Impairment Committee Report,<sup>3</sup> which states:

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<sup>3</sup> At pages I39 to I46 of the Bundle of Documents

*While Miss Green was certainly unwell in 2014 and there is now some more information around this, the Impairment Committee remains unable to determine whether Miss Green was suffering from any specific impairment at the time of the events in the Mandatory Report.*

55. The respondent said that 2014 was the year that this all occurred; the year the Mandatory Report was about and it was the year she was dismissed. She said that it was stated, after her doctors giving them more evidence, that she was in fact unfit at the time.

#### Cross-examination

56. Mr Kaminski cross-examined the respondent as to whether she was truly unwell when she was absent from school. In particular he challenged her evidence that she was bullied. He referred to her statement in her timeline that at a meeting on 23 October 2014 with the Principal and the Chair of the Board she was bullied and the Chair “howled” her down and would not let her speak. The respondent did not resile from that statement or her description of the Chair “frothing at the mouth”. She did not accept that she was prone to exaggeration.
57. It was put to the respondent that in an email in 2009 when she had accepted that her absences had been a bit high, she had not mentioned bullying. She said it was because she had hoped it would stop. She also had been allowed to take leave for other matters. She was cross-examined at length about various absences which were not and could not be attributed to bullying.
58. When asked why she had not typed up the transcripts of the recordings, in accordance with directions made at a pre-hearing conference, she said that she had typed them but they were on her lap-top and she had left her lap-top at home. She did not think that the employment matters would be covered at the hearing because she had been told this hearing was not about her employment situation. She denied that she told lies.
59. Generally Mr Kaminski’s cross-examination was aimed at exposing the respondent as a liar. This continued as he put to her emails in which she had said that she was going to ensure that a complete set of medical certificates was before the Tribunal. He asked where the medical certificates were. The respondent said that she had asked the medical centre to send them, and that she was not responsible for whether or not that had happened. She did not accept that she had not made her medical records available

to the Impairment Committee.

60. Mr Kaminski cross-examined about inconsistencies in the respondent's statements that there had been no complaints from students about her, and yet in an email to the principal on 20 October 2009 (Exhibit 4), she had asked for a copy of the complaint. In that email exchange, the principal had confirmed that there had been a complaint. This line of questioning was fairly circular as the respondent said that she had not ever seen the complaint, and therefore did not accept that there had been one. This was part of the reason that she felt bullied. We did not see a copy of such a complaint.
61. In answer to questions about her failure to disclose convictions to Ms Thomson, the respondent said that she did not believe that she needed to because they were old and she had not gone to prison. At the time that she applied for registration, she did not have the second conviction.
62. Mr Kaminski's cross-examination also highlighted that the respondent had said that she would make available transcripts of the audio recordings she had provided and yet she had not submitted the transcripts. She maintained that they were on her computer at time.
63. Ms Green was cross-examined at length about her stress, the causes, whether she had treatment, and the words used by the doctors who signed her medical certificates. It was put to her that the certificates were not worth the paper they were written on.
64. The respondent was asked about the treatment for her stress. She did a few self-help classes, talked to a friend who is a counsellor, and she took her dog for walks along the beach and in the bush. She did not take anti-depressants. She explained her degree is in physiology and biochemistry and she would not take anti-depressants because she understands the effect they have on the brain and body.
65. Mr Kaminski observed that the respondent returned to work on 31 July 2013, but by 6 August she was already sick. The respondent said that there was a mistake with the records. Mr Kaminski suggested that she had had plenty of time to file further evidence to correct the record, but she said that she did not understand the process. When asked why she did not have medical certificates for the 12 days off in her first month back, she said that they were not required unless the days were in a row (under the PPTA contract).

66. The respondent denied being intimidated by the senior management at Auckland Girls Grammar School, saying that she was bullied by them and wrongly treated, which was stressful. She said that she is not intimidated by anybody.
67. In answers to questions from the Tribunal as to what she wanted following the hearing, the respondent said that she wanted her name cleared, and she would have liked to have been given her practising certificate or registration.
68. When asked why there were delays with the impairment process and why nothing seemed to be “straightforward”, the respondent said that she fell into deep depression after being dismissed. She became upset and said,
- Yeah, I was avoiding everything that needed addressing, or not really avoiding but it just, I just didn't get round to it, you know. The days would come and go.*

## Findings

69. Mr Kaminski’s cross-examination highlighted the inconsistencies in the respondent’s evidence. We found her to be confused about timeframes and very quick to bring any matter back to her perception that she was bullied over several years during her time at the school. We do not accept that the Chair was “frothing at the mouth” at any time, and find it hard to imagine anyone doing that. In the tape that we heard of a conversation with the respondent, the Chair and the principal, there was nothing about the Chair’s tone that indicated a lack of control, anger or intimidation.
70. On the one hand the respondent said that she was not intimidated by anyone, but on the other hand, she seemed to be easily adversely affected by certain comments made by her colleagues. She seemed to lack the communication skills to address such issues as they arose, and she is still very upset by these matters. We gained the impression that the respondent did not want to be thought of as vulnerable.
71. It is not the role of this Tribunal to determine employment disputes. We observe that the respondent’s examples of her treatment did not sound like “bullying” as we understand that term, but we do not need to determine whether the respondent was being bullied in order to dispose of this charge. We reiterate that our views on this issue are not relevant for any employment dispute.
72. The onus was on the CAC to prove that respondent was not truly unwell at the time of her absences from school.

73. Medical certificates were provided for some but not all of those absences. The need for medical certificates for periods of sick leave is a matter for an employer to determine. A failure to provide a medical certificate does not mean that someone was not unwell. The time to explore the reasons for the respondent's absences and the validity of her explanations was at the time of those absences. If the school was not satisfied with the information contained in the medical certificates, they could have asked for more. It appears that the respondent's explanations for her absences were accepted. The school did not seek further information or explore the situation.
74. Mr Kaminski challenged the medical certificates that were before the Tribunal, saying they were "not worth the paper they written on". We did not hear from either of the medical practitioners who signed the documents to explain the diagnosis and treatment of anxiety, or their communication and clinical relationship with the respondent; they did not have an opportunity to respond to the criticisms of their practice. Through the Impairment Committee's report, we heard that the respondent's GP had more recently confirmed that the respondent had suffered from some stress-related matters during 2014.
75. We are surprised that the respondent did not participate in any sustained or structured treatment programme to for her stress, but also recognise that the nature of mental unwellness can make it difficult to appreciate what is needed and to comply with any recommendations. The availability and efficacy of treatment for mental illness is not as straightforward as for some clinical presentations, and so we are not able to say that the respondent's choice not to commit to structured counselling or regular medication is evidence that she was not truly unwell. Without hearing from a medical practitioner about the treatment options and training of practitioners working in primary health and the availability of funded and non-funded interventions, we do not think we are in a position to comment on the respondent's treatment or lack thereof. Given the school's concerns about the impact of her absences on her students, we are surprised that they did not take action sooner to serve the interests of the students as well as the respondent herself.
76. The CAC case was that the respondent was well enough to work on the days that she was absent, but we heard no evidence to satisfy us on the balance of probabilities that she was indeed well at that time.

77. It was not up to the respondent to prove to the Tribunal that she was sick. The respondent said at the time of her absences that she was ill, and she repeated at the hearing that she was absent from school because of stress. Although we found the respondent was confused and inconsistent in some of her evidence, it does not follow that she was not unwell at the times that she was absent from school.
78. The Impairment Committee was unable to conclude that the respondent was “impaired” at any time of the events of the mandatory report, but did conclude that the respondent was unwell in 2014.
79. Having considered all the evidence, we find that the CAC has not proved that the respondent was not unwell when she was absent from school.
80. We accept that the respondent’s absences were likely to adversely affect the learning of one or more students, but because the CAC has not satisfied us of the factual allegation that the respondent was not truly unwell, we are unable to find that her absences bring discredit to the teaching profession, or meet any of the other criteria for a finding of serious misconduct. The charge is not upheld.
81. We cannot make any orders, but we do encourage the respondent to work on some coping mechanisms for stress and anxiety.

**Costs**

82. We make no order for costs.

**Non-publication**

83. During the course of the hearing Mr Kaminski was critical of the two general practitioners involved in the respondent’s care. They were not given an opportunity to answer these matters, and so in the absence any objection from either party, there is an order for non-publication of the names and identifying details of the two medical practitioners.



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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).