

**Attention is drawn to the order  
prohibiting publication of  
certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 203/09  
5035404

BETWEEN	JUDITH CHISHOLM Applicant
AND	MINISTRY OF SOCIAL DEVELOPMENT Respondent

Member of Authority: Philip Cheyne

Representatives: Catherine McNamara and Fleur Fitzsimons, Counsel for Applicant  
Sean Heywood, Counsel for Respondent

Investigation Meeting: 26 May 2009 at Christchurch

Submissions & further Information Received: 8 & 16 June 2009 from the Applicant  
2 & 10 June 2009 from the Respondent

Determination: 27 November 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Judith Chisholm worked for the Department of Child Youth & Family Services (CYF) and its predecessors for about 28 years, the last 20 of which were as a social worker in the area of adoption. Mrs Chisholm's part-time employment ended in September 2005 when she requested *early voluntary retirement* based on previously offered terms. The retirement followed Mrs Chisholm's lengthy absence on sick leave.

[2] By letter dated 26 October 2005, Mrs Chisholm through her union raised a personal grievance. CYF acknowledged that letter on 7 November 2005 and

eventually provided a substantive response on 19 January 2006 denying any liability. The exchange focused mostly on the termination of Mrs Chisholm's employment.

[3] These proceedings appear to have been lodged on 24 October 2008, just within time for a personal grievance. In the statement of problem, Mrs Chisholm's employment relationship problem is described as a disadvantage personal grievance and a breach of contract. In reply, CYF says that Mrs Chisholm's grievances were not raised within 90 days, that it did not unjustifiably disadvantage her or breach her employment agreement and that it always acted fairly and as a good employer.

[4] To resolve these problems, I will set out more fully the sequence of events that preceded Mrs Chisholm's sick leave and the exchanges between the parties prior to her resignation. I must then assess whether her grievances were raised within time. If her grievances were raised within time, I will consider the merits of those claims before addressing the alleged breaches of contract and statute.

[5] First, there are two matters on which the parties are agreed. CYF is now part of the Ministry of Social Development (MSD) and it is agreed that the respondent should be identified accordingly in these proceedings. However, for convenience, I will refer to the employer as CYF or the Department. In the evidence and documents, there is mention of adoptees and adoptive parents. To protect the privacy of these people, and with the agreement of both parties, I make an order prohibiting from publication the names of any adoptees or adoptive parents referred to in the evidence or during these proceedings.

### **How the problems arose**

[6] Mrs Chisholm's work at the relevant time was with CYF at Christchurch in its Adoptive and Information Services Unit (AISU). Helen Pashley-Taylor was a senior practitioner in AISU until December 2002 when she became the social worker supervisor. The previous social worker supervisor was Peter McGurk. He was appointed Practice Manager Southern in November 2002 which created the vacancy filled by Mrs Pashley-Taylor. So when the following issues arose, Mrs Chisholm's line manager was Mrs Pashley-Taylor who in turn reported to Mr McGurk.

[7] Mrs Chisholm and her husband have an adopted son. From about the time he became a teenager, his behaviour deteriorated. That behaviour led Mrs Chisholm and her husband to have a great deal of involvement with Police, the Youth Court, CYF

and eventually the District Court. Mrs Chisholm's son was taken into care by CYF. Mrs Chisholm was open about these problems with her colleagues at work. Mrs Pashley-Taylor was supportive of Mrs Chisholm and her son to the point that Mrs Pashley-Taylor's husband actually attended a family group conference in 1999. It is common ground that Mrs Pashley-Taylor generally knew of developments with Mrs Chisholm's son and his behaviour, at least until her appointment as social worker supervisor.

[8] Mrs Pashley-Taylor's evidence is that her relationship with Mrs Chisholm took on a more formal tone from January 2003 when she became the supervisor and she was no longer party to the day-to-day conversations between team members which was typically how Mrs Chisholm shared her troubles regarding her son's behaviour. While I accept that the supervisory role changed the relationship between Mrs Chisholm and Mrs Pashley-Taylor from 2003, I do not accept that their personal friendship was displaced, at least initially. Nor do I accept that from January 2003 Mrs Pashley-Taylor was no longer aware of Mrs Chisholm's son's involvement with the Police. Mrs Pashley-Taylor remained based at the same workplace and could not have avoided coming into contact with such information.

[9] Mrs Pashley-Taylor was responsible for the allocation of AISU work to the social workers. Her evidence, which I accept, is that adoption applications were reviewed by her to obtain a basic understanding of an application and its likely complexities before it was allocated to a social worker. Work allocation decisions required an assessment of relative caseloads and matching the complexities of particular cases with the skills and experience of individual social workers. In other words, the most experienced and skilled social workers were allocated the most complex cases, subject to workloads. Mrs Chisholm was one of AISU's most experienced and skilled social workers.

[10] Some time in early 2003, Mrs Pashley-Taylor reviewed an adoption application from Mr and Mrs B. She assessed it as a straightforward, routine application and she allocated it to Mrs Chisholm because Mrs Chisholm had caseload capacity at the time. As a routine application, it could have been allocated to any other social worker. The date of this allocation is recorded as 12 March 2003.

[11] There is a significant conflict in the evidence of Mrs Chisholm and Mrs Pashley-Taylor about whether Mrs Chisholm raised any objection to this file

allocation at the time. Mr B was a policeman. Mrs Chisholm's evidence was that as soon as she found out that the applicant was a policeman, she asked Mrs Pashley-Taylor to allocate the file to someone else, but Mrs Pashley-Taylor refused, saying that Mrs Chisholm's name had already been given to the applicants and that Mr B did not work in Christchurch as a policeman. Mrs Pashley-Taylor's evidence is that Mrs Chisholm did not raise any concern or issue about the file with her at the time of its allocation or ask for it to be reallocated. It is common ground that Mrs Chisholm did not speak to Mr McGurk about the file allocation or Mrs Pashley-Taylor's refusal.

[12] Patricia Walker was a social worker in Christchurch until December 2003. Her evidence is that she can recall discussions after Mrs Pashley-Taylor refused to reallocate the file to another social worker but it is not suggested that Ms Walker personally overheard the refusal so her evidence does not resolve the dispute.

[13] CYF operated a policy of professional supervision for social workers at the time. It involved a regular discussion between the supervisor and supervisee to meet specified objectives such as competent practice, personal and professional support and safety. These words reflect a 2004 policy document, but there is no reason to think that the objectives of supervision were any different in 2003 or that Mrs Chisholm did not understand these objectives. Mrs Pashley-Taylor was Mrs Chisholm's supervisor. There are file notes by Mrs Pashley-Taylor of supervision sessions on 6 March 2003, 27 March 2003 and 16 April 2003. These notes do not include any mention of Mr and Mrs B or the file allocation issue. The first recorded mention by Mrs Chisholm of this file in the supervision notes is dated 15 July 2003. I accept Mrs Pashley-Taylor's evidence that their discussion at that time did not include any concern by Mrs Chisholm about the file allocation. The note does not reflect any such concerns. The next mention is in the note dated 2 September 2003. Again I accept Mrs Pashley-Taylor's evidence that there was no concern mentioned at this time about this file being part of Mrs Chisholm's work.

[14] Mrs Chisholm's work on the file resulted in Mr and Mrs B being approved as adoptive parents some time in late 2003. Nothing further was required on that file pending their selection by a birth parent as potential adoptive parents for a child.

[15] It is probable that if Mrs Chisholm had any significant concern in 2003 about the allocation of this file she would have made an issue of that with Mrs Pashley-Taylor so as to result in the matter being referred to in the supervision notes and/or

she would have taken up any unresolved issue with Mr McGurk. It is unlikely that the file would have received the negligible attention in supervision that Mrs Chisholm and Mrs Pashley-Taylor did accord it if Mrs Chisholm had raised any conflict of interest issue. It is also likely that the 2003 request and the refusal would have been referred to in Mrs Chisholm's 2005 meetings with Mr McGurk (see later) and the 26 October 2005 letter. Accordingly I do not accept that Mrs Chisholm objected to the file allocation or asked for it to be reallocated during 2003.

[16] In late 2004, Mrs Chisholm's son's behaviour resulted in a number of visits to her house by Police from her local Police station. One of those visits was on 20 December 2004 when Police had a warrant to arrest Mrs Chisholm's son. They searched the house. Mrs Chisholm's daughter was present but Mrs Chisholm was not. Mrs Chisholm was later told by her daughter that Police appeared to show particular interest in the family photographs present in the house. Mrs Chisholm's evidence is that she did not connect the search or Police interest in family photos with her responsibility for the Mr and Mrs B adoption file at the time.

[17] There is a conflict between Mrs Chisholm and Mrs Pashley-Taylor about whether Mrs Pashley-Taylor knew anything about the search or the warrant. Maree Brown worked for CYF at the time. Her evidence is that she can recall Mrs Chisholm telling colleagues about this event at the time. There is no reason to doubt Ms Brown's evidence but it does not go as far as saying that anyone reported this news to Mrs Pashley-Taylor. I am left with the likelihood of Mrs Pashley-Taylor hearing of this event because she worked with others who knew of it as against Mrs Pashley-Taylor's denial.

[18] Mrs Pashley-Taylor and Mrs Chisholm met on 22 December 2004 for supervision. Mrs Pashley-Taylor's notes say *sick leave 21/12/04 – to be debited against 5 Jan pay sheet*. Mrs Chisholm took a day's sick leave following the Police search of her house because of her upset as a result of the search. The note reflects that her absence must have been mentioned during the 22 December supervision session. Mrs Chisholm's evidence is that she believes she told Mrs Pashley-Taylor about the Police search during the discussion on 22 December. Given Mrs Chisholm's general openness about her problems with her son, and Mrs Pashley-Taylor's friendship with Mrs Chisholm, I find it more likely than not that Mrs Chisholm did tell Mrs Pashley-Taylor about the Police search. It follows that I

do not accept Mrs Pashley-Taylor's denial. At the time however, there was no active work on the Mr and Mrs B file and there is no evidence that the allocation issue was discussed at this time. I should also note that there is no evidence that Mrs Chisholm thought at this time that Mr B might be involved in the Police activities.

[19] On 17 January 2005, Mr and Mrs B were chosen by a couple who were expecting a child but intended to put the child up for adoption. As a result, Mrs Chisholm was required to do further work on the file that included close contact with Mr and Mrs B. That resulted in Mrs Chisholm learning that Mr B had been transferred to her local Police station as a sergeant. Mrs Chisholm's evidence, which I accept, is that she learned about this transfer during a pre-placement interview that CYF records show as having taken place at 1pm on 26 January 2005. As at January 2005, Mrs Chisholm's dealings with her local Police about her son had not been resolved. Accordingly, when Mrs Chisholm learned about Mr B's transfer to her local Police station, she became concerned that Mr B knew or would learn of her son's problems. Mrs Chisholm also became concerned that Mr B had been or would be involved in searches of her house. Mrs Chisholm discussed these concerns with colleagues and she decided to ask for Mr and Mrs B's file to be allocated to another social worker.

[20] There is a dispute between Mrs Chisholm and Mrs Pashley-Taylor over what was said between them about the file in early 2005. Mrs Pashley-Taylor's evidence is that Mrs Chisholm said to her that she hoped Mr B did not make a connection between her and her son; that she was puzzled by this comment and asked *why would he?*; and that Mrs Chisholm said he was now located at her local Police station. Mrs Pashley-Taylor cannot say exactly when they had this conversation. Her evidence is that nothing said by Mrs Chisholm made her think that Mrs Chisholm was expressing a genuine concern about working further on this file.

[21] Mrs Chisholm's evidence is that her discussion with a colleague (Alice Faber) resulted in an offer from the colleague to take over the file, coinciding with Mrs Chisholm intending to go on leave for two weeks. Ms Faber was also the social worker allocated to the parents who had selected Mr and Mrs B to adopt their child. Armed with that offer, Mrs Chisholm went to Mrs Pashley-Taylor, told her of the colleague's offer, explained about Mr B's transfer to her local Police station and her daughter's reports about Police interest in family photos during the December search,

and she asked for the file to be reallocated. Mrs Chisholm's evidence is that Mrs Pashley-Taylor refused the request saying that she was sure that Mr B and Mrs Chisholm would be professional about the situation and that AISU was short staffed.

[22] It is not suggested by either woman that anyone else was present during their discussion in early 2005 about the Mr and Mrs B file. However, there is recent evidence from Ms Brown that she can now recall Mrs Pashley-Taylor saying to Mrs Chisholm as they came out of an office that she would not reassign the file. However, this evidence is not part of Ms Brown's statement signed in July 2006 where she recorded her recollections of Mrs Chisholm's discussions with Mrs Pashley-Taylor regarding this issue. The 2006 statement records Ms Brown's recollection about Mrs Chisholm going to talk to Mrs Pashley-Taylor about the file and Mrs Chisholm telling her afterwards about the refusal. I do not doubt the sincerity of Ms Brown's more recent evidence, but it is less likely to be accurate than the July 2006 account so I do not accept the recent evidence. However, Ms Brown's July 2006 statement supports Mrs Chisholm's evidence that she did request Mrs Pashley-Taylor to reallocate the file.

[23] On balance, I accept Mrs Chisholm's evidence that she explained to Mrs Pashley-Taylor her concerns about further dealings with Mr B in light of his likely involvement with or knowledge of her son's dealings with Police. Further, I accept Mrs Chisholm's evidence that her request for the file to be reallocated was declined by Mrs Pashley-Taylor on the basis that Mr B and Mrs Chisholm would be professional and AISU was short staffed. Mrs Chisholm was told to *carry on*. It is difficult now to establish exactly when Mrs Chisholm had this conversation with Mrs Pashley-Taylor. There is merit in the submission that the discussion would have been noted if it had happened during the supervision session at 3pm on 26 January 2005 but that note is unremarkable, as are the subsequent supervision notes. However there is Ms Brown's statement from July 2006 that Mrs Chisholm told her in January 2005 of Mrs Pashley-Taylor's refusal to reallocate the file. I am left to conclude that the discussion must have been sometime before Mrs Chisholm's leave but perhaps not during the supervision session.

[24] Mrs Chisholm was on leave for two weeks starting Monday, 31 January 2005. Mrs Pashley-Taylor did agree that Ms Faber should look after the file during

Mrs Chisholm's leave. Near the end of her leave, Mrs Chisholm asked for her leave to be extended for a further week but she did not tell Mrs Pashley-Taylor why she required the further leave. There is a file note of supervision on 24 February 2005 where Mrs Pashley-Taylor criticised Mrs Chisholm for the lack of direct communication with her about the extended leave and the assumption made by Mrs Chisholm that it would be acceptable for her to take extra leave without it being properly approved. At the time they talked about Mrs Chisholm's workload but there was no discussion about Mrs Chisholm's concern over the Mr and Mrs B file.

[25] File notes indicate that in late February 2005 Mr and Mrs B raised with Mrs Pashley-Taylor some concerns about their experience since the birth of the child they intended to adopt, including an alleged lack of contact with Mrs Chisholm. Mrs Pashley-Taylor reported this to Mrs Chisholm but the concerns dissipated soon after. Mrs Chisholm continued working on the file without further incident. The last note by Mrs Chisholm on this file is dated 18 March 2005 and is a positive report of developments.

[26] On 13 April 2005, at about 2am, Police, including Police dogs, went to Mrs Chisholm's house looking for her son. Mrs Chisholm stayed upstairs while her husband went downstairs to deal with Police. However, Mrs Chisholm identified Mr B by his voice as one of the Police at her house.

[27] Despite the early morning Police visit, Mrs Chisholm worked as normal on 13 April. On Friday, 15 April, Mrs Chisholm saw her doctor who certified her as unfit for work from that date until 2 May 2005. Mrs Pashley-Taylor was on leave between 18 March and 2 May so Mrs Chisholm rang Mr McGurk to tell him about her sick leave. Mr McGurk's evidence, which I accept, is that he was concerned about the prospect of a long term absence in light of another social worker being on extended sick leave at the time and he wanted to proactively manage the situation. He asked, and Mrs Chisholm agreed, to meet on Monday 18 April to talk about her health and what could be done to assist her to return to work.

[28] When they met on 18 April, Mrs Chisholm told Mr McGurk in some detail about the issues that she felt had caused her ill health. Mr McGurk made a file note after the meeting and I accept that note as an accurate summary of what was said by Mrs Chisholm. Mrs Chisholm referred to her son's absconding, trouble with Police and his likely imprisonment once caught. Mrs Chisholm described herself as having a

crisis of confidence in her work as she felt she had failed in raising her own adoptive son. Mrs Chisholm mentioned what had recently happened with Mr B coming to her home and her view that the file should have been reallocated to another social worker. Mrs Chisholm spoke of her longstanding sense of grievance about CYF's earlier handling of her son's care and protection issues. Mrs Chisholm was also unhappy about the practice change required of her some years earlier as to the scope and detail of her work. Mr McGurk was supportive and he recommended Mrs Chisholm use EAP as well as meeting regularly with him.

[29] Mr McGurk met with Mrs Chisholm again on 23 May and 20 June. Meantime, Mrs Chisholm saw her doctor several times and was certified unfit for work initially with a fortnightly then a monthly review date. In her discussions with Mr McGurk, Mrs Chisholm asked if her duties could be altered so she did not have to assess adoptive applicants. On 27 June 2005, as requested, Mr McGurk wrote to Mrs Chisholm explaining the reasons why CYF was unable to agree to this change in her duties.

[30] In light of Mrs Chisholm's continued absence and her request to be considered for medical retirement, Mr McGurk arranged for her to be reviewed by an occupational medicine specialist for advice about her diagnosis, prognosis, rehabilitation and return to work. Following this consultation, Dr Stoner provided a report dated 23 July 2005. Dr Stoner diagnosed Mrs Chisholm as having a *major depressive disorder, single episode, mild* which was being well treated and in remission at the time. In Dr Stoner's opinion, Mrs Chisholm's current problem was not related to her medical condition but *was an attitudinal change towards her workplace, following a perceived erosion of trust that she believed she had built up over her 29 years of practice*. Dr Stoner went on to say *I perceive her current problem as being 10% medical/psychiatric and 90% industrial/workplace related ...*

[31] Mr McGurk met again with Mrs Chisholm on 18 August 2005. They discussed Mrs Chisholm's continued preference for medical retirement. Mr McGurk indicated that CYF could not support medical retirement given Dr Stoner's report and there was some discussion about the Department supplementing an ordinary retirement package on a full and final settlement basis. Later, on 25 August 2005, Mr McGurk clarified that there was no financial benefit to Mrs Chisholm from a medical retirement as opposed to an ordinary retirement. There were more

discussions at another meeting held on 5 September 2005. As a result, the Acting National Manager Adoptions wrote to Mrs Chisholm on 8 September 2005 advising her that the Department would pay retiring leave and two weeks' salary in lieu of notice should she provide a formal written request to retire. Mrs Chisholm did so by letter dated 14 September 2005 and her employment ended on 30 September 2005 without her returning to work.

**Was a grievance raised in time?**

[32] Paragraph 3 of the statement of problem identifies actions and omissions said to be unjustified actions within the meaning of s.103(1)(b) of the Employment Relations Act 2000. To paraphrase they are the failure to address Mrs Chisholm's objection to working on the Mr and Mrs B file and requiring her to continue with the file; breaches of the collective agreement provisions concerning staff well-being and safety; and acting unfairly and unreasonably. These same actions/omissions are also said to be breaches of a contractual term requiring fair treatment and the statutory good employer obligation, but I will return to an analysis of that later.

[33] I have found that Mrs Chisholm did not originally object to the allocation of the Mr and Mrs B file but she did object and ask for it to be reallocated in January 2005 sometime before her leave. Mrs Chisholm's evidence is that she raised her grievance by letter dated 26 October 2005. That letter deals mostly with the claim that Mrs Chisholm was forced to resign but no such grievance is referred to by the statement of problem. The letter does refer to the instruction from Mrs Pashley-Taylor to *carry on* and the *distressing incident* in April 2005 following which Mrs Chisholm went on sick leave. A letter sent on 26 October 2005 could not have raised such grievances within 90 days as is required. If such grievances had been validly raised earlier within 90 days, then these proceedings which were lodged on 24 October 2008 would be caught by the requirement in s.114(6) for personal grievance proceedings to be commenced in the Authority within 3 years of having been raised. Any disadvantage grievance in relation to Mrs Chisholm being required to work on the Mr and Mrs B file is out of time.

[34] The same reasoning applies even if the grievance is described as a breach of the statutory good employer obligation or a breach of other express or implied contractual terms. At the 18 August 2005 meeting with Mr McGurk, Mrs Chisholm's representative said that they intended to bring a personal grievance claim because of

CYFs failure to exercise its duty of care to her by not reallocating the Mr and Mrs B file to another staff member. Proceedings based on a grievance having been raised on 18 August 2005 had to be lodged by 17 August 2008 at the latest. Equally, the latest it could be said that any grievance about the refusal to reallocate the file being a breach of express or implied terms might have arisen is 13 April 2005, the day of the Police raid on Mrs Chisholm's house. A grievance about that had to be raised with the employer by mid July 2005 and lodged with the Authority by mid July 2008 at the latest, but it was not.

[35] It might be said that CYF disadvantaged Mrs Chisholm by refusing her request to be allocated to duties other than assessing adoptive applicants. Ms Chisholm made that request on 20 June 2005 and Mr McGurk explained the reasons for CYFs refusal in his letter dated 27 June 2005. Accordingly a grievance must have arisen no later than the end of June 2005 so the 26 October 2005 letter was out of time. If a grievance had been raised in time (before the end of September 2005) these proceedings would not have been commenced within time.

[36] A response for Mrs Chisholm to these limitation issues is to point to the power of the Authority to conclude that an applicant's grievance is of a type other than that alleged. Counsel refer to s.160(3) of the Act but that must be a mistake as it is s.122 that specifically empowers the Authority to find that a grievance other than of the type alleged exists. The power contained in s.122 of the Act does not assist Mrs Chisholm in my view. Mrs Chisholm's grievances referred to in the statement of problem are about events other than the termination of her employment and which all occurred months beforehand. The Authority cannot turn this matter into a case about a different event that occurred later in time such as her resignation.

[37] It is also submitted that Mrs Chisholm's grievances can be viewed as a whole series of events culminating in her resignation. The difficulty with the submission is to be found in the words of the statute. S.114(1) requires an employee to raise a grievance within 90 days *beginning with the day on which the action alleged to amount to a personal grievance occurred ...* The actions alleged to amount to a grievance are the requirement in January 2005 to continue working on the Mr and Mrs B file despite the conflict of interest; or the failure to address the conflict and the mid April 2005 police visit immediately following which Mrs Chisholm suffered her depressive episode; or the refusal in June 2005 to reassign Mrs Chisholm. Mrs

Chisholm's subsequent resignation does not extend the date on which these actions occurred or came to her attention.

[38] For the foregoing reasons I find that there is no personal grievance as defined by s.103(1)(b) of the Act properly before the Authority.

### **Breach of contract**

[39] I should observe that the limitation issues that have affected the personal grievance claim do not arise here; except that s.113(1) of the Act means that Mrs Chisholm cannot contest the lawfulness of the termination of her employment through this breach of contract claim.

[40] I am referred to clause 1(K) of the applicable collective agreement which says *In accordance with the State Sector Act 1988, the Department is committed to fair treatment of staff ...* I am also referred to s.56(2) of the State Sector Act 1988 which defines a good employer as one who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment including *good and safe working conditions*. Further, I am referred to *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 as to the implied duty on employers to treat their employees fairly and reasonably. There is also reference to clause 6 of the collective agreement which generally provides for *Staff wellbeing and safety* and incorporates the Health and Safety in Employment Act 1992 duties. Part of the material before the Authority is CYF's code of conduct that includes provisions about conflicts of interest. The submission for Mrs Chisholm is that CYF breached its contractual obligations by requiring her to work with Mr and Mrs B when she had a personal conflict of interest.

[41] In its submissions CYF referred to *Attorney-General v Gilbert* [2002] 1 ERNZ 31 (CA) for the applicable law and in reply counsel for Mrs Chisholm accepted its relevance. I proceed on that basis. In *Gilbert* the contractual obligation in summary was to take all reasonable steps to maintain a safe workplace. The foreseeability of harm and its risk are important in considering whether the employer has failed to take all practicable steps to overcome it. The contractual obligation requires reasonable steps which are proportionate to known and avoidable risks.

[42] The harm suffered by Mrs Chisholm was a depressive disorder. For present purposes I will assume that this harm was caused by Mrs Pashley-Taylor's refusal in January 2005 to reallocate the Mr and Mrs B file and Mr B's involvement in the raid on Mrs Chisholm's home in April 2005. These need only be material factors to establish causation. Given this assumption it is not necessary to review in detail what else may have contributed to the depressive disorder. However, I should note Mrs Chisholm's view that she experienced a crisis of confidence in her work because of her personal circumstances which were not attributable to a breach of obligation by CYF.

[43] Helpfully, CYF in its submissions has teased out the components of the risk of harm. To summarise: that there was a risk that Mr B may as a police officer become involved with Mrs Chisholm's son; that this might compromise Mrs Chisholm in her work on the Mr and Mrs B file; that this would create a risk that Mrs Chisholm may suffer a depressive disorder; and that CYF ought to have been aware of this risk and taken reasonable steps to prevent it.

[44] I find that the first two components are established given the facts as at January 2005. Once Mr B was transferred to Mrs Chisholm's local police station as sergeant there was every chance he would have some knowledge of or involvement for the Police in their search for Mrs Chisholm's son. That placed Mrs Chisholm in a position of conflict in performing her duties for CYF on the Mr and Mrs B file. CYF's *Code of Conduct* required her to be *honest, fair and impartial* when performing her duties and working on a file for a client who was likely to have some involvement in the arrest of her son was a clear conflict of interest. One only has to consider what would have been CYF's position if Mrs Chisholm had produced an unfavourable report on Mr and Mrs B who then might have complained that it was because of Mr B's professional involvement with her son. Mrs Chisholm was obliged under the code to advise CYF of the conflict, as she did in January 2005.

[45] What is not established is any risk that Mrs Chisholm might suffer a depressive disorder by having to continue her work on the file or that CYF knew or should have known of such a risk. Mrs Chisholm was a very experienced and capable social worker. In her work she was supported by a formal supervision process through which she was able to identify any current issues, but none were raised by her so as to alert CYF to this risk. The risk that she might suffer a depressive disorder (or

similar harm) as a result of being required to continue work on a routine file regarding which she had disclosed a conflict of interest was not otherwise mentioned to CYF. In my view such a risk was not reasonably foreseeable either.

[46] As a result I find that there was no breach of contract being a failure by CYF to take all reasonable steps to provide Mrs Chisholm with a safe workplace.

### **Summary**

[47] Mrs Chisholm's personal grievance claims about CYF's unjustified actions affecting her employment to her disadvantage are out of time.

[48] There was no breach by CYF of any contractual obligation owed to Mrs Chisholm.

[49] Costs are reserved. If the matter cannot be resolved the respondent may lodge and serve a memorandum within 28 days and the applicant may lodge and serve a reply within a further 14 days.

Philip Cheyne  
Member of the Employment Relations Authority