

Attention is drawn to orders prohibiting publication of certain information in this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 727  
3395884

BETWEEN WKM  
Applicant

AND FLG  
Respondent

Member of Authority: Nicola Craig

Representatives: Applicant representing herself  
Penny Shaw, counsel for the respondent

Investigation Meeting: 24 September 2025 by audio-visual link

Submissions (and other material) received: At the investigation meeting and 24, 25 and 29 September and 1, 2, 6, 9 and 13 October and 3, 4, 10 and 11 November 2025 from the applicant  
At the investigation meeting and 24 September and 2, 6 October and 3, 4 and 10 November 2025 from the respondent

Determination: 12 November 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (who is referred to by the randomly chosen letters WKM) was working towards registration as a social worker whilst working as a support worker for an organisation referred to as FLG.

[2] FLG provides a range of community based mental health, addiction, disability support and other services.

[3] WKM came to the Authority with personal grievances, seeking to be reinstated from leave to her usual role, including initially by interim order. FLG is opposed to that order because it says there are genuine and reasonable grounds for WKM to be off work.

### **The Authority's process**

[4] The Authority granted urgency on the basis of interim orders sought by WKM to reinstate her back to work. The parties went to mediation.

[5] A case management conference was held, arranging for a timetable for the interim application and an investigation meeting to hear submissions on that application. At the conference WKM referred to having received a psychologist's report clearing her to work. WKM was concerned about who would see that letter but ultimately it was agreed that she would provide to the Authority and FLG subject to only FLG's lawyer and a national manager seeing it. Attempts to then resolve the matter were unsuccessful.

[6] WKM has provided a several sworn and unsworn affidavits during the course of the proceeding. FLG has provided sworn affidavits from managers and staff I refer to as persons A to G in no particular order – national director A, service manager B, regional manager C, senior ER advisor D, national managers E and F and district manager G.

[7] The Authority held an investigation meeting on 24 September 2025 to hear submissions regarding the interim orders. The Authority encouraged the parties to have discussions to try to resolve the matter and allowed them some time to do that.

[8] After the meeting WKM asked the Authority to contact additional witnesses – a clinician from another organisation who she had worked with and the parents of a tāngata whaiora. The Authority declined to do so on the basis that the matter was at an interim stage with a determination being made on the basis of affidavit evidence and submissions.

[9] Subsequently WKM sought to provide new evidence regarding the professional registration situation of one of FLG's witnesses which impacted on that witness's credibility. FLG provided an explanation which will likely need to be explored if this matter goes to a substantive investigation.

[10] WKM later provided some additional material to the Authority but after objection from FLG agreed to withdraw it.

[11] The Authority sought any comment from the parties on the possibility of interim reinstatement to the alternative duties role WKM was last undertaking before going on leave, with a view to working towards her returning to her usual role. She appreciated the opportunity to return to work and asked the consideration to be nestled in the context of her original and amended request for orders. FLG opposes such an order being made.

[12] In the usual way, I have dealt with this application for interim orders on the basis of untested evidence and submissions. Disputed matters cannot be decided on such evidence.

[13] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

### **Non-publication warranted**

[14] The day before the investigation meeting WKM sought name suppression on the basis of material in the affidavits filed for FLG which she describes as defamatory. Her views on whether any non-publication order should also cover FLG were mixed. She initially did not consider the organisation should have that option but then indicated she did not want to damage its reputation as she loved the organisation.

[15] FLG was supportive of a non-publication order being made on the basis that the organisation and its witnesses are also anonymised. It accepts that there are aspects of the evidence which may mean it is not that hard for WKM to be identified. Identification of witnesses would lead to identification of WKM. There is also a risk of client identification which is sought strongly to prevent.

[16] The Authority has the power to make non-publication orders.<sup>1</sup>

[17] The process involves identifying specific risks of harm then weighing the reasonable likelihood of occurrence against the open justice principle.<sup>2</sup>

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<sup>1</sup> Employment Relations Act 2000 (the Act), Sch 2, cl 10.

<sup>2</sup> *MW v Spiga Limited* [2024] NZEmpC 147.

[18] The open justice principle is seen as having greater weight at the substantive determination stage, as the parties will have had the opportunity to give oral evidence, be subject to cross examination and the Authority will issue final findings.<sup>3</sup>

[19] WKM is concerned about the potential damage to her professional reputation and future career. Significantly there is extensive evidence about her health. There is also sensitive information about vulnerable tāngata whaiora/clients. WKM also makes serious allegations regarding FLG's witnesses who have their own professional reputations to consider.

[20] Also worth noting is that disclosers under the Protected Disclosures (Protection of Whistleblowers) Act 2022 are entitled to certain protections. WKM makes reference to having made a protected disclosure to FLG. Although it is not necessary at this stage to decide if WKM is a discloser or made a protected disclosure covered by that Act, on grounds of caution, this supports her application for name suppression.

[21] Non-publication orders are somewhat more readily granted at the interim stage, with a fuller consideration of the relevant issues being available at the substantive phase.

[22] There are sufficient grounds to warrant interim non-publication orders being made, including covering the organisation and its witnesses.

[23] I order, on an interim basis until further order of the Authority, that the following are not to be published:

- (a) WKM's name and identifying details;
- (b) FLG and its witnessed' names and identifying details; and
- (c) Clients' names and identifying details.

### **The issues**

[24] The issues for determination in this interim application are:

- (a) In terms of the application for an interim order reinstating WKM to her role, is there a serious question to be tried in that she has an arguable case:

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<sup>3</sup> *JGC v MBC* [2020] NZEmpC 193.

- that she has been disadvantaged by unjustifiable actions of FLG in being put on leave and/or not being returned to work in her usual role; and
  - that she should be permanently reinstated to that role?
- (b) Where does the balance of convenience lie?
- (c) Where, standing back and considering the case, does the overall justice lie until the substantive matter is determined?<sup>4</sup>

[25] WKM's wider concerns include what she describes as unjustified disadvantage, unlawful retaliation and discrimination. She also refers to making a protected disclosure about a serious client safety risk and refusal of domestic violence leave. Broadly, FLG denies there is a basis for those concerns.

## **Background**

[26] WKM begins working for FLG as a support worker providing psychosocial services in a community mobile team in August 2024. The role involves supporting tāngata whaiora by assisting them to develop and maintain living skills, relationships and daily activities so they may be active participants in their communities. Home visits were involved. At least some tāngata whaiora have complex mental health needs requiring clinical support from specialist mental health services and are socially isolated with few supports other than from professional services.

[27] WKM refers to her recent qualification with a Masters degree (Honours) in Social Work. She hoped to undertake the required provisional hours before qualifying for full registration with the Social Workers Registration Board.

[28] FLG points to its Professional Boundaries learning modules requires and Code of Conduct specifies the importance of maintaining professional boundaries.

[29] WKM's employment initially progresses relatively uneventfully. She provides to the Authority either directly or by way of suggested contact people, positive material regarding her FLG work.

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<sup>4</sup> For example, *Brooks Homes Limited v New Tax Refunds Limited* [2013] NZSC 60, *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36 and *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59.

## **Events leading up to WKM's move to alternative duties**

[30] On 24 April 2025 WKM records in clinical notes and emails her manager that a whaiora she had been supporting for seven months was ready to be assigned to a new support worker. Standard practice is to honour such requests. WKM then goes on a few days annual leave.

[31] On her return, according to WKM's manager B, during discussions about the whaiora WKM became emotional, speaks at a fast pace and cries. There is a dispute, which the Authority is not in a position to resolve at this point, whether her manager told her around this time that she should not contact the whaiora.

[32] WKM declines an invite to a handover meeting for the whaiora and expresses dissatisfaction with B's handling of the situation.

[33] WKM refers to, in early May, making a protected disclosure under the Protected Disclosures (Protection of Whistleblowers) Act although which documentation she refers to has yet to be established.

[34] On 9 May 2025 WKM enquires by email to the district manager, if she requests to be assigned to another person's team, would her current whaiora remain assigned to her. She broadly mentions "concerns relating to professional and whaiora safety and professional development". If she cannot retain the whaiora, she asks that the request be ignored.

[35] B arranges a meeting with WKM to see how she is feeling and allow her time to talk. B's impression is that WKM becomes upset and distressed about the loss of her role with the whaiora.

[36] WKM visits the whaiora's home, she says intending to drop a framed photo in the letterbox but the whaiora comes out to talk to her. WKM records details in the clinical record, including that she felt anxious about the visit.

[37] WKM's manager B reads the record and sends her an email on 16 May. Her dedication and compassion are noted but also concern about crossing professional boundaries by visiting the whaiora. She is encouraged to consider taking a few days leave to rest and reflect.

[38] On the same day WKM submits an electronic complaint ticket through FLG's system, particularly the handling of whaiora support.

[39] WKM is concerned that her manager's 16 May email means her employment is in jeopardy. On contacting the ER advisor D, D attempts to provide reassurance that is not the case.

[40] Manager B recalls WKM unexpectedly leaving a handover meeting having appearing to be having an emotional breakdown. Other instances including WKM calling him a liar in the presence of others.

[41] On 21 May WKM raises another ticket, making a formal complaint against her manager B, accusing him of misrepresentations to advance a disciplinary process making false allegations and requiring her to attend a meeting with the district manager. From FLG's perspective there was no requirement to attend any meeting, including a disciplinary one.

[42] Several days later another service manager is approached by Ms WKM. He emails her saying her own service manager B's letter is not on WKM's HR file, having checked with another staff member. Her complaint is acknowledged, and the district manager is noted as the best person to resolve it, when she returns from leave.

[43] The next day WKM emails her manager B identifying that B's email has caused her unjustifiable harm, distress and anguish. Meanwhile B is expressing to the service manager G that he is finding dealing with WKM's situation increasingly taxing, with multiple emails from WKM as well as meetings with WKM in an emotional state, combined with her strong attachment to the whaiora who is reassigned.

[44] During discussion with the ER advisor D, WKM agrees to attend a facilitated meeting with B. D says that she told WKM verbally that this was not a disciplinary meeting or investigative process. An email of 3 June 2025 is to similar effect – the meeting is seen as a space for open dialogue to “reflect on recent events and explore constructive ways forward”.

[45] WKM declines to attend the facilitated meeting, saying she wants to formalise her complaint against her manager.

[46] With B indicating the situation with WKM is distressing and affecting his wellbeing, the matter is escalated to regional manager C. He contacts WKM, indicating her concerns are being examined and offering support options.

[47] On 11 June 2025 WKM speaks to her district manager G. That manager's perspective is that WKM becomes distressed and tearful, saying her manager made false allegations in the 16 May email. The district manager is concerned and emails, offering WKM a short break from work.

[48] Regional manager C follows up on 18 June emailing WKM asking her to an informal hui to discuss her concerns, identify any supports and look at how to move forward. She replies, saying she was unavailable on the suggested date and would not be available for three weeks due to union representative availability.

[49] Several days later WKM emails C a photo of her nose bleeding. C takes the accompanying email as indicating she is attributing this to work although he identifies subsequent medical evidence linking it to another cause.

[50] WKM's union representative emails C on 1 July advising of her representation. He emails back suggesting alternative duties for WKM to reduce potential stressors to her, given wellbeing concerns. The union representative replies saying she has no feedback.

[51] In the process of preparing for the upcoming meeting C notes a client report from May 2025 of WKM yelling at the client and another client she thought WKM was having a nervous breakdown, although this was subsequently retracted by the client.

### **Events after move to alternative duties**

[52] On 4 July, manager C, the ER advisor D, WKM and her union representative meet to discuss the alternative duties proposal and support. The discussion includes C advising the focus will be on moving forward, with FLG remaining committed to focused on supporting WKM. Then FLG confirms by email the alternative (office) duties.

[53] WKM is dissatisfied with the communication to B's team referring to her being on "leave". She advises FLG she has formally withdrawn her consent for the union to act for her. C sends her a suggested agenda for the upcoming meeting.

[54] On 15 July WKM and C meet. There is some exploration of her concerns. Manager C adjourns the meeting, after what he regards as WKM becoming emotional. She sees herself as being interrogated, being asked why she had written that she told the clients she was feeling anxious. Later WKM accepts that she did become very distressed in her meetings with manager C.

[55] The meeting resumes the following day but the manager's perception again is that WKM becomes emotional. Seemingly the two meetings together take around three and a half hours. There is a dispute about the position on recording of the meeting.

[56] The manager C's impression at both meetings is of WKM becoming agitated at times, speaking over him and talking excessively. He considers she is highly emotive, moving quickly from sobbing to laughing and at times struggling to keep on topic. C considers WKM discloses very personal information about a former employee inappropriately. A similar comment is made by district manager G regarding another meeting.

[57] WKM tells C third party stakeholders would attest that she was a good worker. After the meeting C receives a call from a client's mother asking when WKM would be returning as she had heard WKM is on alternatives dues. C is concerned that WKM is soliciting feedback or drawing in clients' families and other staff.

[58] C describes, when taken together, various incidents cause him to have serious doubts about WKM's ability to maintain privacy, confidentiality and professional standards in her role as a support worker. He describes developing serious concern for WKM, other staff and client wellbeing, with her behaviour negatively impacting on colleagues in the office and the prospect of her contacting clients, their families and other clinical workers, creating risks for client safety, confidentiality and the organisation's reputation. C refers to having trained as a medical doctor earlier in his career and having extensive experience in the organisation. He concludes repeated and escalating signs of emotional dysregulation suggested it was unsafe for WKM to be at work until her wellbeing can be clinically assessed.

[59] On the information before me it appears that WKM had not taken up the various suggestions of taking a few days off.

[60] The next day WKM approaches another manager who becomes concerned about Ms FLG's wellbeing and reports her concern to the HR team. Around this time WKM emails the chief people officer with her concerns.

[61] WKM proceeds to log a complaint against manager C and the ER advisor D, categorising the incident as one of harm and abuse involving clients. She describes the action of removing her from her normal duties as a situation making her feel powerless to support the whaiora assigned to her. Photos of whaiora "missing out on support" are imbedded.

[62] National manager E becomes involved. She has advanced qualifications in social work. She phones WKM the same day, 18 July, telling her she is seriously concerned about her welfare and would like her to consider going on discretionary (paid) leave and getting some support. E also mentions FLG seeking a psychological assessment of her fitness to practice prior to her return to work. E describes WKM's response as including rapid speech, talking over E and tangential thinking with some elements of grandiose thinking.

[63] WKM leaves the office. Texts between the two then have E saying she needs to take the next steps in the employment process given WKM did not agree or respond to her request to take discretionary leave. WKM replies that she has gone home as requested and will wait to hear further from management. E takes there being agreement to the discretionary leave proposal.

[64] The same day E writes to WKM outlining the observed behaviour and interactions which have prompted questions about her current health and wellbeing. Concern about professional boundaries is also noted. WKM's consent to undertaking an assessment by a clinical psychologist is sought, to help determine her fitness to work. FLG will cover the cost and consult with her in preparing an appropriate brief to the psychologist. Confidential counselling is also offered through the EAP provider.

[65] A few days later district manager G encounters WKM outside the office entrance, returning her devices to FLG. According to G, WKM tells her C and E were "crazy". G also notes what she refers to as an unusual statement by WKM that she could make G a regional manager if G allowed WKM to help.

[66] WKM requests on 24 July that district manager G handle all employment matters going forward. G notes that by this point WKM had raised concerns about all her other managers up to and including at national level.

[67] G and WKM speak on 25 July with WKM agreeing to undertake a psychological assessment as requested. G then sends a referral and consent form to WKM. The forms include a summary of the support worker role, a brief summary of concerns about WKM and the assessment aims. The aims are to assess mental health status, identify capacity to return to or continue in current role, identify risks (to herself, colleagues or tāngata whaiora) and provide recommendations for support, treatment or alternative employment pathways. The consent provides a clinic's contact information.

[68] G is involved in lengthy calls with WKM. Having earlier agreed to an assessment, WKM moves to expressing resistance to the assessment with concern about the referral letter being based on a false premise and thinking she was going to be able to choose her own psychologist. G confirms by email that WKM is free to choose her own psychologist, but the referral needs to come from the organisation.

[69] FLG emails WKM 4 August asking for the name of the registered clinical psychologist she has arranged and the date of the assessment, noting that the organisation will pay.

[70] WKM lodges her proceeding in the Authority on 6 August 2025.

[71] The following day WKM drafts a self-assessment based on the referral, including a return-to-work plan for consideration. FLG declines this. WKM also requests additional time to identify a psychologist with FLG proposing new time frames.

[72] WKM continues to express reluctance, sending several communications including complaints to FLG.

[73] FLG says it is not unusual for its staff to have lived mental health experience or to experience periods of unwellness. Such experience can be information for the work. However, its concern is that it was not aware of WKM having any previous diagnosis and has no oversight or understanding of what is going on for her. This means they cannot provide appropriate support or oversight to protect her and their vulnerable whaiora. The organisation expects staff experiencing periods of unwellness to take

personal responsibility and show insight into their well-being, having the ability to identify when they are unwell and need time off.

[74] WKM seeks a mental health report herself from a psychologist who she had seen via telehealth sessions in mid-July and early and mid-August 2025. The report notes a marked preoccupation with the on-going workplace conflict and some anxiety and depressed mood but no delusional thinking or perceptual disturbances:

There is no indication of a mental illness that would impair her capacity to perform the inherent requirements of her job. Her distress is contextually appropriate and reactive to specific environmental stressors, rather than reflective of a chronic or intrinsic psychiatric disorder.

[75] The recommendations are continuation of therapeutic support, occupation reintegration (with a plan) and workplace mediation. WKM's considerable emotional resilience, insight and professional integrity is noted.

[76] WKM is hopeful that report would satisfy FLG to allow her to return to work. The organisation has reservations that the psychologist did not have full visibility of the context and the specific concerns it hoped would be addressed in the assessment. It sees key areas remaining unanswered, including:

- an assessment of her current mental health status
- her capacity to manage the demands and stressors associated with her work
- any identified risks to the safety of clients, colleagues, or herself
- recommendations regarding suitability to resume duties and/or any accommodation or support required.

[77] National manager A notes that the psychologist's letter does not indicate they were provided with the information in FLG's draft referrals, including the nature of Ms FLG's role and the vulnerability of clients. Further, the letter does not specifically confirm WKM is currently fit to return to work.

[78] FLG seeks WKM's consent to send a referral letter to the psychologist capturing those elements, along with a summary of events FLG managers and staff have reported concerns about. She rejects this and continues to say she should be able to return to

work without the requested assessment and more specific information, as she has provided sufficient information.

[79] WKM could be seen as proactively seeking out the psychologist's report and occupational therapy support to develop a return-to-work programme. Another perspective is avoidance of a psychologist seeing the report from her employer about the observations staff and managers had of her.

[80] Ultimately FLG seeks that WKM is assessed by an independent and unbiased mental health professional with occupational health expertise.

[81] WKM reports undertaking various activities, professional and personal, which she considers will assist with a return to work and remaining committed to returning to her usual work with tāngata whaiora at FLG. For the sake of completeness, I note there are GP medical certificates which on the evidence before me relate to a physical injury WKM had during the course of the events above.

### **Considerations**

[82] The Authority is permitted under s 127 of the Act to make an order for interim reinstatement pending hearing of a personal grievance. Reinstatement is a primary remedy.<sup>5</sup>

#### *Employment agreement*

[83] Under clause 17 of WKM's employment agreement:

17.2 With the objective of supporting your ability to continue to perform your role satisfactorily or to successfully return to work following a prolonged sickness absence, we may request that you undergo an assessment by a registered practitioner acceptable to both parties. This may be requested where:

- You have exhausted your sick leave entitlements and the sickness absences are impacting your work performance and/or your ability to attend work regularly
- You have been absent from work for a prolonged, continuous period due to a serious condition, illness or accident/injury or

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<sup>5</sup> The Act, s 125.

- In the course of assessing your capacity to perform your duties, we consider that your physical and/or mental health is affecting your ability to perform your duties safely and effectively.

### *On-going relationship*

[84] Ms FLG's application and submissions at the investigation meeting focused on events leading to being moved to alternative duties and then to being off on leave. However, the provision of the psychologist's report and subsequent communications between the parties add to the situation up which needs to be considered in terms of the interim application.

### **WKM has arguable case regarding unjustified action**

[85] Turning now to the first issue of whether WKM has an arguable case that she has been subject to unjustified action by FLG to her disadvantage. An objective examination is required of whether the employer's actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time.<sup>6</sup>

[86] Being taken away from work can be disadvantageous to an employee. But where there are good reasons to believe that the employee's continued presence, in this case with the client work, or even in alternative office duties, will or may give rise to significant issues a removal may be warranted.<sup>7</sup>

[87] WKM says that FLG's case is a fabrication relying on allegations of a baseless nature. She considers that it took unlawful retaliatory steps against her once she raised concerns about the whaiora's care and its removal of her from all clients, causing significant disruption to multiple vulnerable individuals, their families and clinical teams.

[88] Further, WKM argues the organisation deliberately publicly humiliated her and caused professional ostracisation by reassigning her to office duties. The decision to place her on discretionary leave pending a psychiatric "fit for work" assessment was unjust and unsound.

[89] FLG describes its concerns about WKM's wellbeing as genuine and based on observations of managers with mental health experience. Further, observations of

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<sup>6</sup> The Act, s 103A(1) and (2).

<sup>7</sup> *Mutonhori v Wairoa District Council* [2025] NZEmpC 44.

deteriorations in her presentation lead to placement on alternative duties and a requirement for a fitness to work assessment before returning to her usual role. Later concerns increased about whether she should be at work at all.

[90] The organisation points also to particular concerns about what it sees as professional boundary breaches, including visiting a tāngata whaiora at their home after that person said they did not want her support, and she had been given a clear direction not to visit. WKM disputes this. As part of what she provided to the Authority, FLG identifies what it regards highly personal and confidential information belonging to whaiora which should not be retained by an employee.

*Removal from her usual role and then from alternative duties*

[91] On the evidence before the Authority, WKM's then representative did not raise concerns about her being taken away from client-focused work, given how she was at the time. On the face of it, there was some effort to targeting the alternative work, such as (clinical) auditing, at WKM's skills.

[92] Similarly, when it came to her being put on discretionary (paid) leave she did not object. There were reasons for both decisions, with explanation provided verbally and in writing to her, after consultation.

[93] She has been on paid leave.

*Requiring an assessment*

[94] Starting with the employment agreement, under clause 17.2 there was a prima facie entitlement on FLG's part to request WKM to undergo an assessment by a registered practitioner acceptable to both parties. This was where there is an objective of supporting WKM's ability to perform her role satisfactorily or successfully return to work following absence.

[95] The employment agreement provision refers to the registered practitioner being agreed by both parties. Here the consent form initially sent to WKM had a clinic (although not a practitioner) specified. She had not agreed to or seemingly been consulted about that clinic although when she raised concerns about this, FLG said she could choose her own practitioner.

## *Conclusion*

[96] It is not possible establish on an interim basis the retaliatory, premeditated fabrication and punitive response suggestions by WKM. These need to be left for a substantive investigation, if required. WKM will be entitled to challenge the evidence of a caring and supportive approach which FLG says are evidenced in its contemporaneous communications with her.

[97] Subject to the establishment of improper motive, it is difficult to see an argument succeeding that WKM should not have been taken away from her client work, later put on alternative duties and then required to have an assessment before returning to work. Five managers and other staff including experienced mental health, social work and employment relations practitioners, who saw WKM over multiple separate occasions were concerned about her behaviour, including references to agitation, intensity, highly emotion, tangential thinking and distress.

[98] WKM provided evidence and testimonials regarding her performance before May 2025 but FLG says her performance up until that point is not in question – its concerns began after the 16 May 2025 email.

[99] Turning now to the refusal in more recent times to restore WKM after she has provided a psychologist's report or working with that psychologist to cover off elements it was not satisfied with.

[100] The assessment was undertaken by a clinical psychologist, as FLG had sought. However, on the evidence it was provided solely on the basis of WKM's self-reporting. FLG considers the resulting report should be treated with some caution for that reason and others outlined above. Ultimately it did not agree to pursue further information from that psychologist to achieve what it would see as a satisfactorily grounded outcome. There is an arguable question about whether FLG acted unjustifiably in that regard.

## **WKM has arguable case for permanent reinstatement**

[101] In circumstances where it is both practical and reasonable to reinstate, the Authority must provide reinstatement as a primary remedy.<sup>8</sup> Here there are considerations of return to Ms FLG's usual duties or return to alternative duties.

[102] The reasonableness and practicability overlap to some extent in this case.

[103] There is no suggestion that WKM's role is no longer available. She refers to being very happy when she was performing her normal duties. There were elements of satisfaction when she was undertaking the alternative duties as well.

[104] WKM points to her maintaining a reasonable relationship with district manager G and also considers she maintains a positive working relationship with many colleagues. As she points out FLG has the resources to manage her return to work. WKM submits that it could demonstrate the values it espouses by allowing her return to work.

[105] In addition WKM relies on the support element she has put in place with an occupational therapist, demonstrating her commitment to working for the organisation.

[106] FLG suggests it is not practicable to reinstate when there is significant concern about the person's wellness and ability to observe professional boundaries.

[107] Regarding reasonableness, FLG's position is that it is not reasonable for WKM to be reinstated without the requested assessment. If she is unwell it creates a risk to vulnerable tāngata whaiora.

[108] The organisation is also concerned that with experienced senior managers had been somewhat overwhelmed by Ms FLG's intensity of presentation and criticism of them. An understanding of what is going on for her is needed to prevent a risk of permanent damage to the employment relationship.

[109] Given the question about whether there has been a breach of professional boundaries and WKM's lack of cooperation with FLG's attempt to be involved in her assessment, there is doubt whether it can be seen as practicable and reasonable to reinstate WKM to her usual role dealing with tāngata whaiora.

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<sup>8</sup> The Act, s 125.

[110] I conclude WKM has an arguable case that at this point in time she should be reinstated to alternative duties only, although I do not consider it a strong case by any means.

### **Balance of convenience favours FLG**

[111] I now move on to weigh relevant injury or detriment the parties may suffer if interim reinstatement is granted or declined.

#### *WKM*

[112] Firstly I look first at the impact on WKM if she is not reinstated to the workplace.

[113] WKM describes in her statement of problem that her professional identity is tied to providing compassionate care to vulnerable clients. She says she is suffering professional harm with FLG forcing her to abandon her clients. She submits that her immense distress and anguish has results from FLG's treatment of her and that she was distressed when she was away from her usual client-based work.

[114] WKM continues to be paid so is not suffering financial detriment by being away from work. There is limited suggestion of degradation of skills or knowledge in her role and there is evidence of FLG having support available for integrating support workers who have been on long term leave back into the workforce.

[115] WKM points to her employer's substantial role in the sector and the difficulty of her getting other work. WKM is keen to pursue her social work registration and considers that is impacted by her being away from work. FLG disputes there is any impact, for example, if a clinical assessment showed no concerns. Also, concerns would not automatically prevent registration.

[116] I accept that WKM gets a lot out of her work and finds it hard not being involved but find the suggestion that she has had to abandon her clients challenging.

#### *FLG*

[117] Now I move to considering possible harm or detriment for FLG if WKM is reinstated.

[118] Concerns mentioned above are reiterated. Without understanding what has occurred for WKM the organisation has limited ability to put in supports towards a return to work. There is a risk that she will behave towards tāngata whaiora in the way she did towards several managers, potentially harming those tāngata. This includes erratic communications.

[119] FLG also raises issues about the health and safety of anyone who has to manage WKM– overwhelming intensity and volume of communication, along with criticism and complaints about their management, including in front of other staff. Disruption to the workplace with managers and staff finding it difficult to engage with Ms WKM.

[120] The organisation is also concerned about reputational risk, with reliance on contracts to deliver services.

#### *Conclusion on the balance*

[121] The balance of convenience weighs in favour of rejecting the interim order sought.

[122] I conclude firstly about the possibility of return to usual duties with tāngata whaiora. The work is often provided in the secluded context of the client's home. The potential harm to FLG and its clients of having WKM back in her original role is somewhat uncertain but possibly significant. WKM's actions both before and after her removal from her usual duties provide some basis for the employer's unease about a return, despite her great desire to return to her role.

[123] I have seriously considered whether a return to the alternative duties might sufficiently move the balance in Ms FLG's favour but was unable to conclude that it did. On the untested evidence, her actions have impacted significantly on managers who have been criticised publicly in the workplace and complained about through the organisation's systems. Concerns by, for example national manager E include that Ms FLG's actions include a lack of insight and belief that she knows better than others and only she can provide support for the needs of her tāngata. Colleagues may be exposed to ongoing disruption.

### **Overall justice favours FLG**

[124] In summary, WKM has an arguable case that FLG should have done more to work with the psychologist to gain an adequate report, although it does not currently appear a strong case. Her case for permanent reinstatement is likewise not strong. The balance of convenience favours FLG. Next is the requirement to take a step back and check where the overall justice lies.

[125] I cannot be satisfied that there are sufficient grounds to disturb the assessment of the relative weakness of WKM's case with the balance favouring FLG. It needs to be able to satisfactorily meet its obligations to WKM, other staff, and ultimately tāngata whaiora, through a more detailed and informed understanding of WKM's mental state and what it should do to support her.

[126] Ms FLG's application is declined.

[127] However, the parties are required to work together in good faith with the aim of getting WKM back to work in the organisation and in her usual role. If either consider further mediation may assist they are to let the Authority know and consideration will be given to making a direction to mediation.

### **Costs and next steps**

[128] Costs are reserved.

[129] Either party is to let the Authority know if there is a wish to proceed to a substantive determination in this matter.

Nicola Craig  
Member of the Employment Relations Authority