



Rōpū Whakawawao
Tautohe Tauwhiro

**Social Workers
Disciplinary Tribunal**

Costs Practice Note

August 2026

The purpose of this practice note is to give notice of the procedure it intends to follow in making orders as to costs and expenses, under section 83 of the Social Workers Registration Act 2003.

1. The Tribunal wishes to provide the parties with information and guidance on costs which may be awarded under the Act following the hearing of a disciplinary charge.

Jurisdiction

2. Under s 83 of the Act the Tribunal may make an order that the social worker pay part or all of the reasonable costs and expenses of and incidental to the proceedings to:
 - a. Any investigation by the Health and Disability Commissioner in relation to the subject matter of any charge concerned;
 - b. Any inquiry by a Professional Conduct Committee (PCC) in relation to the subject matter of any charge concerned;
 - c. The prosecution of any charge by the Director of Proceedings for matters referred by the Health and Disability Commissioner; or by the Professional Conduct Committee;
 - d. The hearing of the charge.
3. The Tribunal does not have jurisdiction to order costs against the Professional Conduct Committee or the Director of Proceedings. The Tribunal may determine to make no or a reduced order for costs in appropriate circumstances.

Principles

4. The award of costs is discretionary. The general principles which apply to costs against professional people facing disciplinary charges include keeping with the position in disciplinary proceedings across several disciplinary regimes:¹:
 - a. that the social work profession as a whole ought not to be expected to fund all the costs of the disciplinary regime; and
 - b. members of the profession who come before disciplinary bodies must be expected to make a proper contribution towards the costs of the inquiry and hearing;

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¹ See also *Professional Conduct Committee appointed by the Medical Council of New Zealand v Brown* [2024] NZHC 990.

- c. costs are not in the nature of a penalty or to punish;
 - d. the practitioner's means should be taken into account¹ ;
 - e. a practitioner has a right to defend himself or herself;
 - f. the level of costs should not deter other practitioners from defending a charge;
 - g. the starting point for a reasonable order of costs is 50% of reasonable costs, and that in some circumstances downwards or upwards adjustment will be appropriate.
5. The 50% starting point may be increased or decreased taking into account various factors, including:
- a. the way in which the parties have conducted themselves, including whether any party unnecessarily prolonged the proceedings (including the hearing time) with meritless arguments or irrelevant evidence;
 - b. whether there were any novel points that merited further argument and determination, even if eventually unsuccessful;
 - c. the social worker has produced satisfactory evidence of their limited financial position or inability to pay any award; and
 - d. part of the charge was not established, or a charge or particulars were withdrawn and costs can be attributed to that charge or particular.

Reasonableness

6. In assessing the reasonableness of costs incurred, the Tribunal requires from the prosecuting party a Schedule of Costs. If necessary the Tribunal may require a memorandum of costs showing the fees and expenses, including a breakdown of hours, tasks performed and hourly rates for the legal practitioners and investigators in relation to the charge and identifying any costs incurred in relation to proven charges, and where relevant, an updated schedule of costs where a charge or particulars of the charge have not been proved.
7. At the first Pre-Hearing Conference, the presiding Chair will ensure the parties are aware of this Practice Note. A social worker who does not engage with the disciplinary proceedings will be put on notice that non-engagement does not impact on the Tribunal's ability to make an order for costs against a social worker in respect of whom a disciplinary charge is proved.

¹ If the social worker wants the Tribunal to take account of their financial circumstances and the impact of these on the ability to pay an order for costs and/or the level of costs, the social worker should provide evidence to the Tribunal.

The effect of a legal aid grant

8. Where a practitioner has been granted legal aid under the Legal Services Act 2011, s 45 generally requires that no order for costs can be made. This may be challenged in certain circumstances. Any prosecuting party who intends to challenge an order declining costs in reliance on the social worker being legally aided will be required to file submissions and any supporting evidence (if relevant) to enable the Tribunal to determine the matter. Even where no order for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if s 45 had not affected that person's liability.

General

9. The PCC or DP prosecuting the charge should ensure that a schedule of costs on which any application for an order for costs is based is filed with the Tribunal and served on the social worker in advance of the hearing. This should include an estimate of costs for the hearing. Any material changes should be promptly notified to the Tribunal and the respondent before the conclusion of the hearing or at any other time with the Tribunal's agreement.
10. Parties are encouraged to resolve costs between themselves prior to the conclusion of the hearing. Where possible, a joint memorandum as to costs is to be filed with the Tribunal at the conclusion of the hearing.
11. Although costs are discretionary, the Tribunal may compare the amounts claimed by the prosecuting party and ordered by the Tribunal in other cases to achieve consistency across cases. The Tribunal is aware that each case is different and will be assessed on a case-by-case basis.
12. An order of costs and expenses is not payment for a service provided to the social worker. Accordingly, no GST is payable on any award of costs or expenses.
13. Costs are payable to the SWRB, not to the Tribunal. Any arrangements for the payment of costs should be discussed with the SWRB.

Catherine Garvey



Chair

Social Workers Disciplinary Tribunal