

THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 28/08
5050368

BETWEEN MAXINE HODGSON
 Applicant

AND PARENTLINE CHARITABLE
 TRUST
 Respondent

Member of Authority: Janet Scott

Representatives: Mark Hammond for Applicant
 Philip Morgan & Julie Hardaker for Respondent

Investigation Meeting: 16-20 April, 5-6, 9-11 & 19-20 July & 22-23 August
 2007 in Hamilton

Submissions Received 30 August, 26 October & 7 December 2007 for
 Applicant
 4 October & 22 November 2007 for Respondent

Determination: 4 February 2008

DETERMINATION OF THE AUTHORITY

Direction of the Authority

Suppression orders granted in respect of some of the evidence received in this matter are lifted with effect from the date of this determination.

Note: *The events recounted here have been extremely controversial. For this reason I have set out all of the evidence on which my findings are based. As a result the determination is presented in two parts – Background and Discussion/Findings. The first part Background sets out the evidence. The second part, Discussion and Findings, sets out my findings and has of necessity repeated some of the evidence to illustrate the findings. Some readers may prefer to read the second part of this determination only. It starts at page 82.*

Employment Relationship Problem

[1] The applicant submits she was constructively dismissed from her employment with the respondent. She also submits that she was unjustifiably dismissed on 24 July 2006 (during her notice period) or in the alternative that she suffered a disadvantage grievance in the way the Board handled the notice period expiry and in the Board's aggressive actions on 24 July 2006.

[2] To remedy her alleged grievances the applicant the applicant seeks 12 months salary by way of lost remuneration and a total of \$60,000 compensation pursuant to s.123 (1)(c)(i).

[3] The respondent says the applicant resigned her employment and that she was not constructively dismissed. The respondent also denies the applicant's claim she was unjustifiably dismissed during the notice period and it denies the claim in the alternative that the applicant was disadvantaged by the manner in which the respondent handled the notice period.

[4] The respondent denies any liability to the applicant and denies that the applicant suffered hurt and humiliation.

[5] Further by way of counterclaim, the respondent seeks to recover from the applicant the sum of \$52,000 representing an unauthorised salary increase to the applicant for a period of two years. The respondent also seeks an order directing the applicant to repay a bonus payment made to her of \$3,199 gross (\$1909.81 net) which was unauthorised.

[6] The applicant denies the respondent's counterclaims.

[7] Both parties seek costs in the matter.

Background

[8] Ms Hodgson has extensive experience as a social worker and community worker in the provision of social services. In 1978, she was employed by Catholic Social Services as a social worker. That year she, with others, set up Parentline. It was set up as an incorporated society to promote the prevention of child abuse and neglect.

[9] Throughout its existence, Ms Hodgson has been first, the manager of Parentline, and then, when the organisation was constituted as a charitable trust in 2003, she became the CEO. (Ms Hodgson explained that the organisation became a charitable trust because it was felt this structure would be more attractive to philanthropic donors).

[10] As a not-for profit trust, Parentline continued and continues to provide services (including advocacy services) for children and their families. The organisation is based in Hamilton.

[11] The majority of Parentline's funding (75-80%) comes from government departments, e.g. Ministry of Social Development (MSD), CYFS and Waikato District Health Board (WDHB). The remaining funds come from fundraising and philanthropic donors. Funds provided are commonly tagged and must be accounted for.

The First Board (June 2003-July 2005)

[12] Parentline took on charitable trust status on 9 July 2003.

[13] Murray Earl, a former committee member of Parentline Inc, became a member of the new trust board and its first chairperson.

[14] Bernadette Doube was a founding member of the new board and was elected chairperson of the board on 10 March 2004. Russell Drake joined the board later that year.

[15] Over the first few months of the trust's existence, considerable time was spent on establishing the policies necessary for the sound governance of the new trust. Attention was also given to negotiating and putting in place the contracts and policies governing the Board's relationship with Ms Hodgson, the CEO of Parentline. In this regard, Murray Earl negotiated an Individual Employment Agreement (IEA) with Ms Hodgson. (The terms of Ms Hodgson's employment will be dealt with in greater depth at a later point, (paras.231-241). Steps were also taken to undertake a review of Ms Hodgson's performance and to establish performance objectives for her.

[16] A delegations policy was developed and approved at the July 2004 board meeting. That delegations policy authorised Ms Hodgson, as CEO of Parentline, to

undertake media and public relations activities under the operational purview of Parentline. However, Ms Hodgson was required to inform the Board, via the Chairperson, and to seek advice on any situation that might involve any potential or actual or legal, contractual, political or funding exposure other than the daily clinical management of casework. The CEO was also to advise and invite the Board to participate in visits to or by significant persons including visits undertaken whilst on official visits to Wellington (VIP policy).

[17] However, behind the steps taken by the Board and Ms Hodgson to establish policies for the sound governance of Parentline, relationships between the Board and Ms Hodgson became increasingly fraught.

[18] It was Ms Hodgson's evidence that, in her dealings with the first Board of the charitable trust, it became apparent there were important philosophical differences between herself and certain Board members. The Board was bent on adopting a corporate approach to governance and Ms Doube "*introduced an approach that she was there reinforce the governance and broad policy directions of Parentline and they were to be adhered to by me*". Ms Hodgson said she wanted to focus on the work of Parentline which called for a caring and collaborative approach to managing the business. This she said was a more appropriate philosophy to guide the business of a non-governmental agency.

[19] Ms Hodgson said she did try to meet the Board's expectations regarding the amount, nature and quality of information provided to the Board. It was Ms Hodgson's evidence, however, that Ms Doube was increasingly demanding in her expectations relating to information and explanations and it was difficult to meet those expectations. It was Ms Hodgson's evidence that Ms Doube made it clear that she was going to change her (Ms Hodgson).

[20] For their part, former Board members (first Board) described a CEO who:

- Failed to recognise the Board's governance role. She also failed to provide information in the amount and quality necessary for good governance. Numerous examples were cited of Ms Hodgson's failure to provide information or her failure to meet the Board's requests for more adequate information.

- Adopted a stance of challenge and defiance towards the Board, both generally and at Board meetings. This was particularly noticeable in respect of Ms Hodgson's attitude to Bernadette Doube (Chairperson), and she had to be reminded that it was the Board that made decisions, not Ms Doube.

[21] The deterioration in the relationship between the Board and Ms Hodgson came to a head over the Board's concerns that Ms Hodgson was not following Parentline's policies and protocols in respect of two significant matters i.e. her lobbying/child advocacy activities and VIP visits.

[22] Mr Drake and Ms Doube met with Ms Hodgson on 7 February 2005 to discuss their concerns with her.

[23] The Board accepted that Ms Hodgson was strongly committed to child advocacy. However, in respect of her advocacy role the Board had become increasingly concerned that Ms Hodgson presented publicly, her own very strong views, as those of Parentline, to the potential detriment of Parentline's reputation and funding. The Board was also concerned that Ms Hodgson did not inform them of planned statements and they frequently felt broadsided by them. It was the evidence of both Russell Drake and Bernadette Doube that they did not challenge Ms Hodgson's role in child advocacy but rather the manner in which she went about it (which was confrontational) and the fact the Board was not kept informed.

[24] For her part Ms Hodgson sees the first Board as having been implacably opposed to her child advocacy activities. Ms Hodgson saw her role in this regard as being within her operational responsibility and she saw it, as part of her strategy to convince the Board that the lobbying she did was normal. This was part of the rationale, she said, for requesting the appreciative inquiry review of her performance (see paras 253-266)

[25] On the matter of VIP visits the Board was concerned that Ms Hodgson was not advising the Board of impending visits with significant individuals. For example, in December 2004 Ms Hodgson made a visit to the Governor-General and Ministers whilst she was on an official trip to Wellington. Ms Hodgson later reported her visits to the Board and the Board expressed concern that, in not having been advised in a

timely way, Board members were not in a position to arrange their diaries to accompany her on such significant visits.

[26] It was Ms Hodgson's evidence that on many occasions such visits were arranged at very short notice and it was not possible to advise the Board prior to these visits that they were diarised. In respect of her visit to the Governor-General it was Ms Hodgson's evidence that in fact this had been a personal meeting between herself and Dame Sylvia Cartwright. However when she was questioned about it by the Board, she was reluctant to advise them it was a personal visit. It seems, however, that the Board surmised this after discussing the matter with Ms Hodgson.

[27] The evidence suggests that the meeting between Mr Drake, Ms Doube and Ms Hodgson held on 7 February was a wide ranging one and it canvassed the issue as to whether or not the current governance structure was an appropriate one for Parentline.

[28] Following the meeting Ms Doube wrote to Ms Hodgson confirming their discussions and requesting her to take advice (which the Board would fund) on the question of the governance structure. The options presented for consideration and advice were:

- A return to a Board of Management structure as an incorporated society.
- The continuation of the current structure which, it was noted, would require considerable change to the CEO/Board relationship and to the functioning and performance of the CEO.
- Retention of the status quo where the Board was not consulted or informed and existed only to rubber-stamp the actions and statements of the CEO.

[29] In the event Ms Hodgson did not provide the advice sought although she did advise the Board that she would prefer a return to the Board of Management that existed under the former governance arrangements of Parentline i.e. an incorporated society. The Board went on to take legal advice on the subject and having considered that advice decided that an incorporated society which depended on a membership base was an inappropriate governance structure for Parentline's future and it was decided to continue under the charitable trust arrangement already in place.

[30] It was Ms Hodgson's evidence that she did not disagree with this decision albeit it was also her evidence that the incorporated society structure was more appropriate to the collaborative approach to Parentline's work that she favoured.

Mediation (April 2005)

[31] However, the issues between Ms Hodgson and the Board had not been resolved and on 8 March 2005, the Board received a request from Ms Hodgson to arrange mediation.

[32] That request, in an email, read:

Parentline Charitable Trust Board members.

As CEO of Parentline I request that Parentline Charitable Trust Board arrange for mediation between the Parentline Board Chairman and myself (as per my employment contract, 29 (g) (i)). It is imperative for there to be trust and confidence in my professionalism expertise experience and role as Parentline CEO. I consider these attributes are in question.

Maxine Hodgson CEO, Parentline

[33] Russell Drake responded to Ms Hodgson on 10 March and on this subject notified Ms Hodgson that the Board accepted her right to request mediation. Ms Hodgson was asked to document her concerns and advised that on receipt of that information they would be addressed.

[34] On 14 March 2005, Ms Hodgson wrote to the Board stating that she was seeking mediation between herself and the Board Chair (Ms Doube). She advised that the concerns she wanted addressed were "*around issues of respect and trust and the current unnecessary stress, which inhibits my role as CEO of Parentline*".

[35] In the event, mediation was arranged through the Board's lawyers and on 20 April the parties met with an independent mediator, Peter Doogue. All Board members attended the mediation.

[36] It was Ms Hodgson's written evidence that the mediation resulted in the Board disbanding. The then Board members who gave evidence to the Authority disagreed with Ms Hodgson on this point. In fact, the evidence discloses (and Ms Hodgson

agreed with this in her oral evidence), that the outcome of the mediation was that an interim managing executive/board chair (the Executive Chair) would be appointed to:

- Manage the strategic direction of the organisation and act as Chief Executive;
- Chair the Board;
- Review the governance, management and structure; and
- Report on the preferred structure for the organisation, including the job description of the CEO; KPI's for the CEO; the responsibilities for the Board, the CEO and staff advocacy roles.
- Ms Hodgson would act as Chief Operating Officer during the appointment of the Executive Chair on the same terms and conditions as she currently enjoyed; and
- The term of the Executive Chair would be six months or such time as otherwise agreed.
- Ms Hodgson was to have veto rights (on reasonable grounds) in respect of the appointment of the person who took over the Executive Chair role.

[37] On 13 June 2005, the parties reached an agreement to supplement the initial agreement reached in mediation on 13 April 2005. This agreement set out the practical working arrangements required to implement the first agreement. It detailed Ms Hodgson's role as Chief Operating Officer and provided dispute resolution mechanisms to settle any issues that arose over her role during the tenure of the interim Executive Chair and also identified the person who was to undertake the role of Interim Executive Chairperson to manage Parentline and chair the Board (Marty Rogers) and stipulated her start date. The agreement also provided for such things as discussions over accommodation and notification to senior staff of Ms Rogers' appointment.

[38] These mediated settlements were never implemented for reasons that are set out below.

Friends of Parentline and the Second Board

[39] Despite the agreements reached between the parties at meetings where Ms Hodgson was represented, she described herself - on reflection - as being distraught that the effect of the agreements reached was that she would no longer be CEO of Parentline. She stated she feels the arrangement to move her out of her CEO role was stitched up prior to the mediation and she only agreed to it at the end of a gruelling session as a way to move forward but she was not happy.

[40] Ms Hodgson was, at this time, relying on and confiding in her dear friend Rona Larsen. Ms Larsen has extensive experience in the finance and banking sector and has worked with Non-Governmental Organisations (NGO's) for many years. Also involved in these discussions was Margaret Evans who is well qualified and experienced in local body governance. She has served as the Mayor of Hamilton and has been very active in community affairs and involved in a number of NGO's promoting social and economic wellbeing. Ms Evans was not a friend of Ms Hodgson's at this time but they did know each other through their respective roles in community affairs.

[41] It was the evidence of Ms Evans and Ms Larsen that when Ms Hodgson was consulting them in June 2005 she was unwell and distraught. She was describing the current situation at Parentline as a "*war*" and saying she did not know what it was about. She was especially critical of Ms Doube.

[42] Ms Hodgson's evidence was that she could not remember using the term "*war*" to describe the situation prevailing at Parentline at this time. However, she said it did feel like that at the time. She did not see the agreements, reached at and following the April mediation, as providing a way forward and noted that nothing changed as far the relationships and the atmosphere at Parentline was concerned.

[43] As a result of her discussions with Rona Larsen and Margaret Evans, Ms Hodgson provided them with information as to the current state of play at Parentline and it is their evidence they became concerned that there seemed to be the potential for Parentline to collapse. Ms Evans had discussions with trustees (Marlene Julian and Michael Redman) with a view to finding a way to stabilise the situation at Parentline. Subsequently Ms Evans identified a group of people who were prepared to

assist as Friends of Parentline and, as a group, they wrote formally to the Board asking it to resign with a view to replacing the Board in its entirety.

[44] The then Board members accepted this approach and legal steps were taken to dissolve one Board and to appoint a new Board in its place. The membership of the new Board was drawn from the nine Friends of Parentline who had requested the old Board to resign and included Ms Evans and Ms Larsen. Ms Hodgson took no part in this process. There is no doubt however; she was very appreciative of the steps taken by the Friends of Parentline.

[45] The new Board met for the first time on 14 July 2005. Ms Evans and Ms Larsen became Chair and Deputy Chair respectively of the new Board. At this stage the Board was an interim one only (up to the AGM). As I understand the evidence the interim Board was confirmed as a permanent Board at the AGM which was held on 10 November 2005. Ms Evans and Ms Larsen were confirmed in the positions of Chairperson and Deputy Chairperson at the same time.

[46] One of the first resolutions of the new Board was to express concern regarding financial and organisational issues that had arisen from the actions of the previous Board and to record the focus of the new Board was to be on the future.

[47] A number of important issues were considered by the new Board at this meeting with a view to moving forward. These issues are outlined below with the subsequent agreements in italics

- It was proposed to review the Trust Deed with a view to including values, Parentline kaupapa¹ and consideration of a kaitiaki (guardianship) role.

The revision of the original deed of Parentline Charitable Trust assumed significant importance for Ms Hodgson, members of the new Board and staff of Parentline. It does not seem to be in dispute that the ideals underpinning the proposed changes to the Trust deed arose from Ms Hodgson's view that the Board had undermined the kaupapa and core values of Parentline particularly in respect of advocacy for the child. For this reason the core value of advocacy was placed centre stage (together with the objective of providing services to prevent the abuse and neglect of

¹ Defined as "the basic platform of core principles, aims and purposes of Parentline".

children and to support their families) and was recorded in the mission statement of the new deed.

To support the kaupapa, tikanga² and core purpose of Parentline a two tier management structure was put in place – a Trust Board comprising not less than 6 who were responsible for the day to day governance of Parentline and a guardianship/kaitiaki group known as Te Roopu Taki Kaupapa (the ultimate guardians of the kaupapa and tikanga of Parentline, its principles, aims and purposes).

There were two very significant features of this deed (that were to come to the fore in the breakdown in relations between Ms Hodgson and the new Board of Parentline). The first significant feature of the Trust Deed was that persons eligible for membership of Te Roopu Taki Kaupapa could also be employed by the Trust. Under this provision Ms Hodgson herself became a member of Te Roopu Taki Kaupapa. The second key feature related to the powers of the Te Roopu group. At clause 7.2 (Authority Clause) Te Roopu had the power “to remove a [Board] trustee at their absolute discretion.

The new Trust Deed was adopted at the 10 November 2005 meeting of the Board. However, due to an oversight on Ms Hodgson’s part the new Deed was never executed and no attempt was made to register it.

There is also considerable confusion and disputation between the parties as to the individuals who made up Te Roopu Taki Kaupapa group.

- The delegation policy was discussed as elements of it were viewed as unnecessarily restrictive to a senior Chief Executive.

It was resolved at that meeting that the two clauses in the delegations policy relating to VIP and media statements (which were restrictive of Ms Hodgson’s lobbying activities) were to be removed from the policy. Concomitant with this it was agreed that there be a “culture of no surprises” between the CEO and the Board.

² Defined as “principles, customs, culture practises and procedures to achieve the correct ends of the Trust according to the Purposes of this Trust”.

- The state of play with respect to strategic planning was addressed.

It was agreed the current plan (still in draft stage) would be sent to new Board members and a strategic planning sub-committee was appointed (steered by Ms Hodgson). This subcommittee was to report back to the Board. Parentline's Strategic Plan was subsequently approved at the Board meeting of 5 April 2006. It contained at centre stage of Parentline's strategic direction a proposal to "investigate, plan, pursue collaborative agreements with MSD for a Measurement for Outcomes IT system". Delivery on this objective was to be measured by a contract³ signed by June 2006. This proposal was also reflected in the Business Effectiveness objective described in the Strategic Plan. There the action to be implemented is "Undertake 18 months MSD/Parentline collaborative agreement which may eventuate into a commercial opportunity around Measurement for Outcomes within Non Government Organisation service providers". Again success against this objective was to be measured by a contract with MSD signed by June 2006.

- The Annual Report and financial reporting was discussed.

A Finance Sub-Committee was established to review and recommend clearer and more transparent reporting systems and financial accounts.

It was agreed that the financial accounts be included in the Annual Report for 2005 "noting its importance as a public document" and confirming the need to ensure that financial reporting more clearly and transparently presented Parentline's status. There was concern at the impression 'reserves' conveyed, when tagged funds were involved, and that the 'bottom line' appeared greater and more profitable than was actually the case.

- The CEO's job description, performance review and contract was discussed.

Agreement was reached that these matters would be deferred for consideration in January 2006.

³ Between Parentline and MSD

Operations/Relationships at Parentline under the new Board –The Early Days

[48] As described above a significant amount of energy was directed, in the early days of the new Board's existence, at revising the governing structure and Trust Deed and putting into place the strategic plan and financial reporting changes.

[49] Relationships up till May/June 2006 were, generally speaking, positive. However, one or two issues arose which signalled the troubles that were to arise in the future.

- The violent videos issue. In the latter part of 2005 a psychologist then employed by Parentline (Narelle Dawson) reported to Maxine (and it seems Rona Larsen and Margaret Evans who happened to be present in Ms Hodgson's office at the time) that young clients were reporting to Parentline that they were playing an R18 violent video game, Grand Theft Auto San Andreas⁴. As a result of the concerns expressed by Dr Dawson, Ms Hodgson invited the Chief Censor, Bill Hastings to two public meetings in Hamilton to discuss concerns around violent videos and age restrictions. At those meetings there was support for Parentline to take some action on this issue and the preparation of a pamphlet for distribution to schools warning of the concerns and age restrictions around such videos was suggested. The Minutes of the Board meeting of 18 October 2005 report on the public meeting and note "*Parentline has offered to host a get together to monitor this issue*" and in the Minutes of the 14 February 2006 Board meeting it is noted, as part of the CEO's report to the Board, that a "*meeting is to be called to discuss this. Staff are to be invited*".

As I understand the evidence, that meeting took place on 20 February. It was Ms Larsen's evidence that following that meeting she was told by Ms Hodgson there would be no further action from Parentline on the issue. Ms Larsen described herself as being stunned by this. Ms Hodgson said it would "*make the phones ring*".

Ms Hodgson's accepts she took the position that Parentline was not going to develop a specific programme to address the issue of violent videos.

⁴ Parentline focuses its services on children and young people up to the age of 13.

The parties dispute what was said around this issue but in the event Ms Larsen and Dr Dawson undertook some activities in their own time to promote the danger of these violent videos.

This issue and the exchanges between individual Board members, staff and Ms Hodgson assumed some importance in the later dispute that was to develop between the parties. For Ms Hodgson it was the genesis of her subsequent complaints that the Board began interfering in operational matters and that an improper relationship developed between Board member(s) and Dr Dawson such that it led to bias and discrimination by the Board towards her when she subsequently raised with the Board issues relating to Dr Dawson's performance as a contractor to Parentline.

- Salaries for the 2004/5 year. It was Ms Evans evidence that at the February 2006 meeting she questioned Ms Hodgson regarding the increase in salaries for the Year End July 2005. Ms Evans was concerned there seemed to be a significant increase in wages for 2005 over the 2004 year (where wages constituted approximately \$1.1m out of a total budget of \$1.3m). It was her evidence that Ms Hodgson declined to discuss staff salaries saying she had taken legal advice and she did not need to disclose this information. It was Ms Evans evidence there was a stunned silence. However, she did not challenge Ms Hodgson on this point hoping that she would open up when discussions were held on the 2006/7 budget. She said it was difficult to discuss some things with Ms Hodgson because she would just get up and walk away on occasion.

Ms Hodgson did not respond to this evidence other than to say that there were full discussions between her, and the Business Manager (Moyna Fletcher) prior to submitting budgets to the Board and it was all transparent and she did not "*get up and walk away*"

- Waikato District Health Board Contract

It was Ms Evans evidence that in early 2006 Ms Hodgson asked her and Rona Larsen to become involved in a contract dispute with WDHB relating to a requirement to reimburse funds for services not delivered through what is termed "wash-up". She said it was clear that neither Maxine nor Moyna Fletcher

understood the terms of the contract and viewed it simply as a source of funds rather than a two-way contract to deliver services. To remedy the situation Parentline negotiated a change involving reduced hours for one position over the term of the contract. The exposure risk to Parentline not providing the service related to this position was about \$30,000 over the term of the contract.

Ms Hodgson responded to this. Her evidence was that she did understand the contract. It was about commercial rates and DHB rates.

Assessment for Outcomes Project⁵

[50] The Assessment for Outcomes project was developed with the object of assessing the effectiveness of Parentline's programmes.

[51] As I understand the evidence the project resulted from increased interest (from the year 2000 onwards) in 'outcomes' as the measure of value for monies spent in social services. This was a change from previous thinking which focused on 'outputs'. This change in thinking was accompanied by another philosophical shift which focussed on the desirability of delivering funding in such a way that it meets the multiple, complex and integrated needs of clients of social service agencies.

[52] Parentline's proposal for an Assessment for Outcomes Project to assess the outcomes of its interventions (through the programmes delivered to its client base) was developed and sent to MSD in March 2006. That proposal addressed the history and interest in assessing outcomes and the associated funding issues. It also presented Parentline's credentials for entering into a partnership with MSD to undertake a collaborative project to measure outcomes with a view to obtaining integrated funding contracts and the development of the associated data systems and information systems. The credentials of the proposed IT providers were also presented and a timetable was proposed which anticipated a contract for funding being concluded with MSD in June 2006.

[53] This proposal was an important one for Parentline and it featured prominently in Parentline's Strategic Plan (approved by the Board on 5 April 2006). That Plan even envisaged the project giving rise to commercial opportunities for Parentline in the delivery of Outcomes Projects within the NGO sector.

⁵ Measurement for Outcomes project renamed.

Contract with Dr Narelle Dawson

[54] The project described above involved developing questionnaires to administer to Parentline's client base to test the efficaciousness of the programmes Parentline was delivering. For the project to have any credibility, the questionnaires, their administration, the data collection and the analysis and interpretation of the information collected required demonstrable integrity as determined by reference to best practice and relevant research findings.

[55] At the time the project was being developed Narelle Dawson was on the staff of Parentline. She was, and is, a well qualified clinical psychologist and she has trained and written extensively on outcomes measurement. The subject of her PhD thesis was research into families that had experienced suicide and she created a model for this research that has been used as an outcomes measurement in this area.

[56] While it is fair to say that the parties agree on (almost) nothing when it comes to Dr Dawson's work, her involvement in the Outcomes Project and her performance in respect of the work she undertook in relation to the project, it is not in dispute that Dr Dawson played a part in developing the proposal that went to MSD in March. It is also the case that Ms Hodgson wanted Dr Dawson on board as the psychologist essential to progressing the project. However, for some time Dr Dawson had been planning to return to Australia (she is an Australian) to be nearer to her ailing mother and she advised Ms Hodgson that she would be resigning her position at Parentline in April 2006.

[57] Prior to her planned departure Dr Dawson assisted Ms Hodgson with trying to identify/recruit another psychologist. It was an important task because Parentline needed an in-house psychologist to meet the terms of its funding contracts. It was also essential to have an appropriately qualified psychologist to progress the Assessment for Outcomes Project. The two women identified and spoke to a number of potential candidates. One interesting exchange occurred when they met with John Fitzgerald. He had the appropriate qualifications but advised he was currently engaged on a similar outcomes project for ACC with funding of \$750,000 and several psychologists engaged in the project. He was not willing to undertake such a project for Parentline, particularly given the skimpy resources anticipated.

[58] As I understand it the next step involved Ms Hodgson approaching Dr Dawson with a view to having her enter into a contract with Parentline to undertake the work necessary to develop the required questionnaires for the project from Australia. It was also anticipated that she would train staff in the administration of the questions and carry out and present the literature review necessary to underpin the integrity of the project. The contract entered into by Ms Hodgson and Dr Dawson was an enormous source of contention in this investigation.

[59] The contract covered two periods. The evidence suggests that formulation of the contract progressed in two stages and that the second part of the contract was conceived and developed after the 12 April meeting with John Fitzgerald and a meeting on 13 April with MSD officials and IT specialists from Waikato University. These meetings led to an improved understanding of the scale of the project and it was envisioned, as a result, that Dr Dawson's involvement would need to be more extensive than originally thought. The second part of the contract recognised that.

[60] The essential features of the contract are set out below:

First phase:

- The first phase of the contract was expressed to run from 19 April 2006 to 7 June 2007.
- Dr Dawson was to be paid \$17,000 AUD upfront for the first phase of the contract.
- In return she was to develop and deliver questions for the Assessment for Outcomes research project (referred to as “*templates*”) by specified dates which allowed for “*sign off*” by stipulated team members. The programmes around which the templates were to be designed and due dates were:

| <i>Task</i> | <i>Signed off from</i> | <i>Date</i> |
|---|----------------------------------|----------------------|
| <i>Transformers programme</i> | <i>Jan, Val, Maxine, TRA rep</i> | <i>26 April 2006</i> |
| <i>Parents Building Bridges programme</i> | <i>Jan, Val, Maxine, TRA rep</i> | <i>10 May 2006</i> |

| | | |
|---------------------------------------|----------------------------------|--------------------|
| <i>Totally Awesome Kids programme</i> | <i>Jan, Val, Maxine, TRA rep</i> | <i>24 May 2006</i> |
| <i>Shaping of full assessment</i> | <i>CEO via supervisors</i> | <i>7 June 2006</i> |

- If time permitted Dr Dawson would also address the Keeping Ourselves Safe programme.
- A pilot would take place in May or June 2006.
- Dr Dawson might need to come to Parentline for consultation and training in relation to the project and her reasonable expenses would be met by Parentline.
- Dr Dawson was provided with a new laptop which she could keep and she would be paid \$50 to connect with broad-band in Australia.
- This phase of the contract was concluded with the following statement and agreement.

“This signed agreement is undertaken with the history of goodwill between Narelle and Parentline Charitable Trust. It is agreed that this innovative project will benefit Parentline Charitable Trust, Parentline clients and continued relationship with contractors and funders. Therefore all parties will strive to optimum professional outcomes; and

If Narelle cannot fulfil the tasks, as set out in this letter, a percentage of the up front payment will be reimbursed to Parentline”.

Second Phase:

[61] The second phase of the contract was expressed to run from 7 June to 15 December 2006 and it anticipated Dr Dawson’s continuing to work on the Outcomes Project. The contract fee was suggested to be \$40,000 AUD and it and all the terms of

the agreement relating to the second phase of the contract depended on Board approval.

- The contract fee was to be paid in 2 tranches – 8 June 2006 and 8 September 2006. The second payment was to be subject to timely presentation of the agreed templates.
- The templates to be prepared under the second phase of the contract were to be agreed between Dr Dawson and the CEO of Parentline (Ms Hodgson) prior to 7 June 2006.

[62] There was no reference in the contract to a review of the literature to underpin the research. However, both parties to the contract accepted that this would be required.

[63] Dr Dawson left for Australia on 19 April 2006.

[64] The contract was approved by Parentline's Finance Committee at emergency meetings held on 28 April (approval to October 2006) and 2 May 2006 where approval was granted to contract Dr Dawson until December 2006.

[65] On 11 May Ms Hodgson met with MSD personnel in Wellington. Following this meeting Ms Hodgson emailed Mr Wood. She copied this email to members of the Finance Subcommittee. In the email she raised with Mr Wood a number of questions relating to progressing the proposed MSD/Parentline – AFO project. Ms Hodgson also referred to meeting MSD staff during that visit where the words “*big, big, big*” were used by those staff to describe the proposed task/project. In this email Ms Hodgson suggested it might be appropriate for MSD to consider employing Narelle Dawson directly under any contract between MSD and Parentline and she advised MSD that *‘The importance of outcome definitions needs robust peer review as well as international search and documentation that Narelle is currently undertaking. Parentline has full confidence in Narelle’s professional performance and capacity’*.

[66] Despite this expression of confidence in Dr. Dawson by 18 May Ms Hodgson was questioning the contract between Parentline and Dr Dawson and it is her evidence that she decided on 18 May to terminate Dr Dawson’s contract.

Dr Dawson's Performance

[67] The question of Dr Dawson's performance under the contract between herself and Parentline was to become a major issue of dispute between the parties and it is central to Ms Hodgson's position that the Board crossed the line between governance and operational management and overrode her decision to terminate the contract with a contractor who was not performing. The question of Dr Dawson's performance (or non-performance as Ms Hodgson sees it) is a major issue that must be addressed in the resolution of the matter before me.

[68] It was Ms Hodgson's⁶ evidence that Dr Dawson was a poor performer whilst she was an employee of Parentline – she was seldom at work on time and her supervisor Paul Flanagan expressed concerns relating to the inconsistency of her work and her tardiness. She was increasingly erratic and exaggerated her importance and sought private interviews with the media in relation to her work. Numerous strategies were implemented to pin Dr Dawson down and to keep her on track including a joint supervision plan where Dr Dawson was supervised by both Ms Hodgson and Mr Flanagan. No other employee required a supervisory regime like this.

[69] In respect to Dr Dawson's performance under the contract entered into on 13 April whereby Dr Dawson would deliver the templates required for the AFO project, Ms Hodgson emphasised that Dr Dawson's input into the project should not be overestimated – she was simply one member of the AFO team. It was her evidence that Dr. Dawson was to develop the templates which were required to be submitted to Parentline in sufficient time to allow them to be signed off by the named team members including the TRA representative⁷ by the stipulated dates. However, it was her evidence that soon after the commencement of the contract she became concerned that Dr Dawson was not meeting the deadlines for the submission of templates and those that were submitted were not suitable for administering to children. Neither was Dr Dawson providing the literature reviews required to support each template.

⁶ I have not detailed the supporting evidence on this issue provided by witnesses for Ms Hodgson. To the extent those witnesses address this issue it repeats the evidence of Ms Hodgson.

⁷ Te Ropu Awhina (a grouping of Maori staff within Parentline. The templates were reviewed by this group ensure they were culturally appropriate.

[70] It was also Ms Hodgson's evidence that, despite her repeated requests to Dr Dawson for the required literature reviews, none was ever supplied and she finished only a few of the templates required under the contract.

[71] To support her evidence relating to Dr Dawson's non-performance under the April contract Ms Hodgson referred the Authority to the large amount of email correspondence between herself and other Parentline staff and Dr Dawson which she said supported her position. She said she sent 18 or 19 emails to Dr Dawson asking her to provide information and advising her that she was behind time in meeting her contracted tasks.

[72] Dr Dawson responded to Ms Hodgson's evidence regarding her performance. She was shocked to hear Ms Hodgson's evidence in relation to her performance as an employee of Parentline. It was her evidence that no performance issues were raised or documented in relation to her employment with Parentline with the exception of the fact she was told she needed to improve her typing speeds.

[73] In relation to the contract deadlines for submitting templates Dr Dawson said she was very clear as to what was required under the contract i.e. that she was to submit the questions for the questionnaires relating to the various programmes identified by the due dates. It was her evidence she did that in respect of each questionnaire with the exception of the Totally Awesome Kids template that was due on 24 May and in respect of which Ms Hodgson unilaterally advised her was to be submitted by 7 June. Dr Dawson, too, pointed to emails that supported her position that the templates were delivered to Parentline on time.

[74] It was also her evidence that she exceeded the mandate under her contract by submitting questions to be asked of other persons in the lives of Parentline's clients i.e. teachers, parents and counsellors. She said that research findings suggest that outcomes measures are more thorough and durable if they include parents, counsellors and how they see changes resulting from the administration of programmes.

[75] On the matter of the requirement that the templates be sent in time for sign off by other staff members Dr Dawson was concerned to hear Ms Hodgson's evidence which suggested the questions to be submitted by her were to be the subject of checking by Parentline staff as to their suitability. It was Dr Dawson's evidence that

staff at Parentline are highly experienced in working with children but they were not qualified in test construction work or to test the validity and internal consistency of the tests or to change them and she denied the evidence given by some employees to the Authority they had the skills in question to evaluate her work or to do that work themselves.

[76] On the matter of the literature review it was Dr Dawson evidence that this was not mentioned in the contract. However, it was discussed by her and Ms Hodgson and she knew a literature review was essential to give the model credibility. She said that the literature reviewed required and agreed to, centred on the measurement for outcomes and the rationale as to why Parentline needed to adopt this evidence based process in order to remain sustainable. There was no due date for the literature review and it could not be completed until all the templates were completed.

[77] Dr Dawson recognised that there developed a difference in view between herself and Ms Hodgson around the provision of literature reviews. She noted the PS to an email sent by Ms Hodgson to her on 9 May 2006 where she said *“I think we need a clinical statement from you saying you have researched, planned and designed this template, for example Anger Management, by researching xxx and evaluating xxx in the literature”*. It was Dr Dawson’s evidence that this did not reflect the agreement reached between them in relation to a literature review; that literature reviews had been undertaken in relation to the individual programmes when they were originally developed and that to undertake such reviews was impossible on the short deadlines she was working to. She saw this request from Ms Hodgson as a *“shifting of the goalposts”*.

Meeting at Ms Evans home on 18 May

[78] Ms Hodgson went to Margaret Evans home on 18 May to discuss her concerns relating to the templates and Dr Dawson’s performance. Rona Larsen happened to be present at the time as was Tonga Kelly (Ms Evans’ partner and a Parentline Board Member). It was Ms Hodgson’s evidence she told them:

- Parentline could not get any work out of Narelle Dawson and the project team were doing the work.

- What little work she was producing did not work. This was a reference to the fact that one template had been trialled on one child client; with the result that it was found the questions traumatised the child. Ms Hodgson described advising these Board Members that the trial showed that Dr Dawson was way off beam with her ability to undertake the template work. This, she said, was consistently repeated to Board members Ms Evans and Ms Larsen by herself and Parentline staff over the ensuing weeks.
- That consideration should be given to terminating the contract with Dr Dawson. (Ms Hodgson was at this time referring to the contract as ‘the agreement’). It was also her evidence that she advised Ms Evans and the other Board Members that day that Parentline should “*advance on a variation on the AFO project*”.

[79] She said that at the meeting with Margaret Evans, Rona Larsen and Tonga Kelly at Margaret’s home on 18 May she was advised by them that Narelle Dawson was arriving in Hamilton from Australia that day and that Rona Larsen would be picking her up from the airport. She was told that Dr Dawson would be staying at Margaret Evans’ property. Ms Hodgson said she was extremely unhappy to hear this as Dr Dawson was not expected in New Zealand until the date when it had been agreed that she would attend for consultation on the project and staff training (26-29 May 2006). It was Ms Hodgson’s evidence that Dr Dawson was behind in the delivery of the templates and she should have been in Australia getting on with that work.

[80] It was her also her view, that the fact Dr Dawson was to be residing in Margaret Evans’ cottage for the duration of her visit, was evidence of the inappropriate relationship that was developing between Margaret, Rona and Narelle – a relationship that led ultimately to a conflict of interest in respect of the Board’s management of the issue that was to arising relating to Dr Dawson’s performance and which ultimately led to serious bias in Dr Dawson’s favour and against the views she (Ms Hodgson) was attempting to get across to the Board relating to Dr Dawson’s performance and conduct.

[81] Margaret Evans and Rona Larsen (respondent’s witnesses present at that meeting on 18 May) have a very different view of the events and communications that took place at Margaret Evans’ home that day.

[82] Between them, it is the evidence of Margaret Evans and Rona Larsen that when Ms Hodgson arrived at Margaret's home around lunch time that day she was agitated and waving a piece of paper; she said a template had been trialled and that it didn't work. This was a point she made repeatedly. She said the project was too big for Parentline. She wanted to postpone or cancel it and she wanted "*an organic indigenous model*" not an "*international model*" but she could not explain what that meant.

[83] Ms Hodgson did not say she was not getting the contracted work from Dr Dawson. She did say that Dr Dawson was expecting to be put up in a motel during her visit. Ms Evans responded by offering the use of a cottage on her property (to save Parentline money). Ms Hodgson was pleased with this offer and accepted it.

[84] Ms Hodgson was asked why testing had taken place when the proposed training had not been delivered and she was advised to take up any concerns she had about the templates with Narelle Dawson who was arriving that day and was due to be picked up at the airport by Rona Larsen.

[85] On receipt of the information that Dr Dawson was arriving that day, Ms Hodgson hit the roof. She was very angry – stating that Rona Larsen should not be picking her up and that she (Ms Hodgson) should have been told of her arrival.

[86] Margaret Evans concluded her evidence on the events of 18 May by saying that throughout her visit to her home that day Ms Hodgson was loud, raving and on the warpath.

[87] Ms Hodgson denies this. She told the Authority that it had never been agreed that Dr Dawson would be provided with accommodation for a week when she was in Hamilton. She said she expected that Parentline would meet Dr Dawson's airfare but Parentline did not have the resources to meet accommodation expenses (particularly given Dr Dawson was in New Zealand for 10 days – 4 might have been possible). It was her evidence she did not ask Margaret Evans if Dr Dawson could use her cottage and she did not see it as any of her business where Dr Dawson stayed. Neither was Parentline in a position to provide Dr Dawson with a vehicle.

[88] Following the meeting on 18 May Ms Hodgson emailed Richard Wood (MSD) the same day:

Dear Richard,

Parentline staff managers and I, as Parentline's CEO, have made a decision that Parentline should withdraw from our proposal to undertake a Measurement for Outcomes Project with MSD this year, 2006.

We have trialled some initial templates designed by Dr Narelle Dawson and after testing, see there is a gap between academic literature template design and client interaction template design.

Richard, as CEO, I have taken this decision and informed you promptly. I believe that at some stage we may be able to rethink this task. Parentline will continue to do internal Measurements for Outcomes planning and trialling throughout 2006.

...cheers Maxine Hodgson, CEO Parentline

[89] Ms Hodgson subsequently copied the above email (19 May) to Board member (Kirstyn Buezeval) advising her that she had "*informed Margaret, Ro, Tonga and Mark [Flowers] of our decision*".

[90] It was the evidence of Margaret Evans and Rona Larsen that in fact they knew nothing of this email advising MSD that Parentline was withdrawing from the AFO project or any of the subsequent communications Ms Hodgson had with MSD in relation to the project. This information only came to light after Ms Hodgson's departure from Parentline and it was never discussed or approved by the Board.

Dr Dawson's visit to New Zealand – May 2006

[91] It is not in dispute that Dr Dawson was requested to come to NZ for meetings at Parentline on 26 and 29 May 2006.

[92] It was Ms Hodgson's evidence that during Dr Dawson's visit to Parentline staff told her the template material was inappropriate for children. It was her position that Jane McCallum was well qualified to have assessed the material in question. (This was a reference to the '*trial*' that had been carried out on or about 18 May).

[93] It was Dr Dawson's evidence that she was requested by Ms Hodgson to make herself available for consultation and training at Parentline premises on the templates

on 26 May and 29 May 2006. Dr Dawson described the purpose of her visit was to consult and receive feedback from the project team on the templates she had prepared. It was then planned to pilot the template(s), to assess the pilot and to make any changes indicated as result.

[94] The dates suited Dr Dawson because she had sold her house in New Zealand and it was settling on the 26 May. As she still had to pack up her house she made arrangements to travel to New Zealand on the 18th. She planned to stay in her own home till settlement date on the 26th and thereafter expected Parentline to provide her with accommodation for the period she would be visiting Parentline i.e. 26- 29 May. She had also taken Rona Larsen up on her offer to pick her up at Hamilton airport on 18 May.

[95] It was Dr Dawson's evidence, too, that she still had some work to do on the Totally Awesome Kids (TAK) template which was due to be submitted to Parentline on 24 May and she planned to ask Ms Hodgson if she could work on it at the Parentline office on the weekend of 21-22 May.

[96] Dr Dawson said she had a very strange telephone conversation with Ms Hodgson on 18 May after her arrival and it was the first inkling she had that there was anything wrong with their relationship. She also received an email from Ms Hodgson that day where she stated her annoyance at hearing she was in Hamilton and that she should have been informed. She also stated her expectations regarding the receipt of the TAK template and previously requested research and said Dr Dawson would be provided with an agenda for the discussions/training planned for the 26^{May}.

[97] Dr Dawson said that she had another telephone conversation with Ms Hodgson on 19 May where she requested access to Parentline to complete the TAK template. She also requested permission to collect her belongings that remained at Parentline. These requests were refused and Ms Hodgson told her she had an extension to 7 June to submit this template. Dr Dawson had not requested an extension.

[98] Ms Hodgson accepts she gave Dr Dawson an extension to complete the TAK questionnaire. She twice addressed this matter in her oral evidence saying she *"wasn't happy about granting the extension but she gave Dr Dawson this lee-way because she was considerate of her need for shifting deadlines"* and she *"had offered*

the extension because she's a reasonable person and Dr Dawson was behind and had the PC to do the work".

[99] Dr Dawson said Rona Larsen had already advised her that she was to stay at Margaret Evans' cottage after the settlement on her property. She was unhappy about this she said because she barely knew Margaret Evans. She said she told Ms Hodgson she had accommodation at her own home for the rest of the week and asked if she could camp at Parentline thereafter because it had bathrooms and a kitchen and a place she could sleep. This request was also refused by Ms Hodgson who told her Parentline was a workplace and that she had arranged for her to stay at Margaret Evans.

[100] Dr Dawson said she tried to raise the question of transport with Ms Hodgson during that conversation. It was her evidence that Ms Hodgson had (at the time of their contract discussions promised her the use of a car) but when she had rung Parentline the previous week to inquire about it a staff member told her that no car was available for her to use. She said she made no headway with Ms Hodgson on this issue (and certainly Ms Hodgson told the Authority that Parentline had no car available for the use of Dr Dawson) and she dropped the matter. She took a taxi to Parentline on the 26 May.

[101] Dr Dawson referred to other conversations she had with Ms Hodgson that week – one in particular when she was staying in her house after all the furniture had be moved out. Ms Hodgson accused her of having a friendship with Rona Larsen. She found it all very strange because she hardly knew Rona and felt it wasn't any of Ms Hodgson's business who her friends were.

[102] Dr Dawson recalled the events of 26 and 29 May. It was her evidence that on Monday 26 May Ms Hodgson began the training session at Parentline by talking to everyone about the project. She said the outcomes measurement project was not working and that Parentline was not going to pursue the project. Jane McCallum (another psychologist employed by Parentline and the person who had conducted the trial) then addressed the group and said that a trial had been conducted and the template had been "clumsily written" and it didn't work. Maxine agreed that the AFO project was not for Parentline. She then told Dr Dawson to proceed with the training.

[103] Dr Dawson said she solicited feedback on the statement that the template “didn’t work” but none was provided although it was advised that one template had been trialled on “*a suitable child*”. She also said that she later saw the template in question up on Jan Hight’s computer screen. It was different to the template she had submitted. She asked Jan for a copy of the template but she refused and quickly shut down the screen.

[104] Dr Dawson also addressed the fact the template had been trialled on one child. She said anyone who had done test construction would know it was meaningless to choose a particular child because it immediately creates a bias. Further, she said testing on one child is meaningless because it constituted only one part of the process. There were, she said, eight templates with four questions each to be asked of the child, the teacher, counsellor and parent both before and after the programme in question. Dr Dawson said she was horrified to hear what had happened and concerned with the criticism that questions had been read to the child were above his or her head as it was to be part of the planned training that questions were interpreted for the child and the other participants. It was her evidence that in any event she had pitched the questions at seven or eight year reading level.

[105] It was Dr Dawson’s evidence that throughout the training exercise she took that day Ms Hodgson sat next to Jane McCallum nudging her and on one occasion said to her in a loud whisper “*I’m so sick of this!*” She was screwing up her face in a way that indicated she did not want to be there.

[106] For Dr Dawson all this added up to the fact that Ms Hodgson wanted the project canned and so said the questionnaires were not working. She said the staff knew nothing about the project or the timeframes or what was expected of her under the contract she had with Parentline. There did not seem to be any project manager.

[107] Ms Hodgson denies she told staff (at the meeting held with them and Dr Dawson on 26 May) that the project would not be going ahead. She pointed to the letter prepared by staff for presentation to the 7 June Board meeting (para.128). She said it confirmed this had not been the case. She could not remember if Jane McCallum had said the trialled template had been “*clumsily written*” but she certainly said it was unsatisfactory and Jane would not have told Dr Dawson she no longer had the template, it would have been on the child’s file. She said that there had been eight pages of questions for the child involved and that was unsatisfactory and

needed to be condensed. That is why Jane and the staff questioned the suitability of what had been done to date

[108] Ms Hodgson says she had one to one meetings with Dr Dawson during her visit to New Zealand and it was her evidence that on 26 May she explained to Dr Dawson she was not meeting deadlines, the literature reviews had not been done and the staff could take the programme onwards from that point. She told Dr Dawson that they would have to look at terminating the contract. She was sure this conversation occurred on 26 May. She asked Dr Dawson to consider it over the weekend because that was good employee relations. Elsewhere in her evidence she said this was consistent with her style of fairness.

[109] Ms Hodgson said that Dr Dawson told her she was taking advice from Board Members Margaret Evans and Rona Larsen and they had told her the contract would be continued.

[110] Ms Hodgson said that on hearing this she telephoned⁸ Margaret Evans while Dr Dawson was present and had a heated conversation with her that lasted 45 minutes. She said she told Margaret it was not appropriate for her to talk to Narelle about employment matters and that she should not be undermining the CEO's role in this way. She also said to the Authority that, by then Dr Dawson had been living at Margaret Evans' place for 10 days and she felt undermined and not listened to over the issue of Narelle Dawson.

[111] Dr Dawson accepts she had one on one meetings with Ms Hodgson during her visit. It was her evidence that on 26 May Ms Hodgson told her she was to think about the contract over the weekend and to think about ending it and tell her on Monday. She was polite at this meeting and used words like "*big, big, big*" and said the thing had come unstuck. Dr Dawson asked Ms Hodgson if she had any issues with her performance and was told that was not the case and her work was exemplary.

[112] Dr Dawson said it was an awful day and she was very upset. She had to go to the home of someone she didn't know and she felt most uncomfortable. She said she briefly saw Ms Evans on her arrival. Ms Evans could see something was wrong and she told Ms Evans she had some concerns about things at Parentline. Margaret Evans evidence was that Narelle told her things were strange at Parentline and she thought

⁸ It was Ms Hodgson's evidence this conversation took place on 26 May 2006.

Maxine wanted to pull out of the project. It was the evidence of both women that they did not meet over the remainder of the weekend. It was Dr Dawson's evidence that she had a lot of time to think and she wrote an email to Ms Hodgson asking her if "they could work this thing through together".

[113] Ms Hodgson denies receiving this email and it was not produced because Dr Dawson has since deleted it albeit it was reproduced in Dr Dawson's report/complaint to the Board and CEO dated 5 June 2006 (see paras. 120-1).

[114] It was Dr Dawson's evidence the meeting with senior staff on 29 May was reasonably positive. Following that she met with Ms Hodgson who informed her that that her contract was terminated. She told Ms Hodgson that she had been asked to make herself available until 15 December 2006 and that she had given up other opportunities to be available to Parentline. Ms Hodgson said she would be snapped up. She said the Outcomes project was too big and that it might work in a few years. Ms Hodgson voiced no issues with her performance and indeed called it exemplary.

[115] Ms Hodgson repeated three times that the contract was terminated and Dr Dawson said she became extremely angry when she (Dr Dawson) asked "*if it wasn't a legal contract*" and queried whether the Board had confirmed it and whether Ms Hodgson had asked the Board about terminating it. Ms Hodgson said she would ring Margaret Evans there and then which she did. She was pointing her finger at Dr Dawson as if she was a naughty child. Dr Dawson could not believe the treatment she was subjected to. Ms Hodgson was agitated and hyper-aroused during her conversation with Margaret Evans.

[116] Margaret Evans said that during this conversation Ms Hodgson was agitated and raving. She said she had "*told Narelle she is terminated, Margaret*". Ms Evans said she advised she could not just do that and that procedures needed to be followed. Ms Hodgson said it was an employment matter and that Ms Evans was interfering. Ms Evans took the view that it was a contractual matter and that as such it was a Board matter and it could have legal consequences. Maxine accused her of giving Narelle advice which Ms Evans denied.

[117] In the event Ms Hodgson was advised that, if as the CEO, she had legitimate concerns she should bring those concerns in writing to the Board. Following the telephone discussion Ms Hodgson prepared a written document setting out the issues

for the Board meeting planned for 7 June 2007. She did not send it out with the papers for that meeting but spoke to it. The document is set out below:

“30 May 2006

MEMO TO: BOARD MEMBERS PARENTLINE CHARITABLE TRUST

I am informing the Parentline Charitable Trust Board of a decision I have made and request the Board to support this decision.

The issue is regarding the proposed Parentline and MSD measures for outcome projects that was previously presented to the Board. Various meetings and interactions were worked through with MSD and Parentline advisers.

The decision I have made is to pull back on the momentum at this time not engage any formal contractual arrangements with MSD for measurement for outcomes.

This decision has been made on the following:

- *Parentline’s CEO years of experience, nous, gut reaction and wisdom coupled with supervisory discussion and consultation with Parentline managers.*
- *The CEO’s visit to MSD in Wellington where it was signalled the enormity of this project. This signal was followed up with consultation and discussion relating to measurement for outcome.*
- *The CEO has been too ambitious regarding this proposed timing and Parentline’s readiness to commit to a formal contract.*
- *It has become evident that communication and distance between the template designer and Parentline was difficult, intermittent and required a reality check.*

The four areas involved in this project which needed to be worked on:

- *Relationship between MSD and Parentline in order to acquire a contractual relationship.*
- *Parentline’s staff willingness to shift gears to a high level of client service and assessment.*
- *IT planning design and production.*

- *Parentline template design trialling and production.*
- *The first three points are secure and are capable of achieving. At this time the fourth point is the area of least capability.*

Current plan:

The CEO has signalled to the Chairperson of the Board and MSD that we are currently not in a position to pursue a formal contract. MSD have advised they are willing to move forward with the Parentline CEO regarding the funding for outcomes as part of the proposal and want to keep in touch but accept that at this time the postponement of the measurement for outcomes was a wise decision.

The template designer will have completed the three initial templates with an overview of Parentline's assessment procedures by 7 June 2006 as per the letter of agreement.

As CEO of Parentline I do not feel confident to advance any formal contractual agreement with any person or agency. Parentline has undertaken other large complex projects under my leadership and this is the first time as CEO I have pulled back on a proposal or project. I require the Board to understand and honour my leadership and experience by supporting my decision. Maxine Hodgson CEO"

[118] It was Ms Evans evidence that following the telephone conversation she had with Ms Hodgson on 29 May she had a discussion with Dr Dawson about that telephone conversation. She was trying to mend risk fences for Parentline because she could see the potential for this escalating and she knew that Narelle had been present in the room during the telephone conversation. She advised Dr Dawson that the contract and the project would be discussed at the next Board meeting. She also said that Dr Dawson was visibly shocked by her experience and she asked about the Board procedures for considering such issues – she did not ask about complaint procedures.

[119] Dr Dawson left New Zealand the next day. She said she discussed the issues with her daughters and she prepared a report entitled Progress Report that she sent to the Board and to Maxine. It was her position that she had a binding contract; she had delivered the templates as requested and she had given up other opportunities to contract with Parentline.

[120] In her report Dr Dawson:

- Set out her understanding of the current situation relating to the project – that the MSD/Parentline project had been cancelled and that there would be no ‘in house project’ either. Maxine had explained staff were not ready for an in house project which was contrary to the situation that Dr Dawson had found on her visit. She had, she said, found staff to be enthusiastic about the project.
- Stated her contract had been terminated; she believed she had a binding contract.
- Set out a timeline in relation to the project to date.
- Described and confirmed her delivery of the templates requested.
- Traversed the events of 26 & 29 May during her visit to Parentline both in terms of her interactions with staff and her discussions with Ms Hodgson
- Provided a summary of the concerns to be addressed.

[121] Dr Dawson concluded her report:

“I believe that this project has become overwhelming for the CE as she has no personal experience in this field. I reiterate that the project is not as complicated as the CE continues to express. The senior staff members have made a commitment to continue with the outcomes measures and many of them are at a loss to understand the current level of resistance. Parentline needs to be able to assess if our programmes are effective. I signed a contract that was ratified by the Trust Board to help Parentline answer such a question, and believe the contract to be binding.....”

I hope we can put raised concerns to rest and that we can simply get on with the job of providing the best possible interventions to the children of our community”.

[122] It was Ms Evans evidence that after the telephone conversation with Ms Hodgson on 29 May she also made enquiries of senior staff by telephone to ascertain the situation regarding the Outcomes Project. She said that all staff requested the discussions remain confidential. All staff spoken to affirmed their support for the project but also expressed concerns about a lack of information regarding the project

and difficulties perceived with Dr Dawson being at a distance. One staff – member – Paul Flanagan - raised with her the question of the relationship between Dr Dawson and Rona Larsen. Ms Evans said she explained that personal relationships were part of the fabric of the Parentline culture and that the closest relationship of all was that between Ms Hodgson and Rona Larsen.

[123] Mr Flanagan confirms this conversation albeit he has a somewhat different take on it e.g. that it was Ms Evans that stressed the need for confidentiality. He confirmed the necessity for Parentline to quantify and record the changes for clients brought about by taking part in Parentline’s programmes. His evidence was that he advised Ms Evans that staff did not have confidence in the way the project was progressing.

[124] It was Ms Evans’ evidence that when she received Dr Dawson’s progress report she emailed it to all the Board members together with a summary document prepared by her to pull the background and issues together for consideration by the Board. Along with Dr Dawson’s progress report Ms Evans highlighted for the Board a statement (that she saw as a proposal) in the report on the Board’s strategic directions submitted to the Board by Ms Hodgson for the 7 June meeting

“Agreement to postpone MSD/Parentline project due to template provision. CEO seeking to reach agreement around an extended Phase One and keep MSD relationship intact”.

[125] Having summarised the history and issues for the Board members consideration Ms Evans highlighted two issues for consideration at the 7 June Board meeting being;

- Should the Board authorise the postponement of the Measures for Outcomes Project (Phase One)? And in what form?
- Should Narelle Dawson’s contract be terminated?

[126] Ms Evans highlighted factors to be considered by Board members when addressing these issues.

[127] Ms Hodgson had also received Dr Dawson’s progress report. It is her evidence that she received Dr Dawson’s report only on the afternoon of the Board meeting (7 June). She sees the report as a letter of complaint about her and says that

as such it was in breach of Parentline's grievance and complaints procedures which, she says, requires any complaint about the CEO to be addressed to the CEO in the first instance.

[128] It was Mr Flanagan's evidence, however, that he was provided with a copy of Dr Dawson's report by Ms Hodgson on 6 June and certainly senior staff were possessed of the report in sufficient time to allow them to prepare a response to it which they sought (through a request from Ms Hodgson to Ms Evans) to present personally to the Board at the 7 June meeting. In their submission to the Board the senior staff signatories addressed matters they believed had been misrepresented by Dr Dawson in her report. In that letter staff explained that the attitudes expressed at the 26 May meeting with Dr Dawson reflected the views of all staff and were not the views of one single person; that they understood the process with MSD to be on hold-not cancelled and that they did not understand Dr Dawson's comment about "*resistance*" of the CEO to the project as the CEO had heard staff and was taking the project at a slower pace. The also commented on the difficulties of working at a distance with Dr Dawson and that they had concerns on professional grounds about communications and working collaboratively and cooperatively with her.

7 June Board Meeting

[129] Ms Evans requested that the MSD/Parentline project be the first item on the agenda. It was also decided that due to "*the late notice of the matter and its sensitive nature*" that the item would be considered '*in committee*' by Trustees only with the CEO being provided with the opportunity to speak to the matter. It was Ms Evans' evidence that another reason the trustees resolved to go into committee related to the fact that some Board members, including Mark Flowers, had indicated they had not had time to read the information provided and this allowed them time to familiarise themselves with the information.

[130] Senior staff had attended the planned Board meeting with a view to addressing the Board on their concerns regarding Dr Dawson's report. However, the Board decided it was not appropriate to have staff present at this time and Ms Evans communicated this to the staff in attendance.

[131] Staff members including Ms Hodgson left the meeting to allow the trustees to reflect on the written material (including Dr Dawson's report) and the issues for discussion and agreement.

[132] Following this Ms Hodgson was invited to attend the meeting to clarify the status of the project.

[133] Ms Hodgson, who is very critical of the Board's actions in asking her to leave the meeting while they considered the issues 'in committee', submits she was invited to meet the committee "to explain herself". She says she "*talked at length about the project for the children, the fact it was not working well under Narelle and showed them proof of her poor performance*".

[134] The Minutes of the confidential meeting of the Trustees on 7 June record that Ms Hodgson "*outlined her views and answered Trustees questions on whether she wished the project cancelled, postponed or given an extended timeframe*"

[135] Ms Hodgson advised (in summary);

- She was supportive of the project but considered Phase One – the development of the three pilots – required an extension of time.
- She had advised MSD that the original timetable for Phase One would not be met. She confirmed they remained interested in the project. The IT aspects could also be delayed.
- She expressed concerns regarding the relevance of Dr Dawson's template development so far – that it was '*global*' rather than the '*in-house organic indigenous model*' sought.
- There were communications and consultation difficulties with Dr Dawson's contribution from a distance and concerns regarding her meeting deadlines for submission of templates.
- Her view was that Parentline had sufficient experienced research staff resources to develop the pilots in house and that Dr Dawson was no longer needed.

[136] Ms Hodgson also expressed concern that Dr Dawson had advised her she was taking advice from Board members. In response, Ms Evans pointed to the complaints procedure, which provides that where a complaint comes from outside the agency or where it involves an unresolved issue with the CEO it may be addressed to the Chairperson.

[137] The Minutes record that following this the Board resolved unanimously to take independent legal advice on the status of Dr Dawson's contract.

[138] The Trustees then voted to go into 'committee again' to discuss the following matters relating to the AFO project.

- The need to develop a project management plan with deadlines and a transparent consultation policy.
- The adequacy of in-house resources to manage the project – both in terms of their research skills and the time available to them over and above their normal workload.
- How to make the best use of Dr Dawson's input until the status of her contract was clarified. It was resolved she would be advised the issues she had raised were under consideration by the Board.

[139] The Board came to several unanimous agreements at the 7 June meeting. The decisions reached (in summary) were:

- The AFO project would proceed in liaison with an in-house nominated project team.
- The project was to be relevant to Parentline culture and will present as an indigenous model.
- Parentline staff have the professional skills to undertake the necessary elements of the project.
- Legal advice would be sought regarding the status of the contract between Parentline and Dr Dawson.

[140] In a nutshell then the Board approved Ms Hodgson's proposal for that the original project be adapted and it was resolved to take legal advice with regard to Dr Dawson's contract.

Events – 7 June / 21 June 2006

[141] Following the Board meeting of 7 June Ms Evans emailed and telephoned Dr Dawson and she was advised to continue her work while the Board resolved the outstanding matters. Ms Evans noted that senior staff had expressed a wish for improved consultation and she suggested that Dr Dawson proceed to connect with SKYPE⁹. Dr Dawson responded positively to this request.

[142] Before the meeting of 7 June concluded Ms Hodgson tabled, for the Trustees, the staff letter (para. 128). Ms Evans followed this up with the senior staff involved via email. They were advised the project would continue and that the Board supported the development of a project plan and improved consultation processes. They were advised that Dr Dawson would continue her involvement in the meantime. Ms Evans also addressed concerns raised about relationships within Parentline and assured the staff that Ms Hodgson's concerns had been heard and that she had been reminded that Parentline's complaints procedure provided for unresolved complaints involving the CEO to be taken to the Chair and Board and that the issues associated with the AFO project were being considered in accordance with those policies.

[143] The evidence discloses that Mr Flanagan (a signatory to the letter from senior staff to the Board) followed this up in a telephone conversation and email to Ms Evans where he thanked her for her memo and advised that staff would welcome a meeting with her (and other Board members if appropriate).

[144] In the event Ms Evans and Ms Larsen met with staff on 20 June regarding the project. As a result a framework to progress the AFO project was developed to include a formal project plan; the identification of a project team and team leader; a communications policy including regular conferencing with Dr Dawson; a requirement for record keeping and regular reports to Ms Hodgson and the Board and a timeline. The recommendations arrived at during this meeting with staff were submitted to the Board at its meeting on 21 June and was adopted by the Board. Ms

⁹ SKYPE is an audio communications system that allows for multiple participants to conference together.

Evans communicated this to Jan Hight - the staff member and member of the Project team who took responsibility for communications relating to the project.

[145] Concurrently with all this the Board was identifying a suitable legal advisor to provide advice on the status of Dr Dawson's contract.

[146] This issue became a subject of contention between Ms Hodgson and the Board but between Ms Hodgson and Ms Evans in particular.

[147] It was Ms Evans' evidence that Natalie Palmer (a member of the Board and a practising lawyer) identified McCaw Lewis Chapman for legal advice about the contract and the Board consulted a lawyer with that practice (Tanya Peterson). Ms Evans liaised with Ms Hodgson to ensure that all relevant information was provided to Ms Peterson to enable her to provide an opinion regarding the contract. However, it was Ms Evans' evidence that she did not see any need for Ms Hodgson to attend a meeting arranged with Ms Peterson. This was because Ms Hodgson had signalled her intention to terminate the contract and it seemed to Ms Evans that it created a conflict of interest for her to attend the meeting. Ms Larsen and Ms Palmer confirmed this view when Ms Evans canvassed their opinion on the matter.

[148] It was Ms Hodgson's evidence that she argued in emails and telephone conversations with Ms Evans her right to attend the meeting with Ms Peterson. It was and is her view that she knew the details behind the documentation that was gathered and submitted to Ms Peterson. It was also her view that as CEO "*it is my business and unless I am under scrutiny I should attend*". (Email to Margaret Evans 12 June 2006). Ms Hodgson also sought the advice of an HR advisor to support her view that she should be involved in the meeting with Ms Peterson. Ms Evans declined to allow her to attend advising her that as the signatory to the contract she should not be there.

[149] On 15 June Margaret Evans, Rona Larsen Kirstyn Beuzeval and Natalie Palmer attended the meeting with Ms Petersen. It was Ms Beuzeval's evidence that she felt the case presented by Board members at that meeting was "*in favour of Narelle Dawson*" and she defended Ms Hodgson's wish to have the contract terminated. Ms Peterson denied the case presented by the Board at its 15 June meeting with her was in favour of Narelle Dawson and she said there was no statement made by Ms Beuzeval in support of Ms Hodgson's wish to terminate the contract. Board members present at that meeting also disagree with Ms Beuzeval's

evidence and they say she raised no concerns at that meeting and in fact she said little if anything.

[150] On 16 June Ms Peterson provided written advice that Dr Dawson was, in her opinion, an independent contractor. Ms Peterson canvassed the steps that could be taken by Dr Dawson if her contract was terminated - including an action for breach of contract. She did not go into detail regarding the potential remedies available to Dr Dawson but did note the broad heads of remedies available for breach of contract and the potential for negotiations between the parties should such a claim be brought by Dr Dawson. She confirmed her willingness to provide further in depth advice if required.

[151] Ms Evans made arrangements for this advice to be made available to Board members to consider at the next Board meeting set for 21 June.

[152] Around this time there was a telephone conversation between Ms Hodgson and Ms Evans.

[153] Ms Hodgson says she had a telephone conversation with Ms Evans on 16 June where she expressed her concerns regarding Ms Evans intruding into her operational role and Ms Evans' relationship with Dr Dawson which was leading her to favour Dr Dawson. She said she advised Ms Evans it was her role to support the CEO and that the issue was an employment related one and within the scope of her duties as CEO. She said she implored Ms Evans not to ignore her rights and advised her job was becoming intolerable and that she would have to explore her rights as an employee to be heard.

[154] Ms Evans denies having a telephone conversation with Ms Hodgson on the night of 16 June (she was out that night). She says she did have a conversation with Ms Hodgson on the evening of 12 June. It was Ms Evans' evidence that Ms Hodgson told her about a personal family matter that Dr Dawson had confided in her when she was an employee and advised she was contacting people to obtain further information. Ms Evans said she counselled against this as it could be viewed as unprofessional and unethical. Ms Hodgson said she was the CEO and responsible for employment matters and it was Ms Evans' job to support her. Ms Evans reminded Ms Hodgson the Board was obtaining professional advice on the contract. She denies that Ms Hodgson spoke about getting advice about her rights as an employee "*to be*

heard". She also said Ms Hodgson had also told her that she had successfully got rid of people in the past. Ms Hodgson denies saying this.

[155] On 18 June (a Sunday) Ms Hodgson rang Ms Evans at home and asked if she could come over. She brought Moyna Fletcher (Parentline's Business Manager). Ms Evans invited Rona Larsen to attend.

[156] Ms Hodgson's intention in asking for this meeting was to go over and respond to the report submitted by Dr Dawson which had been submitted and considered by the Board at the 7 June Board meeting.

[157] It was Ms Evans' evidence that Ms Hodgson and Ms Fletcher were highly derogatory about Dr Dawson and her performance – much of it related to the time she was employed by Parentline. When Ms Evans tried to discuss some of the issues raised by them they became louder and louder in their condemnation of Dr Dawson. Ms Hodgson reiterated her right to terminate Dr Dawson's contract and the fact that she had done this sort of thing before. She would not consider the legal ramifications of this. Ms Evans raised the concept of "*power of personality*" where one person attempts to dominate another regardless of their legal or customary rights – as in bullying. She advised Ms Hodgson it was not appropriate and created risks for Parentline.

[158] Ms Hodgson's evidence is that she was told her behaviour towards Dr Dawson was bizarre. She confirms Ms Evans' evidence that the concept of "*power of personality*" was discussed. It was her evidence her behaviour was not bizarre and she was simply undertaking her role as CEO of Parentline and would have addressed any under performance with any other staff member exactly the same way. She said it became obvious that no notice would be taken of the concerns she and Moyna expressed about Dr Dawson's behaviour.

[159] Another issue, relating to Dr Dawson (aside from her general and specific performance under the April 13 contract for services) was raised by Ms Hodgson with Ms Evans and Ms Larsen at the meeting that day.

Dr Dawson's late night visits to Parentline

[160] This issue became a major focus of the investigation into the issues raised for resolution by the Authority and the evidence became the subject of interim

suppression orders because of the potential to cause serious damage to Dr Dawson's reputation and career prospects in the interim period until this determination addressed and made findings on this evidence. As noted the issue first surfaced between the parties at the meeting held between Ms Hodgson, Ms Fletcher, Ms Evans and Ms Larsen on 18 June.

[161] It was Ms Hodgson's evidence that around 16 June it came to her attention from Parentline's security agency that there had been an unusual pattern of after-hours entry into Parentline. On checking it was revealed that Narelle Dawson had, in the weeks immediately prior to her departure for Australia, been accessing Parentline's premises. Ms Hodgson also referred to an undated memorandum written by her PA, Ann McClure. (I find it was produced at Ms Hodgson's request to support her concerns regarding Dr Dawson's late night entries to Parentline in April 2006). Ms McClure's memo advised Ms Hodgson that for the past three years she had discovered (when logging on to her computer) that Dr Dawson had accessed her computer. Ms McClure noted that other staff had also reported Dr Dawson logging on to their computers over a period of time. It was Ms Hodgson's evidence that she was not only concerned about the unusual times of entry but about a potential abuse of Parentline's computer policy. She was concerned there may have been some criminal element or that Parentline's intellectual property might have been taken to Australia by Dr Dawson. As a result she arranged for a private security advisor (Peter Hikaka) to give advice on the matter. He recommended an in depth investigation of Parentline's computer system to identify what access had been made to these system. He estimated the cost to Parentline for this exercise to be \$5000.

[162] It was Ms Hodgson's evidence that she raised her concerns regarding Dr Dawson's late night access to Parentline premises and computers with Ms Evans and Ms Larsen at the meeting they had on 18 June.

[163] Ms Hodgson was adamant she knew nothing of Dr Dawson's late hour visits to Parentline and said had she known then as a good employer she would have questioned it and would have been unlikely to have agreed with it because of the issues it raises in regard to daytime performance.

[164] Ms Hodgson's evidence is that when she raised her concerns with Ms Evans and Ms Larsen at the meeting on 18 June Ms Evans suggested that Dr Dawson had simply been working late and that if she pursued the matter she would be seen to be

vindictive. Ms Hodgson told Ms Evans she would be taking this issue and the apparent breach of Parentline's computer policies up with the Board as it was her duty to do so as CEO of Parentline. Ms Evans reiterated her warning that it would be seen as vindictive and this added to Ms Hodgson's feelings that she was being undermined and unsupported by Ms Evans.

[165] It was also Ms Hodgson's evidence that throughout this meeting Ms Evans and Ms Larsen were acting as advocates for Narelle Dawson.

[166] Ms Evans confirmed that Ms Hodgson raised with her an issue relating to security and intellectual property breaches by Narelle Dawson and that she recommended further investigation. Ms Evans accepts she advised Ms Hodgson against reporting this to the Board as it would be seen to be vindictive given the current situation with Narelle Dawson. However, she did support Ms Hodgson's right to raise it as an item on the agenda for the next meeting. Ms Evans confirms using the expression "*bizarre*". She said it accurately described the approach Ms Hodgson and Ms Fletcher were taking at the meeting on 18 June particularly given that Ms Hodgson was recommending that Parentline spend \$5000 to troll through Parentline's computer system looking for information that Dr Dawson might have stolen.

[167] The next day (19 June) Ms Hodgson emailed Ms Evans saying she intended to pay Dr Dawson the \$AUD 20,000 payable under the contract on June 8. Ms Evans requested Ms Hodgson not to do this until the Board made a decision on the matter at the 21 June meeting.

[168] Dr Dawson addressed the allegations that she had improperly accessed Parentline's premises and computers.

[169] It was her evidence that when she was approached by Ms Hodgson to work for Parentline she said she would do so on certain conditions. She said she has four children and her family come first. She told Ms Hodgson that she would need to get her children off to school in the morning and that she would not be in before 9am. She also advised that she had a habit of working late.

[170] It was Dr Dawson's evidence that she has studied and written for years around normal work hours as well as raising four children. She is used to working late and regularly does this without difficulty. During her employment with Parentline she often worked around her family commitments and it was not unusual for her to work

at Parentline's offices as late as 2am to finish projects. A notable example cited by Dr Dawson related to the occasion she stubbed her toe badly one evening at Parentline's premises (in August 2005). She said that after being treated at a local medical centre she returned to Parentline's offices and continued working until the shuttle bus came to collect her to take her to the airport the next morning.¹⁰

[171] It was Dr Dawson's evidence that her work habits were well known to staff at Parentline including Ms Hodgson and that they were the subject of frequent comment to her by staff and by Ms Hodgson, who commented that she worked so hard.

[172] Dr Dawson also explained the procedure to be followed by staff when working late at Parentline's premises. A note book is kept for staff to record their presence after hours. Dr Dawson said she filled it in when it was readily available to her. More importantly, staff working at Parentline after hours are required to contact the security company and advise of their presence and the anticipated duration of their visit. The security company became so familiar with her calls to them that they recognised her voice.

[173] On the matter of her visits to Parentline at late hours and weekends in April 2006, Dr Dawson said that she had a big project to finish before she left for Australia. She said she found these allegations difficult and insulting when she was doing literature research and finding best international models for Parentline.

[174] On the matter of accessing other computers Dr Dawson said she had the oldest computer at Parentline and it regularly seized up so she could not access programmes she needed. When this happened she often rang another staff member at home for assistance and would be advised to use their computer – usually Jan Hight's computer or that of Ann McClure because it had the only scanner available at Parentline. She did not access other staff member's computers– she used other Parentline computers but accessed them in her own name. When she used other computers in this way she always left a note that she had done so. There was no secret about it.

[175] Dr Dawson denied absolutely improperly accessing or taking Parentline's intellectual property. She said she had no need to take anything; she had written most of it; it was out of date and she questioned why anyone would want it.

¹⁰ For a planned trip to Australia to visit her mother.

[176] On this issue, I note that the security records admitted show that between 4 April and 18 April (the day of her departure to Australia) Dr Dawson was present after hours at Parentline on 14 occasions. Also admitted was the note book that staff enter the details relating to their after hours presence at Parentline. The earliest dates go back to June 1999 and continue to mid 1007. Numerous staff are recorded as having been on Parentline's premises after hours although certainly Dr Dawson's entries show she worked at very late hours.

[177] It is also noted, that, in her oral evidence, Ms Hodgson confirmed that all staff have access to Parentline's premises after hours; they are given individual security pins to enable this and they phone security to let them know they are on the premises. There is a note book for them to record their presence. She also accepted that there was nothing to prevent staff working at Parentline after hours. Neither, did Parentline's computer policy prohibit an employee using their own log in details to log into Parentline's computers. She stated the policy needed updating.

21 June Board meeting

[178] On 21 June there was another meeting of the Parentline Board.

[179] Before the Board was a report prepared by Margaret Evans which summarised;

- The advice received from Tanya Peterson that the agreement with Narelle Dawson was a binding contract.
- The recommendations arrived at following consultation between Margaret Evans and Rona Larsen and senior staff to progress the AFO project.

[180] The Board unanimously resolved to continue the contract with Narelle Dawson and to pay the \$20,000 currently due under the contract. The proposal to develop an Outcomes Project Plan in the form agreed with staff was also approved. (The Minutes record Ms Hodgson advised that a plan had been in place since April).

[181] Ms Hodgson also advised she would be the AFO project leader.

[182] It was Ms Hodgson's evidence that the Board confirmed the contract with Narelle Dawson despite her best efforts to persuade them she had not earned the contract sum payable to her. She said the approval to pay Dr Dawson \$20,000 was a

significant factor in her subsequent decision to resign. She felt it was dishonest and it compromised her relationship with MSD.

[183] The Chairperson (Margaret Evans) then advised that the CEO wished to raise an item relating to the security of Parentline's building, computers and intellectual property.

[184] It is Ms Hodgson's evidence she raised the issue with the Board because she had a responsibility to do so. She had to be consistent in applying the rules and she was not being vindictive. She did not identify Dr Dawson when she raised the issue. However, she was asked to identify the employee and when she did so Susan Simmons-Kopa (a Board member) screamed at her – accusing her of being on a “*witch hunt*”. Ms Hodgson said she was “*ordered to leave the room*”.

[185] Ms Evans disputes that Ms Hodgson was ordered to leave the room. It is her evidence Ms Hodgson and the Minute Secretary (Moyna Fletcher) were asked to leave the room to enable the Board to go into committee to discuss the issue.

[187] The Board considered information provided by Ms Hodgson and unanimously resolved and advised Ms Hodgson “*her report had been received and after discussion in committee it was unanimously resolved that no further action be taken, and that the Board wished to move on*”.

[188] It is Ms Hodgson's evidence that she was deeply humiliated at being dismissed from these meetings on three occasions (twice during the meeting on 7 June and once at the 21 June meeting). She said she was asked “*to explain herself*” to the Board on 7 June and despite her spelling out her concerns (and those of staff) regarding the non performance of Narelle Dawson she had not been heard; that the close personal relationship between Margaret Evans, Rona Larsen and Narelle Dawson had resulted in a bias in Dr Dawson's favour and that her position as CEO had been undermined and her employment rights violated.

[189] It was Ms Hodgson's evidence that the Board's decisions taken 21 June left her feeling undermined and trodden over. It was increasingly obvious that Margaret Evans was trying to make her life and the operation of her role (as CEO) impossible. The interaction was a personal attack on her.

The Issues and Tone of the Board Meetings of 7 & 21 June – Other Evidence

[190] The issues raised and discussed at these Board meetings are critical to the to the issues that must be decided here. It is not possible to reach conclusions on the subject of the Board meetings of 7 June and 21 June 2006 without addressing some of the evidence of other participants in those meetings including their evidence as to the tone of these meetings.

[191] It was Ms Fletcher's evidence that Margaret Evans, Rona Larsen and Suzanne Simmons-Kopa were the most aggressive and outspoken members of the Board towards Maxine Hodgson. These three were the leaders of the pack and it appeared they were joined at the hip. Mark Flowers and Kirstyn Buezeval tried to provide some balance to the Board. She also said that comments were made at this time that Ms Hodgson was not sharing information with the Board. Nothing could be further than the truth.

[192] Ms Fletcher said that Ms Hodgson decided she had no option to leave after this meeting. She criticised the behaviours of Ms Evans, Ms Larsen and Ms Simmons-Kopu and said it is hard to describe what it was like. It was how Ms Hodgson was being treated and spoken to and the obvious lack of support.

[193] Mark Flowers is an experienced CEO and is currently the CEO of Waikato Institute of Technology (Wintec). It was his evidence – speaking generally – that the boundaries between the Board and the CEO of Parentline seemed to be muddled and there was a surprisingly high input by various Board members into operational matters. He said this was not unusual in this type of organisation but he was concerned it was not handled with sufficient care or sensitivity.

[194] He said Ms Hodgson was often on the back foot under a sort of interrogatory style of questioning by the Chair and certain Board members – being virtually accused of not reporting matters or not dealing with operational issues. Unfortunately Ms Hodgson would over – react and get into detailed information and explanations. He discussed this with her outside of meetings and she acknowledged it and sought help in modifying her approach.

[195] Mr Flowers felt the issues were not insurmountable. He felt a retreat for the CEO and Board was necessary in which the issues of roles and responsibilities could be raised in a constructive way.

[196] It became evident to him, however, that Ms Hodgson was becoming increasingly concerned over the way things were developing in relation to the AFO project – in particular Margaret Evans’ interference in the project and Narelle Dawson’s performance.

[197] Mr Flowers considered the issue of Dr Dawson’s performance was an issue for Ms Hodgson to resolve – keeping the Board informed. He thought it was a fatal mistake to continue Dr Dawson’s contract against the wishes of the CEO and he was concerned the Board became involved in this in a very heavy handed way and that Margaret was taking the matter over and not being clear with the Board. He suspected that personal relationships were seriously colouring the whole matter.

[198] For him things came to a head at the Board meetings of 7 and 21 June. He said that while he never got to grips with all the details he became concerned at how the issues were being addressed. Rather than being brought out into the open by way of reports and discussed, the meetings developed into full blown accusations about Ms Hodgson from the Chair Margaret Evans. He also said it was obvious some Board members had met and discussed the issues separately and he was appalled at the tone, language and predetermination of matters that emerged. He strongly suspected the intention was to get rid of Maxine. He also said that during the ‘in committee’ session of the Board meeting on 21 June it was clear that a number of Board members wanted Ms Hodgson out. He said he made it clear to Board members that he thought this was heading towards Maxine being put into the position of having to resign – with all the implications that had for a constructive dismissal claim.

[199] It was also his view there was a disregard as to how Ms Hodgson might perceive matters; the impact of past events (a reference to the legacy of the problems under the first Board which had left everyone bruised); the lack of confidence Ms Hodgson would have in the Board and the sheer lack of respect for her position.

[200] Kirstyn Beuzeval is a chartered accountant and was another Board member at the time. She too believed the issues in question should have been left to the CEO to resolve. She felt that Ms Hodgson’s role in the management of the Narelle Dawson situation had been undermined and her evidence as to the tone of these meetings supported that of Mr Flowers. She said that on occasions when Ms Hodgson was excluded from the discussions there were complete outbursts against her - where Board members said she was lying and they were “*disgusted*” with her behaviour and

raised irrelevant personal issues about her¹¹. She was shocked at what she saw to be personal attacks and unprofessional behaviour from members of the Board.

[201] Other Board members who gave evidence to the Authority had a different view altogether.

[202] Ms Evans denied ordering Ms Hodgson from the room on the occasions that the Board went into committee at the 7 June meeting. She said Ms Hodgson was not asked to leave the room in a dismissive way. She said that when the Board was in committee that some Board members did express concerns about Ms Hodgson's behaviour and Mr Flower's used the expression "*psychopathic paranoia*".

[203] She said that when Ms Hodgson raised the security issues Susan Simmons – Kopa refer to "*a witch-hunt*" but overall it was her recollection that the Board as a whole wanted to move on because of the importance of the AFO project; the fact they had a contract that was two-thirds paid up and there was still work to be done. Again the decision in the matter was unanimous. No Board member asked for contrary comments to be recorded in the minutes and Ms Hodgson, when informed of the Board's decision, agreed.

[204] It was also her evidence that at this meeting the Board considered the legal opinion on the status of Dr Dawson's contract and the report and recommendations from staff. Mr Flowers did talk about negotiating (out of the contract) with Dr Dawson. However, the decisions taken were unanimous.

[205] Ms Larsen supported the evidence of Ms Evans as to the tone of the 7 and 21 Board meetings. She denies Ms Hodgson's evidence that she was ordered from the room and said it was appropriate to consider the issue in committee. She remembered Susan Simmons-Kopa referring to "*a witch-hunt*" when Ms Hodgson confirmed the identity of the staff member involved in the security concerns raised. She did not scream at any time and Ms Larsen remembers the comment as an expression of frustration. She said that overall there was an air of frustration, among Board members, with regard to Ms Hodgson at that Board meeting but there were no outbursts. She expressed concerns about Ms Hodgson's health and said she felt she did not know her anymore.

¹¹ A reference to the statement made by Rona Larsen that Ms Hodgson appeared to be unwell and that "*she did not know her friend anymore*".

[206] Ms Larsen said that while the Board was in committee she told trustees about her own knowledge of Dr Dawson working late hours. She had taken Dr Dawson to the medical centre when she had torn her toenail one evening at Parentline. Dr Dawson had insisted on returning to Parentline afterwards to finish some work and she had told Ms Larsen she often worked late. It was also Ms Larsen's evidence that she had collected Dr Dawson from Parentline on 19 April to take her to the airport. She was shocked at Dr Dawson's state of unpreparedness for her departure and, in discussions between her, Dr Dawson and Ms Hodgson, it became clear that Dr Dawson had worked right through Easter weekend. Her dedication was discussed during that conversation. It was Ms Larsen's evidence she had absolutely no concerns about Dr Dawson's late entries into Parentline. Dr Dawson was a big part of Parentline's intellectual property, as are many of the staff, and she had no concerns about her taking anything improperly.

[207] Natalie Palmer is another member of the Board of Parentline. She too denied that Ms Hodgson had been ordered to leave the room when the Board went into committee on 7 June. The request to Ms Hodgson to leave had not been delivered in a negative way. In fact it was her recollection that one of the main reasons that the Board went into committee (on the first occasion on 7 June) was that some Board members had not read Dr Dawson's report or Ms Evans' summary so they needed time to do that. After that there was some discussion and then Ms Hodgson was invited to clarify the status of the project. Ms Hodgson appeared to read from a document she had. Ms Palmer said she was unclear, from what Ms Hodgson said, as to what Ms Hodgson actually wanted to do about the project. In the end it was clarified that Ms Hodgson wanted the project to be adapted and to continue without Dr Dawson. She also talked about communications difficulties with Dr Dawson and with problems regarding her meeting of deadlines for submission of templates. However, Ms Hodgson did not give any examples of the problems she was describing.

[208] It was Ms Palmer's evidence that when the Board went into committee again she felt Ms Hodgson's arguments were insufficient to cancel the project and the contract. She thought the issues could be sorted out. Mr Flowers had a different view – that the decision should be up to the CEO. Ms Palmer said the discussion was amicable and they agreed that before any decision was made they ought to take advice on the status of the contract.

[209] Ms Palmer confirmed the evidence of Ms Evans and Ms Larsen regarding the issues and discussions at the 21 June Board meeting.

[210] Speaking to the evidence of Kirstyn Beuzeval, however, she took issue with Ms Beuzeval's view that the Board became unnecessarily involved in the Narelle Dawson issue. She said that given the fact that Dr Dawson had brought her concerns to the Board the Board had no choice but to address those concerns. Neither did she accept Ms Beuzeval's evidence that the behaviour of Margaret Evans and other Board members towards Maxine was unsupportive and unprofessional. She denied there were "*outbursts*" by Board members against Maxine at the 21 June meeting. It was her evidence that Board members were supportive of Maxine often in the face of quite dismissive communications from her to the Board.

Ms Hodgson's resignation

[211] The evidence shows that following the Board meeting of 7 June – where it had been agreed that the AFO project would proceed - Ms Hodgson emailed supervisors and staff on 12 June and signalled that it was necessary to formulate a project team for the project. She suggested four team members plus herself as the core group and asked for expressions of interest.

[212] Then, following the Board meeting of 21 June, (which took place in the morning) Ms Hodgson advised Parentline supervisors that she would head the project team and that staff who put themselves forward for the project team would be advised of the first meeting of the team through Jan Hight (the project coordinator).

[213] These steps indicate an acceptance by Ms Hodgson of the decisions taken at the 21 June Board meeting.

[214] However, behind the scenes, Ms Hodgson was most unhappy with the outcomes of the Board meeting of 7 and 21 June and she felt her position had been undermined to such an extent that she had no option but to resign her employment. Ms Hodgson said she felt devastated, betrayed and hurt. Her kaitiaki role (as a member of Te Roopu) was not honoured and her employment rights had been ignored over the previous 4-5 weeks. It was her evidence that she discussed with her senior managers her decision to resign and on 26 June she submitted her resignation in the following terms.

“Parentline Charitable Trust Board members and Te Roopu Taki Kaupapa members

This communication is to advise the Parentline Charitable Trust Board members and Te Roopu Taki Kaupapa members that I am resigning as CEO of Parentline.

My leaving date and conditions will need discussion as soon as possible.

I feel forced to make this decision because of the manner in which my leadership, management, competency and truthfulness has been questioned by individual Parentline Board members.

This has had a devastating effect on me and left me with an intense feeling of hurt and grief.

My position as a member of Te Roopu Taki Kaupapa has not been respected and honoured.

My employment rights and responsibilities have not been supported or considered throughout the last four/five weeks.

*The content of the attached report, which I declare is factual, my truth outlines the factors which have been the catalyst for **my premature** resignation from Parentline.*

Maxine Hodgson, CEO Parentline [Emphasis mine]

[215] The following report was attached to Ms Hodgson’s resignation:

Report from Parentline CEO

TO: *Parentline Charitable Trust Board members and*

Te Roopu Taki Kaupapa members

I declare that the following report is factual, my truth and hereby presented to serve in the best interests of Parentline, Prevention of Child Abuse and Neglect and Child Advocacy Service.

I feel forced to make the decision of resignation because I believe my leadership, management, competency and truthfulness has been questioned by the Interim¹² Chairperson and Deputy Interim Chairperson.

¹² Ms Hodgson constantly referred to Ms Evans and Ms Larsen as Interim office holders. They were confirmed in these roles at the 10 November 2005 Board meeting.

Parentline has been experiencing a normal but difficult employment issue which I believe was inappropriately taken from my responsibility as CEO.

An opinion was to be sought on the legalities on whether a document was a Letter of Agreement or a formal Contract. I spent considerable time in consultation with the Parentline Interim Chairperson about my right and responsibilities, as CEO, to be at any legal meeting regarding the Template Designer issue. This was not the opinion of the Interim Chairperson and I was told it was inappropriate for me to be involved for legal reasons.

I was affronted by the stance that left me feeling vulnerable and powerless with no avenue for appeal.

This situation was exacerbated by the personal and emotional involvement between the Interim Chairperson, Deputy Chairperson and the Template Designer. This statement is supported by a comment from the Template Designer on 29th May to me that she was taking advice from several members of the Board who she had contact with.

Such advice cut and undermined all my responsibility as CEO and was the defining moment when all further interactions deteriorated.

My unease came to fruition with the receipt of nine pages of detailed account of the Template Designer's perceptions of events which I feel is directly related to previous consultation and advice given by the Trust Board members she is in contact with.

The Business Manager and CEO had a meeting with the Interim Chairperson and Deputy Chair in order to present the Parentline Business point of view. The meeting, of two hours duration, resulted in an obvious bias to the Template Designer's version of events.

This left me feeling hurt and unsupported which was strongly expressed at the conclusion of this meeting.

Parentline staff are indignant and concerned that the document from the template designer misrepresented the staff and they met with the Interim Chairperson and Deputy Chairperson to convey their concerns regarding the truthfulness of the Template Designer's statements.

I was dismayed at the earnest and professional concerns from the CEO, business manager and staff were not conveyed to the Trust Board members collectively.

I wish to register here to the reader of this report, my deep humiliation and shame at being summarily dismissed from two Trust Board meetings on three occasions whenever this issue was raised.

This is in violation to my status as a member of Te Roopu Taki Kaupapa which was specifically designed in the Charitable Trust Deed to prevent any such action.

Also, my employment rights and responsibilities as CEO and an employee of Parentline were not considered.

I feel boundaries of respect, knowledge of governance, rights of employee namely the CEO's position, plus untamed personal bias towards the template designer leaves the Parentline CEO in an untenable position.

My history of relationships with staff is impeccable and is based on harmonious collaboration and well communicated messages.

My leadership skills, relationship building style and indeed my very nature does not equate to the report by the Template Designer. All efforts to explain the CEO and Parentline staffs' point of view, has proved to be ineffective and not heard.

There is no option for me but to resign given the climate of railroading that has been declared at the Board meeting on 21 June 2006 as being on a "witch hunt" and accused of being seen as vindictive at the meeting with the Interim Chairperson and Deputy Chairperson on 18 June 2006.

I present these facts as my truth to the reader of this document.

I noted that in the last two Charitable Trust Board meetings the emphasis was on the Template Designer's rights. The work of Parentline is Child Focused and the statistics provided for the last two months of work was only mentioned by one Trust Board member. Children are my focus. They have been my life and vocation to date and are Parentline's Kaupapa. They should always be the primary reason for all and any meetings.

This report has been sent with my letter of resignation simultaneously to all Parentline Charitable Trust Board Members, plus to the specially nominated and selected Kaitiaki, Brian Prestidge, James Ritchie, Umu Hiakita and Geoff Ruthe, my esteemed and entrusted Te Roopu Taki Kaupapa colleagues.

Consultation and planning for a smooth exit from Parentline, of myself as CEO, needs to take place as soon as possible with Funders and Contractors being notified of the impending change but assuring them that Parentline services are robust and stable.

Parentline's Managers and CEO are planning the best time to advise staff of this decision this week.

Maxine Hodgson

Post – Resignation Events

[216] The events that followed Ms Hodgson's resignation on 26 June 2006 are almost more dramatic and controversial than those that preceded it and must be recorded. In the main I have relied on the documents submitted to the Authority to conclude the background to Ms Hodgson's departure from Parentline. Where possible the details are summarised.

27 June

- Following receipt of Ms Hodgson's resignation Ms Evans called a meeting of the Board for the evening of 28 June. Ms Hodgson was advised of this.
- Mark Flowers resigned from the Board. In his letter of resignation he stated *he did not feel comfortable with the approach taken to the Outcomes Project and in particular the way the Board had handled Maxine. He felt she had been put in an impossible situation; she was not shown proper respect or given enough opportunity to put things right...He did not want to be to be associated with the process and hence he had decided to resign.*
- Senior Managers of Parentline wrote to the Board stating *they were devastated and angry that Ms Hodgson felt the need to resign. They advised they had had several meetings with her and were unable to persuade her to change her mind. They were concerned about the emotional and physical toll this was having on her. They reminded the Board of her vision and advocacy for children and stated her premature resignation would have a far reaching and detrimental effect on Parentline its staff and the community. They requested the Board to **not** accept Ms Hodgson's resignation and to look for alternatives and a resolution.*

- Kirstyn Buezeval resigned from the Board. She advised that *she had advised at recent meetings that the Board work with Maxine to arrive at a positive outcome for the benefit of Parentline and the Children... This had not happened and she felt she could not support the approach the Board had taken and was therefore resigning.*

28 June

- The senior staff of Parentline emailed Margaret Evans “*We again request (even beg) that you **do not** accept the resignation of our CEO . We will continue to work on Maxine to persuade her to seek a resolution or mediation rather than resigning. Please allow time to achieve this outcome*”
- First post-resignation Board meeting. The minutes record that there was wide ranging discussion and that all Board members presented their views on Ms Hodgson’s resignation. The only evidence to the Authority on any of the views expressed by Board members at that meeting was that of Mavora Hamilton.

It was her evidence that she said:

“The resignation was timely. Some fresh impetus was needed as the organisation was becoming a little stagnant and staff did not seem to have a lot of personal initiative”.

The Authority notes, however, that in her oral evidence Ms Evans expanded on some of the thinking at this Board meeting.

- The Board did canvas talking to Maxine and asking her “*what’s going on*” but it was decided the issues had been discussed (at Board meetings) and agreements reached to move on. It seemed Ms Hodgson had thought about it and later decided she was annoyed the Board had not agreed with her.
- There was a feeling of frustration at the meeting – the term ‘*rust*’ was used and there was a sense that there was something funny going on “*Maxine is up to something*”.

- Some Board members considered Ms Hodgson's resignation was "*a gift on a golden platter*" but that was not the prevailing view.
- Ms Evans said she was aware of the previous mediation with Ms Hodgson and if it was discussed it was not seen as having potential for a positive outcome. She noted that Ms Hodgson could have asked for mediation as she had in 2005.
- She noted that Ms Hodgson had in the past spoken of retiring. She felt Ms Hodgson may just have taken the decision to retire. She thought that Parentline would give Ms Hodgson a good send-off.
- If the letter had been received from anyone else they would have taken it to a lawyer for advice.
- In any event the options were canvassed (including, Ms Evans, said her own resignation) and the decision was taken to accept Ms Hodgson's resignation. The Board resolved unanimously (among other things) to accept Ms Hodgson's resignation; to request her to confirm her departure date by 30 June, noting her advice to the Board that she had planned leave for August; that she be advised of the Board's wish to recognise her contribution with a public function following her retirement and that staff be advised to assist with this.

29 June

- Ms Evans met with Ms Hodgson and handed her written advice that her resignation had been accepted. It is her evidence that she invited Ms Hodgson to discuss the situation but she declined. Ms Hodgson acknowledged receipt of this letter by email the same day. She advised she *would respond in due course*.
- James Ritchie (member of Te Roopu) emailed Moyna Fletcher (Parentline's Business Manager) who had emailed him a copy of the Manager's letter (asking the Board not to accept Ms Hodgson's resignation) to the Board. The tenor of his email suggests he is not yet aware the Board has accepted Ms Hodgson's resignation. He states "*...the matter properly rests with the*

Board.... In my mind Parentline without Maxine is something I do not wish to contemplate and hopefully we will not have to”.

- Ms Hodgson emails Brian Prestidge, James Ritchie and Geoff Ruthe (Members of the Te Roopu group) notifying them of a meeting of that group to be held at 3pm on 6 July. She writes *“I want to present to you all my conditions regarding my departure date to send to Parentline Charitable Trust Board members. I want and need discussion and advice from you”.*
- Ms Hodgson emails Mark Flowers and Kirstyn Buezeval advising them the Board had accepted her resignation. She advises that Te Roopu will be meeting on 6 July and states *“Seems like this group expected some discussion and/or mediation and want to discuss the rights of the CEO via mediation”.* She also writes *“I will be submitting to Te Roopu Taki Kaupapa my leaving conditions which they will ratify and then I’ll present to the Trustees. **At this time the conditions will be around an 18-month departure date as this will be in the best interests of Parentline and to satisfy me.** I can then leave my responsibilities, tasks, Projects and Parentline in good heart”.* [Emphasis mine]

(It was Ms Hodgson’s evidence that she was responsible for five projects under Parentline’s strategic plan and only she could bring these projects to a successful conclusion).

3 July

- On this day there was an email exchange between Ms Evans and Ms Hodgson in relation to her departure date. Ms Evans reminded Ms Hodgson she had not heard from Ms Hodgson on this subject by 30 June (as requested) and asked her to advise. Ms Hodgson responded *“Will let you know Friday. Mother is seriously ill”.*

6 July

- Ms Hodgson emails Board Members *“Following a meeting with Te Roopu Taki Kaupapa I am not in a position to give you a leaving date at this time”*

7 July

- Included in the evidence to the Authority is a document with this date. It is a generic draft letter from Te Roopu Taki Kaupapa requesting the recipient (not identified) to reconsider his/her decision to retire and advising of Te Roopu's willingness to meet with him/her to find a resolution to the matter. It also advises the recipient that Te Roopu has met with Ms Hodgson and asked her to reconsider her resignation. The evidence discloses that this letter was subsequently tailored and sent to Ms Hodgson (7 July) and Mark Flowers – who resigned from the Board (17 July). It seems also to have been sent to Kirstyn Buezeval and Lila Jones (who resigned from the Board) and Brian Prestidge (who resigned from Te Roopu Taki Kaupapa at this time).

This is an interesting document because it signals that one of Te Roopu's powers is the ability to remove individual trustees. It also notes that Te Roopu is available to the CEO and Board in a mediatory or advisory role.

- On this date Te Roopu wrote to the Board (communication by email) requiring the Board to (a) reconsider their decision to accept Ms Hodgson's resignation and (b) to submit to Te Roopu "*a written chronology of events which lead up to this decision*". Concern was expressed that the Board had not notified Te Roopu Taki Kaupapa of the resignation of two Board members and the CEO.
- The Board wrote to Ms Hodgson reaffirming acceptance of her resignation and noting Ms Hodgson had advised she was not in a position to give a leaving date and advising that the Board wanted to meet with her on 12 July at 5pm to finalise her leaving date and discuss her leaving arrangements.

10 July

- The Board met for a second time. The emailed letter from Te Roopu Taki Kaupapa (9 July) was tabled at this meeting. It was noted there had been no communication from Ms Hodgson notifying the Board that she wished to withdraw her resignation. The following resolutions were arrived at (among others):

- The decision to accept Ms Hodgson's resignation would stand. The date of her notice of resignation would be 11 July. She would be advised of this and invited to meet the Board at 5pm on 13 July to confirm the exit strategy relating to her departure.
 - Ms Hodgson was to be advised she would exit Parentline on 14 July at the conclusion of business and that all her contractual entitlements would be met in full.
 - That Moyna Fletcher Parentline's Business Manager would be asked to provide a detailed report on Ms Hodgson's salary and other payments made to her from 1 July 2005 to the current date, her annual leave and sick leave entitlements and other relevant contractual entitlements.
 - That the chronology of events requested by Te Roopu Taki Kaupapa be sent to all members of that group.
 - That the Board would invoke direct management control of Parentline until a new CEO was appointed.
 - That Board members would meet with Parentline staff on Monday 17 July to advise them and to consider a media strategy.
- Ms Evans wrote to Te Roopu Taki Kaupapa setting out a history of the AFO project, the contract with Dr Dawson, the proposal to terminate that contract and the issues considered at the Board meetings of 7 and 21 June concluding with the advice of Ms Hodgson's resignation and the Board's acceptance of it. She advised the Board had met on 10 July and had unanimously resolved to confirm its acceptance of Ms Hodgson's resignation. She advised that the Board's decision to advise Te Roopu Taki Kaupapa of Ms Hodgson's resignation had been postponed because of Ms Hodgson's request for an extension of time (to notify her departure date) because of her mother's illness. The Board suggested a meeting with Te Roopu Taki Kaupapa members on 13 July at 4pm.

11 July

- The Board wrote to Ms Hodgson advising it had considered the request of Te Roopu Taki Kaupapa (to reconsider the acceptance of her resignation). She was advised the decision to accept her resignation would stand. She was notified her resignation date would be 11 July and she was invited to a meeting on 13 July at 5pm to finalize matters. She was asked to confirm her attendance at that meeting.
- Ms Fletcher was emailed requesting details of Ms Hodgson's contractual entitlements by close of business that day. (Ms Fletcher never provided this information).
- Ms Hodgson's mother died.

12 July

- Dr Ritchie (for Te Roopu Taki Kaupapa) writes to Ms Evans. He notes, "*The mana of this group was established for a purpose and that must not be imperilled*". He also states that mediation is still possible and that the Board may wish to take advantage of it. He advises, "*given the current situation I will not be available for a meeting this week*".

13 July

- Professor Ritchie emails Ms Evans advising that Maxine wishes to withdraw her resignation and has been advised by Te Roopu Taki Kaupapa to do so. The Board was again asked to reconsider the acceptance of Ms Hodgson's resignation. He advises that details relating to the contract with Dr Dawson are unclear to Te Roopu Taki Kaupapa members and requests clarification of these matters. He advises Ms Evans that the Board should not be managing Parentline – that is for the CEO and line managers and that if the CEO was acting beyond her brief, the Board might have grounds for dismissal and the record would show it. Ms Evans is asked to consider the unexpected nature of Ms Hodgson's resignation and that this might alert it to seek wiser counsel.
- Ms Evans responds and among other things advises Professor Ritchie that the Board is still attempting to arrange a meeting with Ms Hodgson and that she

had initiated meeting with Board member Mavora Hamilton. She also advised that in view of the death of Maxine's mother the Board was willing to postpone the meeting with Te Roopu Taki Kaupapa suggested for 13 July. Dr Ritchie was asked to suggest some dates and times for a meeting. She asks him to clarify what further information Te Roopu Taki Kaupapa members want.

- Ms Hodgson has a meeting with Board member Mavora Hamilton at her home¹³. Ms Hamilton says that during that meeting Ms Hodgson advised her (among other things) that she was entitled to 6 weeks bereavement leave.
- There is a third meeting of the Board of Parentline. It noted:
 - There has been no response to the request of Moyna Fletcher to forward details of Ms Hodgson's contractual entitlements.
 - There had been no response from Jim Ritchie regarding the request to him for explicit information sought by Te Roopu Taki Kaupapa, nor any suggestions from him on a date for a meeting with the Board.
 - Mavora Hamilton's report that Maxine had told her the Board now had no role in her employment; that she was a member of Te Roopu Taki Kaupapa and that her resignation was up to that body to address and that she intended to remain as CEO of Parentline to celebrate its 30th anniversary in 18 months time.
 - Ms Hodgson's contract was reviewed and leave taken by her over the previous year was discussed.
- The Board resolves:
 - Tanya Petersen on behalf of the Board would send a letter to Maxine advising her resignation had been reviewed a third time, that there had been no response to the invitation to her to meet the Board and that the Board was now advising her that she was to vacate the premises (by a date yet to be set).

¹³ Ms Hamilton's evidence is that Ms Hodgson initiated this meeting the previous day. Ms Hodgson says it was her intention to meet with Brian Perry (Ms Hamilton's partner). In the event he was too ill to meet with her and she had a conversation with Ms Hamilton during that visit.

- Tanya Peterson was to advise the Board on the “managing director’s model” asap.
- Tanya Petersen was to write to Moyna Fletcher requesting her to respond (as previously requested) with the information sought about Ms Hodgson’s contractual entitlements.
- Mr Kelly (Board Member) and Rona Larsen were to talk with some of the members of Te Roopu Taki Kaupapa with a view to calling an urgent meeting with that group to discuss Ms Hodgson’s resignation.

14 July

- Ms Hodgson emailed Te Roopu Taki Kaupapa members Jim Ritchie and Geoff Ruthe.

“I will take advice from the members of Te Roopu Taki Kaupapa as I revere the honesty and sincerity of this group who [watch?] the Kaupapa of Parentline. I can consider a resignation withdrawal. I can consider retirement.

Any decisions made will be in the best interests of Parentline. Any action must be paced, with you as special kaitiaki. I await your considered recommendation regarding the next move to resolve the current difficulties”.

15 July

- James Ritchie emails Margaret Evans.

“Maxine has indicated her willingness to reconsider her resignation and placed this decision before the membership of Te Taki, who have been advised accordingly. This materially and legally alters her position vis-à-vis the Board. As you are effectively the Executive of the Board we need your agreement to the reversal of the decision of accept the resignation. Once that is done away with we will be clear as to how, or whether, working relationships can be re-established”.

Dr Ritchie also sought information on Dr Dawson’s contract and noted such contracts can be terminated by negotiation. He felt this had not been adequately explored.

- Email from Ms Hodgson to Mr Flowers enclosing correspondence from Te Roopu Taki Kaupapa asking him to reconsider his resignation from the Board of Parentline. As already noted it seems from hand notations on the letter it was also sent to Kirstyn Buezeval, Lila Jones and Brian Prestidge

18 July

- Ms Hodgson (via Ann McClure) emails Andrew Clements (a lawyer who seemed to be advising Te Roopu Taki Kaupapa at this time). Her email includes a draft letter to Te Roopu Taki Kaupapa. She seeks his opinion on this letter. These communications recorded in full because they are important.

“Dear Andrew,

Please view comment and advise me if this letter is a correct action before I send it. I know you, Geoff, and James have been working towards a goal, but after you read this you will see Margaret is ploughing ahead negatively. I attach a letter sent to me by Margaret. I think, Andrew she is getting legal advice (who is paying I wonder) and do they think I’ll be gone by 11 August (while I’m still on holiday).

Can I see you today to firm up on my present position.

Letter to TRTK members and yourself.

Letter to Te Roopu Taki Kaupapa member and Andrew

I find that via the Chairperson, Margaret my position as CEO continues to be undermined by her demands and seemingly complete misunderstanding of the position taken to date by Te Roopu Taki Kaupapa as I understand it.

I am fairly sure the Board as a whole does not know or has had full facts communicated to them.

Moyna Fletcher, Business Manager was directed for the second time yesterday by the Trust Board Chairperson to supply all my entitlements of wages and leave. I believe this demand is premature.

A Trust Board meeting has been set for next Wednesday 26 July at 5.30 pm.

I don’t think my position as CEO should be further compromised, while Te Roopu Taki Kaupapa is considering the future of the Board and its leaders.

I believe the correct position for Te Roopu Taki Kaupapa is to suspend the Board or some members in the interim period. However, most of the Board, I believe still has Parentline's best interest at heart. They are just confused or not informed by the Trust Board Chairperson's stance.

This would prevent further escalation of conflict between the Board, CEO and staff.

I remind Te Roopu Taki Kaupapa that I am on Annual Leave from 28 July to 14 August.

Yours sincerely Maxine Hodgson" [Emphasis mine]

19 July

- Ms Hodgson emails Ms Evans an agenda for the Board meeting proposed for 26 July. She writes

"I do not feel it would be of any value at this time to discuss the complex Narelle situation, and indeed, the members of Te Roopu Taki Kaupapa advise me not to do so at the meeting.Maxine"

- James Ritchie emails a personal message to Ms Evans "*as a friend of long standing and in order to seek a way ahead*". He writes (in summary):
 - Parentline cannot dispense with Maxine's standing experience, ability and mana. She has been asked to reconsider her resignation and she could contemplate this.
 - He had therefore asked her to continue as CEO until the AGM in August when matters are hopefully more resolved. He hopes Ms Evans will concur with this.
 - In the interim the Board must continue its regular duties....with or without Maxine at her discretion.
 - He had instructed her not to place the Dawson affair or her resignation on the Board agenda as neither is sufficiently resolved at this time.

- The Board should prepare for the AGM at which time its interim nature should cease. This would be a time for interim members to retire (including yourself) with due appreciation.
- Both Maxine and Margaret need to be protected from any further confusion concerning the separable domains of management and governance, which seem to be behind the present difficulties.
- We all need space to back off and reflect on the kaupapa and the obligations it imposes on all involved.

20 July

- Andrew Clements responds to Ms Hodgson's email of 18 July (in which she recommends suspending some Board members. He writes:

"I agree with your summation. She is attempting to play it cool, by the book ...so to speak. I believe that you are correct – that most of the Board are ignorant of what is happening; certainly they will be unaware of much of the facts surrounding the present situation.

The demand on Moyna¹⁴ is premature – and Te Roopu needs to be informed that this has been made. It means the chairwoman is ignoring the Te Roopu and considers them powerless to act.

I believe that the Te Roopu need to remove, rather than to suspend, the present chairperson from the board.

Rhona – if she is on, needs to go too. Andrew".

21 July

Maxine (through Moyna Fletcher's email) emails Jim Ritchie and Geoff Ruthe on some scenarios that she might face at the Board meeting planned for 26 July¹⁵.

" Possible scenarios;

Only myself at the Board meeting on Wednesday

Trustees arrive and all goes well.

¹⁴ For information on Ms Hodgson's contractual entitlements

¹⁵ This Board meeting was subsequently postponed.

Trustees arrive and I am ambushed.

If I know TKTR are behind me I shall be firm. I can manage anything. Andrew, I would like to hear from you soon as to what protection is in place for Moyna when I am away from 30/7/06 if Chairperson demands anything from her/them.”

24 July

- The Board of Parentline meets and approves a draft letter to Ms Hodgson. It is also resolved that all Board members available are to join the Chairperson and Deputy Chairperson at Parentline at 11 am to present the letter to Ms Hodgson and to advise staff and to commence the steps outlined in the letter to her.

In the letter to Ms Hodgson she is:

- Reminded that she has been advised her notice period would commence on 11 July and that therefore her employment will end on 11 October because her IEA provides for 3 months notice.
- Told the Board does not require her to work out all her notice and will pay her out in lieu.
- Advised that as the Board believes she is taking leave from 28 July she will not be required to work from that date. Salary and holiday entitlements will be paid during the notice period in the usual manner.
- Advised that it is important that transitional arrangements are put in place to ensure the smooth operation of Parentline services and contractual obligations. To this end Ms Hodgson is advised the Board will take over direct management of Parentline in accordance with the ‘managing director’s model’ as of today 24 July.
- Invited to meet with the Board to review the current workload.
- Advised the Board intends to issue a media statement and arrange a farewell function for her.

24 July - Ms Hodgson’s departure from Parentline

[217] Ms Hodgson described returning to work from bereavement leave on 24 July. There was a full programme of work planned. She was advised by her PA, Ann

McClure, that Ms Evans and Ms Larsen had arrived at Parentline and she met them in her office.

[218] She described what happened next as akin to a “*home invasion*” or a “*terrorist attack*”. She was handed a letter dated 24 July. She was told the Board were taking over the management of Parentline from that moment. She was so shocked she did not read the letter. She got her PA to ask Parentline’s senior managers to come in and Ms Evans called in other Board members who had been waiting outside. For 1 ½ hours they pleaded with the Board members – individually and collectively. They argued that Ms Hodgson had a right to three months’ notice. The Board members did not deny that. Ms Hodgson advised she had cases going to Court and meetings planned all week. All the Board members would say was “*But you resigned*”. She referred to Jim Ritchie negotiating on the matter of her resignation for 2-3 weeks. She was asked for her diary and the Board members advised they would inform the staff. She said staff knew nothing of her resignation and she asked them not to tell staff on a Monday morning because Parentline was full of clients and the staff would be shocked and traumatised. However, staff were told.

[219] Ms Hodgson also said Ms Evans referred to a press release. She pleaded with the Board not to tell the media because it would destabilize funding and clients.

[220] Finally Ms Hodgson said she could see she was getting nowhere and she and senior managers left Parentline’s premises. She also said she observed a state of excitement and hubris in Ms Evans, Ms Larsen and Ms Simmons-Kopa.

[221] Ms Hodgson closed her evidence with a detailed explanation of the legacy left as a result of the termination of her employment – the financial loss, the hurt and distress which has severely impacted on her health. Psychologist Barry Parsonson gave evidence that it was his assessment that Ms Hodgson suffered a serious depressive episode as a result of the events that befell her in 2006.

[222] Ms Fletcher and other senior managers present that day supported Ms Hodgson’s evidence. Ms Fletcher described the Board’s actions as inhuman, callous and punishing. Ms Hodgson kept her dignity but Ms Fletcher knew it hurt her deeply.

[223] It is not in dispute that prior to leaving that day Ms Hodgson handed Ms Evans two documents both dated 24 July.

- The first document is in the name of Te Roopu Taki Kaupapa and it states that pursuant to Clauses 7.2 (e) and 7.2.2 of the Trust deed, Te Roopu Taki Kaupapa is removing the Chair and Deputy Chair of the Board. (This document signed by Geoff Ruthe, Jim Ritchie and Maxine Hodgson was re-sent to Margaret Evans and Rona Larsen the same day).
- The second document is in the name of Maxine Hodgson, CEO and member Trust Board oversight, Te Roopu Taki Kaupapa. It trespasses Ms Evans from the premises of Parentline. It is signed by Ms Hodgson.

[224] As would be expected the Board's witnesses have a different view of the events of 24 July.

[225] It was Ms Evans' evidence that she and Rona Larsen asked to meet with Ms Hodgson. Initially there was just the three of them. Ms Evans said she emphasised four points to Ms Hodgson:

- The Board had been trying to meet with her for the last month without success.
- They knew she had been meeting with other people including Te Roopu Taki Kaupapa and that she had been in the office.
- The Board knew she was going on two weeks leave (and possibly longer on bereavement leave).
- The Board was unable to wait any longer for a response from her.

[225] Ms Evans said she took Ms Hodgson through the letter. Ms Hodgson acted and spoke as if she had never resigned and had no idea what she was talking about. She said she was working with Te Roopu Taki Kaupapa. Ms Evans reminded her she was employed by the Board. She said the situation seemed "*to dawn*" on Ms Hodgson. She elaborated on this. She said that Ms Hodgson thought that Te Roopu Taki Kaupapa was all powerful and, as it transpired, she had been working with Te Roopu Taki Kaupapa to sack the Board. She had not thought about her contract with the Board.

[226] Ms Hodgson asked if senior managers could join them and with Maxine's permission the other Board members who had been waiting outside joined them. Ms Hodgson continually said, "*don't do this*". She responded that Maxine had resigned

and initially asked for urgency and then refused to meet with the Board. The Board just wanted plans for the future settled.

[227] Ms Hodgson pleaded that she was the only one who could do the work and work with government agencies. Ms Evans said this surprised her at the time because Ms Hodgson had resigned but of course it is now known that Ms Hodgson intended to stay on and run Parentline without the obligations of a CEO.

[228] The managers did plead for Ms Hodgson to be allowed to work out her notice. Ms Hodgson would not provide any information about her salary or her workload except for saying she had a lot of work – which proved not to be the case. They were not asked to not tell staff but they did. Ms Hodgson was not told to leave immediately but she said she was leaving and not returning.

[229] Ms Evans did not accept there was any state of excitement or hubris with any of the Board members. She said the Board members were calm throughout the meeting. She did accept that it would have come as a big shock to Ms Hodgson. This was because as is now known she intended to sack the Board.

[230] The Board issued a brief media statement after Ms Hodgson's departure and locks were changed. Te Roopu Taki Kaupapa (over the signatures of Professor Ritchie and Mr Ruthe and Ms Hodgson) wrote to Ms Evans and Ms Larsen formally removing them from the Board and appointing Te Roopu Taki Kaupapa to the Board as an 'advisory trustee' to chair the Board. These letters were followed up with letters to the same effect from lawyers purporting to act for Te Roopu Taki Kaupapa (in accordance with resolutions taken on 28 July). The same lawyers wrote to Ms Hodgson appointing her as an 'advisory trustee' to the Board and to act as CEO of Parentline. The Trustees took legal advice and there followed a series of letters which questioned the decisions taken by Te Roopu Taki Kaupapa and questioned the right of those members of Te Roopu Taki Kaupapa to take the decisions that had been taken when other Te Roopu Taki Kaupapa members had not been advised or involved in the decisions made. Then there were arguments about who were or were not members of Te Roopu Taki Kaupapa and another group made decisions reversing the decisions taken by Professor Ritchie, Mr Ruthe and Ms Hodgson. There were letters to and meetings with staff of Parentline to advise that Board members had or had not been removed and much speculation in the press. Some staff wrote to funders of Parentline expressing no confidence in the Board and I was told (Ms Evans' oral evidence) that

Ms Fletcher and Ms McClure interrupted a staff meeting to advise that wages due would not be paid. These events have been enormously damaging to Parentline as an organisation and the effects on staff and morale devastating.

Other Relevant Documentation

Individual Employment Agreement (IEA)

[231] Ms Hodgson's employment was governed by an IEA. It was negotiated and signed off between herself and Murray Earl, Chairperson of the first Board of Parentline. It has an operative date from October 2003 and was signed on 19 November (Ms Hodgson) and 10 December (Mr Earl). Each page of the original contract was initialled by both Ms Hodgson and Mr Earl.

[232] The agreement is unremarkable except to the extent the salary clause of the document contains no salary figure. It was Mr Earl's evidence that the Board was going through the process of looking at Ms Hodgson's salary and job description. The salary section of the IEA was left blank and the salary Ms Hodgson was to receive was the same as she received at the time of the incorporated society. Mr Earl said he never knew her salary at the time. It is now known that Ms Hodgson's salary at this time was \$64,000 per annum. Ms Doube said that at some stage during her tenure on the Board she became aware that Ms Hodgson's salary was approximately \$65,000 per annum.

[233] One or two provisions of the contract are recorded here because there were subsequent changes to these provisions – that are shrouded in mystery,

[234] Ms Hodgson was entitled to 3 weeks annual leave (cl.8). As some stage since the contract was signed late in 2003, the holiday entitlement was amended to 6 weeks (Ms Hodgson's hand) and she has initialled the amendment.

[235] It was Ms Hodgson's evidence that she was entitled to 6 weeks annual leave. This enhancement to her annual leave apparently had its genesis in discussions she had on her job description with Heather Fairweather of Beattie Rickman in 2004 as part of the Board's interest in updating documentation including her job description. Ms Hodgson believed the change to her annual leave entitlements was agreed with the Board and she accepted that the change in her contract should have been initialled by an authorised representative of the Board. Ms Doube (Chairperson of the Board

from March 2004 until its dissolution) said this change was not presented to the Board. It was also her evidence that she was given the job description and IEA when she became chair and the changes to Ms Hodgson agreement were “inherited” and were part of the documentation submitted to Paul Dyer as background information for the Appreciative Inquiry Review of Ms Hodgson’s performance that took place during June-July 2004. She noted, however, (seemingly on reflection) that the changes could not have been inherited from the incorporated society because Ms Hodgson’s contract with the Board was negotiated in August 2003.

[236] Ms Hodgson was entitled under the contract to one month’s notice of the termination of her employment. During the discussions between Ms Hodgson and Ms Fairweather it was concluded that three months notice of termination of employment was a more appropriate notice period for a CEO. No change was made to Ms Hodgson’s contract on this point, but when the Board decided to formalise Ms Hodgson’s departure and to confirm her notice she was given three months’ notice. Ms Evans’ evidence was that the Board had no issue with providing three months notice to Ms Hodgson.

[237] Ms Hodgson also advised that as a result of legislative changes to sick/domestic leave provisions staff contracts were amended to reflect these changes. She amended her agreement at the same time by pasting a description of the amended conditions over the clause in her agreement that set out sickness/domestic leave provisions (Cl.10). Ms Hodgson could not recall if this change was referred to the Board or not. It was her view that as operational manager her contract would have been amended to bring all agreements into line.

[238] Ms Hodgson explained too there had been a tragedy affect one of her staff members in August 2004. As a result the provision of 3 days bereavement/tangihanga leave was shown to be inadequate and staff contracts were amended to allow an additional 30 days bereavement leave on pay. This additional leave was at the sole discretion of the employer and was to be considered on a case by case basis. Ms Hodgson said there was significant discussion with the Board on this issue and the change was duly entered into all staff contracts. Consistent with this change to staff agreements Ms Hodgson’s agreement was amended to provide the same benefit. This change is set out at Cl.11 of the agreement in a substituted page. It is initialled by Ms Hodgson alone.

[239] My notes are inconsistent on this point. On one occasion I record Ms Doube saying this change was never presented to the Board and if it had it would not have been approved because of the liabilities it imposed on the organisation. Elsewhere I record it was put to the Board but it was not approved. Regardless of whether it went to the Board or not it is Ms Doube's evidence it was not approved or it would not have been approved.

[240] There is no record in Board minutes of any of these changes to Ms Hodgson's employed being considered or approved by the Board.

[241] Lastly on the matter of Ms Hodgson's terms and conditions of employment I record that Clause 16(c) of the IEA provides that the employer may pay the employee wages in lieu of notice.

Job Description

[242] A ten page job description for Ms Hodgson was filed with the documents presented to the Authority. The last two pages of the job description set out a Delegations Policy. It also includes a person specification.

[243] Ms Hodgson referred again to her meeting with Ms Fairweather of Beattie Rickman. She said this happened in late 2004. It was Ms Hodgson's evidence that her current job description evolved from old job descriptions and the discussions she had with Ms Fairweather.

[244] The job description itself is unremarkable except it is unusual for a job description to contain Terms of Appointment. It is here that the enhanced terms to Ms Hodgson's agreement (relating to notice and annual leave described above are recorded). It is also relevant to the outcome in this matter that the Job Description records that Ms Hodgson is (in relation to her staff responsibilities):

"To operate as a good employer. This is measured by (among other things) – a yearly salary review".

[245] Margaret Evans and Rona Larsen gave evidence that the only part of this document they had knowledge of was the first page which described Ms Hodgson's role and which set out broad brush objectives of the role e.g. to ensure that Parentline focuses of the prevention of child abuse and advocacy, to raise money each year to ensure the continuation of Parentline. It also set out strategies Ms Hodgson was to

develop relating, for instance, to the management of staff, service to clients, meeting contractual obligations with Government bodies etc. They said they also had the last two pages of the document, which set out the delegations policy.

[246] Ms Hodgson does not accept that the second Board did not have the entire document (which includes a detailed description of her role, the person specification, the terms and conditions of employment and the delegation policy).

An Organisational Review – the Looking Glass Review (LGR)

[247] A review of Parentline was undertaken in July 2004. I am unclear of its genesis but it may have come about as a result of initiatives taken by Ms Hodgson and Ms Doube to advance the strategic planning process that was underway at the time. The review was undertaken under the auspices of a Jens Mueller who may have been associated with the Management School at Waikato University.

[248] There is no question however that the review became controversial and that Ms Hodgson and some or all of the staff that participated became unhappy with the conduct of the inquiry and its outcome.

[249] The process adopted in this review sought to evaluate Parentline (as a Not for Profit organisation) on such criteria as management, advocacy, strategic planning, governance and fund raising. The information underpinning the findings of the report were (I believe) gathered in interviews with selected staff and stakeholders.

[250] The study found that generally there was a high degree of congruency between the external view of the organisation and the internal perspective.

[251] The report is notable for one or two findings however:

“The process of this report highlighted significant governance issues. This is demonstrated by the lack of support for the process by the CEO. The preparation of a letter from staff to the Board of Trustees is a further demonstration of conflict between the Board and the CEO;

And:

“ The conflict arises with the CEO who has clearly demonstrated lack of support to the wishes of the Board”

And:

“I observed examples of conflict between the Board and the CEO. The CEO’s years of leading the organisation without accountability to a Board of Trustees has resulted in behaviour of challenge and defiance”.

[252] It was Ms Evans’ evidence that Ms Hodgson’s concerns regarding the LGR took up considerable time during the early part of the second Board’s existence. It was brought up by Ms Hodgson at the first meeting of the Board and she wanted the Board to ensure the review was not accessible publicly. It was difficult to interpret her concerns over the review although it was clear she considered it a personal affront. The Board resolved that she and Brian Prestidge would meet with Jens Mueller and discuss it. They did so and it was resolved to put the report behind them.

Appreciative Inquiry Performance Review

[253] It is not in dispute that there was a focus by the first Board with Ms Hodgson’s agreement on updating arrangements relating to her employment – to evaluate her performance, to set KPI’s etc with a view to reviewing her remuneration and other conditions.

[254] It was Ms Hodgson’s evidence, however, that she initiated the Appreciative Inquiry. Part of her rationale, she said was to convince the Board that the lobbying she did was normal. Ms Doube accepts that Ms Hodgson suggested the Appreciative Inquiry and she agreed with it – Parentline had moved to a new structure and it is, she said, a tool used in situations where there is conflict or where an organisation is going through cultural change. She said it focuses on the positives a person (in this case Ms Hodgson) brings to an organisation and it asks: What can X do more of? what would be new for X? and, what would you wish for X? It does not focus on negatives. It was Ms Doube’s evidence that the Board wanted to focus on the positive things and move forward from that.

AffirmWorks Report

[255] The exercise was conducted between June and August 2004. The purpose of the review was identified to:

- To provide Ms Hodgson with high quality feedback on her performance

- Affirmation of the Board's confidence in her.

[256] It was to provide the new Board with

- Information regarding their CEO's performance
- An avenue for Ms Hodgson's views as the Board works with the development of the strategic plan.

[257] Participants (to be interviewed face to face or by telephone) were chosen from Ms Hodgson's sphere of influence and including individuals drawn from a number of fields/areas e.g. community peers ex- Board members, political leaders, staff, funders and philanthropic trusts.

[258] The report of this exercise describes participants as describing Ms Hodgson in the following terms – catching the spirit of a much longer list provided by interviewees.

- *Capacity for inspirational and charismatic presence and leadership.*
- *Parentline would not be there without her and recognitions of Maxine's' capability that has enabled Parentline to be formed and developed.*
- *Resourceful capacity to build relationships and networks*
- *Commitment to children and the organization.*
- *Adaptability to change with changing social and political conditions over the 26 years*
- *Unique*
- *Sustains energy levels*
- *Drive to stay with vision*
- *Focus on what we can do rather than what we can't*
- *Capacity to overcome obstacles*
- *Resolute and passionate*

[259] However, the consultant who compiled the report also made the following statement that found its way into the Report:

"...with a performance review it was important to note if there was any major issue that might get in the way of a 'straight forward' process. From the process to date Paul [Paul

Dyer – consultant] reported that he was clear in his mind that the CEO-Board relationship was such an issue that to make progress that would need to be addressed before any other matter could be dealt with”.

[260] The process included a facilitated discussion between Ms Hodgson, Mr Ruthe (her advisor) Ms Doube and Michael Redman (Board members). That discussion led to the following list as to what was wanted in the relationship between the Board and its CEO - mutual trust; free and open communications including understanding each others use of language; mutual understanding; alignment of expectations and assumptions; respect for Parentline’s culture as an established organisation and the Board’s culture; space for robust debate and a fundamental attitude and style that is grounded in the assumption of ‘good will’ by all involved.

[261] Concluding on the subject of the performance review Mr Dyer noted in his commentary:

“It was noted that the establishment of Parentline has been an outstanding achievement and Maxine Hodgson is recognised as an outstanding person in the way she has had the vision and capacity to lead this development”

And:

Parentline is currently moving through a challenging transition. An aspect of the transition is developing a new relationship between Maxine as ‘Pioneer’ who has been the key to Parentline’s development to the present position where legal ownership and final responsibility reside in the Board of Trustees. Two consistent concerns were noted as the organisation faces this challenge. First, how to make that transition and at the same time retain the unique characteristics of the organisation that have enabled it to grow and have credibility. Second, how to move forward in a way that continues to provide avenues for Maxine’s rich contribution alongside that of other members of the staff and the Board”. It is noted that the transition is experienced by some as a meeting of two different cultures.....”

[262] The reviewer goes on to make two observations under the heading Performance Review including the following:

“As has been noted the Performance Review was distracted by the key issue around the relationship between the Board and the CEO....”

And:

“Of the wide group of people I heard from and interviewed someone at sometime mentioned each of the key skills and characteristics in relation to Maxine. This does not mean your CEO acts consistently in ways demonstrating all the characteristics. Clearly this is not the case, while Maxine was described more than once as charismatic she is not Messianic. To return to other metaphors that have been used, the skills of a pioneer are different from those managing a settlement”.

[263] The reviewer made a number of recommendations including recommendations to assist Ms Hodgson’s personal development and recommendations aimed at assisting Maxine and the Board to set objectives and a recommendation there be a review against those objectives in 12 months time.

[264] It is Ms Hodgson’s evidence that the Appreciative Inquiry showed her performance as CEO of Parentline was exemplary.

[265] That is not the view of Board members that gave evidence to the Authority and the Board’s issues with Ms Hodgson’s performance and conduct have already been described.

[266] Further, the Authority was reminded in relation to the Affirmative Inquiry process that interviewees had only been asked to comment positively on Ms Hodgson’s performance.

Complaints Procedure

[267] Parentline has a number of policies, which govern its operations including a process to be followed in circumstances when there is a complaint about the CEO of Parentline.

[268] That procedure stipulates that if the concern is from a staff member then every effort must be made for the staff member to address the issue directly with the CEO. If this proves ineffective or fails to lead to a satisfactory solution then the matter may be referred in writing to the Chairperson of the Board of Parentline. The CEO is to be kept informed.

[269] If the Board becomes involved and becomes the decision maker, all Board members must be presented with all the information.

[270] If the complaint is from outside the Parentline agency or if the CEO is involved in any of a number of types of misconduct (including any action that would jeopardise the reputation or work of Parentline), the matter will be referred to the Chairperson of the Parentline Board.

[271] It was Ms Hodgson's view that the CEO appoints staff members and is responsible for them. It is Ms Hodgson's position that Parentline's complaint procedure required Dr Dawson address her complaint to her in the first instance.

[272] It was Ms Evans' view that as Dr Dawson was an independent contractor it was appropriate that her complaint be directed to the Chairperson, particularly given the fact that Ms Hodgson had already indicated she had made a decision to terminate Dr Dawson's employment and thus had a conflict of interest in the matter.

Issues for Determination

- Was Ms Hodgson dismissed constructively or otherwise?
- If Ms Hodgson was dismissed was that dismissal justified?
- If Ms Hodgson was unjustifiably dismissed what remedies are available to her?
- What, if any, contribution on Ms Hodgson's part should be set against remedies awarded to her.
- Was Ms Hodgson entitled to receive the increase in remuneration that was paid to her from August 2004?
- If not should Ms Hodgson be directed to pay back the monies received by her?
- Was Ms Hodgson entitled to the bonus she received in June 2006?
- If she was not entitled to that bonus should she be directed to repay that sum to Parentline?

Legal Issues

[273] The Employment Relations Act 2000 was amended in 2004 by the insertion of a new section 103A:

103A Test of justification

For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[274] In determining this matter I must make an objective assessment of the employer's actions and weigh those actions against those of **a fair and reasonable employer ...in all the circumstances ...at the time....**

[275] The Court has examined the test for justification and, among other things, noted that the objects of the Act including the obligation of good faith, must inform any objective assessment of what a fair and reasonable employer would do in the circumstances. (*Air New Zealand v Hudson* unreported AC 30/06; *X v Auckland DHB* unreported AC 10/07).

Good Faith

[276] The Employment Relations Act 2000 enshrined in New Zealand employment law the concept of good faith. It is the hinge on which the Act swings and the relevant sections of the Act are set out below. The importance of the good faith provisions of the Act was confirmed in amendments to the Act effective from 1 December 2004.

[277] Section 3 (a) & (a) (i) (Objects section) provides.

S.3 The object of the Act is –

- (a) to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.
- (i) by recognising that employment relationships must be built not only on the implied mutual obligations of trust

- (ii) and confidence, but also on a legislative requirement for good faith behaviour...

[278] Section 4 of the Act tells us what good faith requires.

S.4 (1) The parties to an employment relationship specified in subsection 2¹⁶ –

- (a) must deal with each in good faith; and
- (b) without limiting paragraph (a) must not whether directly or indirectly, do anything
 - (i) to mislead or deceive each other; or
 - (ii) that is likely to mislead or deceive each other

[279] Section 4 (1A) (inserted by the 2004 amendment) elaborates on the duty of good faith.

S. 4 (1A) The duty of good faith in subsection (1) –

- (a) is wider in scope than the implied obligations of trust and confidence; and
- (b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative.....

[280] In closing on the subject of the good faith provisions of the Act I note the words of the Court of Appeal in Carter Holt Harvey Ltd v National Distribution Union [2002] 1 ERNZ 239 (CA).

“Good faith connotes honesty, openness and absence of ulterior purpose or motivation. In any particular circumstances the assessment of whether a person acted in good faith will involve consideration of the knowledge with which the conduct is undertaken as disclosed in any direct evidence, and the circumstantial evidence of what occurred”.

¹⁶ Includes an employee and the employer of the employee.

Discussion and Findings

[281] In arriving at a determination in the matters before me I have had regard to the evidence, the extensive documentation received, to the submissions of the parties and to relevant case law.

[282] The parties are aware that on 6 November 2007 I communicated to counsel in this matter that I could not treat the claim brought by Ms Hodgson as a constructive dismissal. I had concerns, having considered all the evidence, that the predominant reason for Ms Hodgson's resignation did not relate to alleged breaches of duty by the respondent and that she affirmed her contract in numerous ways. I referred counsel to the discussion (by the then Chief Judge Goddard in Boobyer v Good Health Wanganui Ltd WEC 3/94) on resignations given in the heat of the moment and the requirement that cooling down periods be allowed before clarifying the worker's intentions. I also advised that the Court's findings in Hudson v Air New Zealand and X v Auckland DHB (cited above) on good faith issues were in my mind – being relevant to assessing the Board's actions in accepting Ms Hodgson's resignation. I advised counsel I was of the view – given my position that this case could not on its facts meet the test of constructive dismissal - that my attention was focused on the Board's acceptance of Ms Hodgson's resignation and that I was of the view that the Board could not just accept a resignation expressed in the terms that Ms Hodgson expressed her resignation, but that it had a duty in good faith to at the very least engage with Ms Hodgson to clarify her intentions and if possible to address/resolve any justifiable concerns she had.

[283] Counsel were invited to provide supplementary submissions on the direction I was heading with this and they have done so.

[284] Of course, despite this change of focus I have had to address and make findings on the multitude of issues this case has thrown up, including on the events/issues arising out of the AFO project and Ms Hodgson's numerous complaints that she was unfairly treated by the Board in relation to her management of this project. These findings are necessary to putting the entirety of the relationship between the respective Boards of Parentline and Ms Hodgson into perspective. These findings are particularly relevant to the consideration of Ms Hodgson's contribution to the situation that gave rise to her personal grievance (s.124).

Credibility

[285] Ms Hodgson's evidence was emotive. That is not of course fatal to finding she was a credible witness. More problematic however was the fact her evidence was frequently inconsistent both with other parts of her own evidence and with that of her own witnesses.

[286] A few words on the subject of Mr Flowers evidence – it was something of a conundrum to me. Mr Flowers is an experienced CEO and is currently the CEO of Waikato Institute of Technology (Wintec). I note that Mr Flowers joined the Board only months before the breakdown in relations between Ms Hodgson and the Board (February 2006) and he attended only four meetings of the Board. I will address aspects of his evidence in my specific findings, but on balance I accept that he gave an honest account of his perspective of events but I must conclude that he was not as well informed as he might have been. He admitted he never got to grips with all the detail of the AFO project and the issues that arose surrounding this project and that he found it madly confusing. I find some of his evidence reflects this. I also note here – because it is an issue that will need to be addressed in my findings - that it was his evidence that the Board members of Parentline had a surprisingly high input into operational matters at Parentline. He did, however, acknowledge that this is not unusual in this type of organisation. (He reflected that all who get involved in social service agencies are fixers, helpers and rescuers). He also said that if a CEO is not dealing with risk, most would agree a Board has to get closer to the issue and as a last resort, intervene. It seems his real concern with the involvement of Parentline's Board in operational matters related to the fact that he did not think it was being handled with sufficient care and sensitivity.

[287] A number of other prominent and influential members of society stood up for Ms Hodgson in this matter including Professor James Ritchie a well known and respected psychologist (retired) who has written and researched extensively on NZ families and child development and Geoff Ruthe, a well qualified clinical psychologist who has worked with Ms Hodgson and Parentline for many years. Dr Rajen Prasad, Chief Commissioner of the Families Commission also provided a glowing written reference for Ms Hodgson.

[288] Professor Ritchie, Mr Ruthe and others described Ms Hodgson as a person who has dedicated her life to the protection of children, the prevention of child abuse and neglect, and to the support of at risk families in our society – particularly in the Waikato region (although her influence has been much wider). It was also their evidence that she has been a committed and tireless worker in this field and that she has been a charismatic, fearless and determined leader in bringing the issues to national prominence, which in turn has brought changes in social attitudes, and government policies with associated improvements in funding and support to address this significant issue.

[289] The evidence discloses too, that much of Ms Hodgson’s energy was directed to the establishment and building up of the Parentline organisation – from a few volunteers providing advice via a telephone help line to being “*one of the leading multi modal services for children and families in New Zealand*”.¹⁷

[290] I don’t question the evidence given by these witnesses in support of Ms Hodgson. However, my determination has a different focus. It focuses on a relatively brief period (3 years) of Ms Hodgson’s significant career and lengthy association with Parentline (28 years). It covers that period of Ms Hodgson’s professional life with Parentline when she was subject to the governance of a Board of Trustees within the framework of the Charitable Trust established in July 2003. My determination must also address and make findings on the evidence submitted on the AFO project because that is the issue that gave rise to the dissolution of the relationship between Ms Hodgson and the second Board of Parentline. The evidence of Professor Ritchie and Mr Ruthe evidence does not help me in respect of the matters that I must decide.

[291] Addressing some of the other evidence received in the course of my investigation. On some very important matters, critical to my findings, I have to say the evidence of Moyna Fletcher, Ann McClure and Jan Hight was not credible. Their evidence on significant matters was commonly second hand. They admitted this. Their evidence was frequently just a reiteration of Ms Hodgson’s evidence and where Ms Hodgson’s evidence was wrong and or misleading theirs was no less so. Some examples (and these are just a few problems I have assessed regarding their evidence) must be highlighted.

¹⁷ Dr Prasad’s reference.

- Ms Fletcher and Ms Hight were very critical of the questions prepared and submitted by Dr Dawson for the templates associated with the AFO project and stated they were not suitable for children. Leaving aside their qualifications for making these statements, they seemingly had no knowledge that these questions were to be interpreted for each person questioned to ensure they were pitched appropriately for that persons level of understanding and that this was to be part of the discussions and training to take place on 26 -29 May during Dr Dawson's visit.
- Ms McClure stated categorically that the allegation that Ms Hodgson was involved in a plot to remove trustees from the Board of Parentline was a "*fabrication of the imagination*", but subsequently conceded that she had in fact prepared a lot of the documentation that confirms there was indeed such a plot and that Ms Hodgson was at the heart of it. She also was complicit in the development by Ms Hodgson of the entirely false allegations against Dr Dawson that she had been improperly accessing Parentline's premises and computers.
- Ms Hodgson gave evidence that Jan Hight would provide the proof of Dr Dawson's tardy submission of templates. On the contrary, Jan Hight made it clear she could not provide this information from her head and she did not otherwise provide it. Further, Ms Hight was extremely critical of Dr Dawson's performance both as an employee and as a contractor but, she could not but accept the trail of emails between her and Dr Dawson, that showed that the questions for the first two templates were delivered by Dr Dawson by the dates specified in the contract between her and Parentline. I refer in particular to an email sent by Dr Dawson to Jan Hight on 12 May 2006, in relation to the Parents Building Bridges (PBB) questions due on 10 May. Dr Dawson asks Ms Hight if she had received the pre and post PBB assessments and was her email to Maxine signing off on these assessments received by her. Ms Hight replied the same day "*yes on both counts*".
- Ms Hight also said that Dr Dawson was at times irrational and demanding and she cited Dr Dawson's request for the use of a Parentline car while she was visiting New Zealand over the dates 26-29 May as an example of this. Hardly surprising I would say – given Ms Hodgson had, in contracting with Dr

Dawson, agreed to meet her reasonable expenses. Further, I accept Dr Dawson's evidence that in requesting a Parentline car for her use during that visit she was relying on an oral promise made to her by Ms Hodgson.

[292] I will say, however, that I accept that the events of 24 July were very traumatising for these witnesses and they are genuine in the concern they felt for Ms Hodgson that day.

[293] Lastly, I do not accept the evidence of Paul Flanagan on the subject of Dr Dawson's performance as an employee of Parentline.

[294] More important than my assessment of these witnesses, however, is the fact that Ms Hodgson's evidence and that of her witnesses was not supported by the documentary evidence (which was voluminous). Further, Ms Hodgson's credibility was not enhanced by her refusal, in the face of documentary evidence that was contrary to positions she asked me to accept, to acknowledge the reality spelt out in that documentation.

[295] This is a case where a large number of my findings of fact are guided by the documentary evidence and on the whole the evidence of the respondent's witnesses is consistent with the documentary evidence. This leads me to accept the evidence of the respondent's witnesses as a more accurate portrayal of the relationship between the parties and the events that led to its dissolution than the evidence of Ms Hodgson and her witnesses.

[296] Lastly, I find Dr Dawson's evidence was cogent, consistent and credible and certainly she had a very clear understanding of the AFO project and what was required to progress it and to ensure it had validity.

[297] Specific credibility issues will be addressed in the course of setting out my findings.

Findings

[298] Prior to answering the questions I have posed above for answer, it is necessary to make some general and specific findings in the matter.

[299] Relationships between Ms Hodgson and the first Board of Parentline had, by July 2005 broken down to such an extent that the first Board was dissolved and a new Board constituted. However, by the end July 2006 Ms Hodgson had departed Parentline in circumstances that are more controversial than any other this Member has experienced.

[300] What went wrong?

June 2003 – June 2004 The First Board

[301] There was some criticism by counsel for Ms Hodgson of the evidence put before the Authority relating to the relationship between Ms Hodgson and the first Parentline Board – particularly as to its relevance. The Authority finds that evidence to be highly relevant as it puts the relationship between Ms Hodgson and the second board into a broad context from which a number of themes emerge that informed the events leading to Ms Hodgson's departure.

[302] I make the following general findings in relation to the background to Ms Hodgson's relations with the first Board. These findings will, eventually, be drawn through the fabric that makes up this case.

- The evidence was relatively sketchy on the management of Parentline as an incorporated society. Ms Hodgson said that staff members did not sit on the Board of Management. Ms Fletcher said that there were staff members on the Board. The evidence such as it is suggests, and I find, that essentially there were few checks and balances on Ms Hodgson's decision making, leadership or management of Parentline for a period of approximately 25 years. Further, I find, that Ms Hodgson (in her own eyes and those of some others) became inextricably identified with Parentline, to the extent she was the organisation, personified.
- I find that when Parentline became a charitable trust a clear distinction was established between governance (the Board's role) and operational management (Ms Hodgson's domain). Ms Hodgson made much of the failure by successive Parentline Boards to recognise the boundaries between governance and operational management and it was her evidence that the Board overstepped that boundary. On the contrary, I find it was Ms Hodgson, generally speaking, who had the problem with distinguishing between governance and operational

management. She may have understood the distinction in theory but I find that she did not, in practice, accept it.

- The evidence supports a finding that this led to a clash of expectations between the Board and Ms Hodgson – the Board’s expectations to be well informed so as to ensure effective governance and Ms Hodgson’s wishes to manage Parentline unfettered by any oversight by the Board (to the extent that it interfered with her absolute right to manage Parentline as she thought fit). This clash in expectations manifested itself in the issues that led to the breakdown in the relationship. These included:
 - Ms Hodgson’s failure to provide information of the type and quality to ensure the good governance of Parentline. For example, her failure to provide the budget requested for the child summit conference. This is just one example. She also failed to inform the Board of VIP visits in a timely fashion and this is another example.
 - Ms Hodgson adopted a dismissive, confrontational and defiant approach in her relations with the Board. This was compounded by a tendency on her part to isolate individual members (for example, Bernadette Doube) and to attack the person rather than address the issues on which there was disagreement. She also elevated issues that should have been resolved by discussions, in good faith, into tests of her competence and performance as CEO of Parentline.
 - Ms Hodgson also defied Board instructions. For example, the letter sent to Glenda Saunders and Diana Yates in spite of the Board’s instruction that she not rely on the hearsay evidence on which that letter was based. Ms Hodgson also failed to inform the Board and defied its instruction that she not engage in controversial public lobbying on child advocacy matters. I find the Board was not implacably opposed to Ms Hodgson’s child advocacy activities. It sought only that she keep the Board informed (as per the delegation policy) and that she moderate her statements so that they did not threaten Parentline’s reputation or potential funding.

Mr Ritchie described the Board as *pusillanimous* (timid). I do not accept this as a correct assessment of the situation. A board operating within the NGO sector will best achieve the purposes for which the organisation exists by ensuring its viability as a base from which its public good objectives can be met. Further, board members of a charitable trust have a fiduciary duty – to *always* act in the best interests of the organisation. This is best achieved through sound governance, which (among other things) includes holding management to account by way of effective oversight.

- There was a meeting between Board members Bernadette Doube and Russell Drake and Ms Hodgson on 7 February to address these issues. Ms Hodgson described this as a positive meeting. I find, however, that there was no resolution to the issues in dispute between Ms Hodgson and the Board and following that meeting the Board posed a number of alternatives in writing to Ms Hodgson, including a return to the board of management structure as existed under the former incorporated society of Parentline; a continuation of the current situation which would require a considerable change in Board/CEO relationships and in Ms Hodgson's performance or a retention of the status quo where the Board insisted only to rubber stamp Ms Hodgson's actions and statements.

Ms Hodgson did not provide this advice to the Board. In any event, the Board sought legal advice itself. It was decided, on receipt of that advice, that an incorporated society that is founded on a membership base was an inappropriate structure for the future of Parentline and the decision was taken to continue with the charitable trust structure.

Ms Hodgson accepted this, although she felt that the incorporated society structure was more supportive of the collaborative approach she favoured. I find, however, Ms Hodgson favoured the incorporated society approach as placing fewer constraints on her management of Parentline.

- In March 2005 Ms Hodgson requested mediation between herself and the Chairperson of Parentline.

“It is imperative that for there to be trust and confidence in my professionalism expertise experience in role as Parentline CEO I consider these attributes are in question”.

- There followed a lengthy mediation between the parties (approximately 10 hours). Ms Hodgson was represented at this mediation and agreement was reached where both she and Ms Doube would stand aside from their respective roles for an interim period (but that Ms Hodgson would continue to have a senior operational role). During this period a new manager would take up the joint roles of CEO and Board Chairperson. A wide ranging inquiry was planned to review the governance, management and structure of Parentline and to report on the preferred structure for the organisation and to make recommendations on the appropriate job description, KPIs of the CEO and responsibilities of the Board.

Following this agreement, there was another agreement reached on 13 June. This agreement supplemented the original agreement and set out the operational details of the interim arrangements.

These arrangements were arrived at some cost to Parentline (\$50,000). However, despite having participated in the negotiations that led to these agreements and having signed off on them, Ms Hodgson effectively reneged on them (*because she realised she would no longer be the CEO of Parentline and that she had to vacate her office*).

- Ms Hodgson could not accept this. She went behind the mediated settlement to which she was party to find an alternative solution to her problems. There are echoes in this of Rajan Prasad’s statement in the written reference he provided to Ms Hodgson:

“Maxine never sees being unsuccessful in an endeavour as an end of the matter but merely an opportunity to think anew, refocus, re-strategise and step out with greater resolve. Thus she is persistent and this has led to the success she has had in her professional life”.

- Ms Hodgson began talking to her good friend Rona Larsen and through her to Margaret Evans. Ms Evans and Ms Larsen became concerned that Parentline

was in danger of imminent collapse. They were, in the main however, only hearing Ms Hodgson's version of what was going on, although it seems that they were aware that staff were talking about strike action and it was also their evidence – accepted by Ms Hodgson – that she had absented herself from the workplace.

On the basis of this information, Ms Hodgson rounded up a group of citizens active in community affairs and supportive of Parentline to establish the informal group Friends of Parentline. This led to the dissolution of the first Board and establishment of the new Board, which I find was extremely sympathetic to Ms Hodgson's views as to what had gone wrong in her relationship with the first board and, through the second Board achieved everything she wanted, to in redress the wrongs she saw in the first Board's governance of Parentline.

[303] To recap on the findings arrived at from assessing the evidence relating to this phase of the relationship between Ms Hodgson and the Board of Parentline i.e. her relationship with the first Board; I now identify a number of themes arising from Ms Hodgson's conduct – themes that went on to inform Ms Hodgson's relationship with the second Board. They include Ms Hodgson's failure to accept the Board's governance role where that it conflicted with her own management of Parentline. This manifested itself in her failure to provide the Board with the information in the nature and quality that was essential to good governance because, I find, an appropriately informed Board would be in a better position to challenge Ms Hodgson's decisions and to hold her accountable. Ms Hodgson adopted a dismissive, confrontational and defiant approach in her dealings with the Board and consistent with this Ms Hodgson failed to observe the delegation policy that required her to keep the Board informed of VIP visits and she failed to comply with, or even to reflect upon, the Board's expectations of her in her role as a child advocate. Her lobbying left the Board broad sided and concerned for the future funding of Parentline – funding that was essential to ensure the continued viability of the organisation. Ms Hodgson also isolated individual Board members who bore the brunt of her displeasure. She also tended to turn differences that should have been resolved by dialogue, in a spirit of good faith, into make or break tests of her integrity and performance as the CEO. And perhaps influenced by these factors, it is evident that when Ms Hodgson focussed on a particular objective, issues seemed to escalate from a standing start to crisis

proportions in a very short space of time. I find that Ms Hodgson described the resulting crisis and the accompanying confusion as “*a war*”¹⁸ and professed not to know how this state of affairs had come about.

[304] The last theme I identify is Ms Hodgson’s remarkable ability to galvanise staff to support her in disputes with the Board of Parentline. I find, however, that staff were commonly ill informed by Ms Hodgson as to the issues they got involved in and they accepted Ms Hodgson’s word without question. An example of this is the reported plan by staff to go on strike in June/July 2005 to uphold the principle of child advocacy as a core value of Parentline. I have found the Board did not challenge this principle, but rather wanted Ms Hodgson to keep the Board informed and moderate her style of advocacy. Ms Hodgson held and continues to hold that was the principle on which her relationship with the first Board faltered. That not the case.¹⁹ Nevertheless Ms Hodgson rallied staff on the basis that this important principle was at stake and the fact they intended to go on strike over it was one of the concerns identified by Friends of Parentline when it became involved in the issues threatening the organisation. This is just one example of what will become clear in this determination i.e. Ms Hodgson’s manipulation of the good people in her circle – staff, Friends of Parentline, Board members and at least some members of Te Roopu Taki Kaupapa.

July 2005 – 2006 Second Board

[305] Things went well for Ms Hodgson with the establishment of the new Board. A resolution was passed which criticised aspects of the first Board’s management.

[306] The trust deed was revised to establish child advocacy as a core value of Parentline. There was also a statement on the core values of Parentline that were expressed to be advocacy; service; professionalism; respect; excellence; partnership and integrity.

[307] A two tier leadership structure was established – a Board to see to the overall governance of Parentline and the group known as Te Roopu Taki Kaupapa who were to have oversight of Parentline to ensure it remained true to its core values and the

¹⁸ I find Ms Hodgson did use this expression in discussion with Margaret Evans and Rona Larsen in June 2005. She also used this expression at the investigation meeting to describe her relationships with the second Board when those relationships broke down.

¹⁹ The issues were many and have been described.

kaupapa and tikanga of Parentline. Ms Hodgson wished to be a member of this group as well as the CEO of Parentline and the trust deed was drafted to permit employees to be members of this oversight group. Extraordinarily, the deed was also drafted to give this group the power to remove trustees in their absolute discretion.

[308] Lastly, I note that by operation of the deed itself a number of the then “interim” board members party to the new trust deed were named as members of Te Roopu Taki Kaupapa including Tonga Kelly, Margaret Evans, Rona Larsen and Ms Hodgson (Clause 7.1 (b). I think this fact has been overlooked by those that drafted this document²⁰ and it explains some of the confusion that infused these proceedings about who and who was not a member of Te Roopu Taki Kaupapa. I note in closing on this point that the only documentation relating to Professor Ritchie’s membership is an emailed letter (dated 24 July 2006) from Ms Hodgson to Geoff Ruthe and other Te Roopu Taki Kaupapa members asking them to sign and return it, confirming Professor Ritchie as a member of Te Roopu Taki Kaupapa.

[309] It is necessary to make findings on the status of this deed, because the drastic step taken by Ms Hodgson, James Ritchie and Geoff Ruthe in its name i.e. the steps to remove Ms Evans and Ms Larsen from the Board and to reinstate Ms Hodgson as CEO.

[310] So what is the status of the revised trust deed? The parties never signed it and no attempt was made to register it. Further, it may not have been accepted for registration because of the provision it contained that Te Roopu Taki Kaupapa could remove Board members at its absolute discretion (given the implications this had for the security of the trusts assets and its operation as a charitable organisation)²¹.

[311] I must find – given the revised deed never assumed anything remotely akin to enforceable status - that it was a voluntary agreement between the parties, which refined and highlighted Parentline’s core purpose and values as described. In matters

²⁰ The Board of Parentline was originally an interim Board and it seems it was envisaged a new Board would eventually take over freeing current Board members to become members of the guardianship group. However, on 10 November 2005 Ms Evans and Ms Larsen were confirmed in their roles as Chair and Deputy Chair. At the same meeting it was resolved the new Board would be confirmed upon ratification of the Trust Deed. The Trust deed was never signed or registered.

²¹ I am not for one minute saying that Te Roopu Taki Kaupapa members had any designs on Parentline’s assets when it sought to remove Board members, Ms Evans and Ms Larsen. The sole purpose of this was to remove Board members that were seen to be blocking the reinstatement of Ms Hodgson as CEO of Parentline and to reinstate her.

that are before me, I find, that in their dealings with each other it was incumbent on the parties to have regard to the core values of Parentline letting those values guide their attitudes and conduct in the management of Parentline. The deed did not usurp Ms Hodgson's contract with the Board nor did it relieve her or the Board from observing their contractual obligations towards each other including their good faith obligations. I will return to this point later.

[312] The VIP and advocacy sections of the delegations policy were removed giving Ms Hodgson a free hand in this area – albeit she brought into a convention known as “no surprises” i.e. that the Board would be appropriately informed in respect of operational matters, particularly in respect of any issue that posed a risk to Parentline's reputation or viability.

[313] Ms Evans took steps to bring closure on the Looking Glass review.

[314] Before making specific findings on the remaining conflicts of evidence that must be decided in determining this matter, I need to address the issue of the personal relationships that existed between the individuals associated with Parentline over the period 2005-2006. Further, on this issue it will be necessary to decide on Ms Hodgson's claim that a close personal friendship developed between Ms Larsen, Ms Evans and Dr Dawson. Ms Hodgson claimed this was evidenced by the fact that Dr Dawson stayed in a cottage on Ms Evans' property for 10 days from 18 –29 May 2006 and the fact that Ms Larsen collected Dr Dawson from the airport on 18 May. Reference was also made to telephone calls over the period in question between Ms Evans and Dr Dawson and between Ms Larsen and Dr Dawson. It also is Ms Hodgson's evidence that Dr Dawson was taking advice from the Board in her contract dispute with Ms Hodgson and that the close relationship between Ms Evans, Ms Larsen and Dr Dawson led to a bias in Dr Dawson's favour when Ms Hodgson was providing advice to the Board on Dr Dawson's poor performance.

[315] It is clear on the evidence that there were many personal and other relationships between the individuals that played a part in this story. In no particular order the evidence discloses that Ms Hodgson is a close friend of Mr Flowers' wife; Mr Kelly (Trustee) is Ms Evans' partner; Ms Buezeval has a professional relationship with Ms Hodgson's family and I believe there were close friendships between some staff members. It was clear on the evidence that relationships formed a significant part of Parentline's identity. The closest friendship of all, however, was that between Ms

Hodgson and Ms Larsen and the documentation submitted to the Authority (cards/book inscriptions) attest to Ms Hodgson's love (I would put the quality of the relationship at this level) for Ms Larsen. Even as late as 21 June 2006, Ms Hodgson followed Ms Larsen from the Board meeting that day and presented her with a birthday present. Ms Hodgson is now extremely dismissive of her relationship with Ms Larsen and says that Ms Larsen over exaggerates it. That is not what the documentary evidence suggests and the fact that Ms Hodgson saw fit to ensure Ms Larsen received her birthday present following the Board meeting of 21 June gives rise to some scepticism on my part in respect of the trauma she now says she was subjected to at that meeting. This is particularly so given Ms Hodgson places Ms Larsen at centre stage in respect of her complaints about the Board's attitudes and actions towards her at that meeting.

[316] First on the matter of telephone calls between Board members and Dr Dawson. I accept there were calls between Board members and Dr Dawson in the months April June 2006. I accept there were legitimate reasons for these calls e.g. Ms Larsen's ongoing discussions with Dr Dawson around the violent videos initiative. I also accept Ms Larsen's evidence that she discussed with Dr Dawson a difficult health and emotional issues she faced at this time. Further, I accept Ms Evans had telephone contact with Dr Dawson firstly after the Board approved the contract with Dr Dawson (Ms Evans was seeking more information about the project and the contract because Ms Hodgson was not very clear about it) and secondly after the Board became seized of Dr Dawson's report/complaint which necessitated the Board keeping Dr Dawson advised of steps being taken to deal with her complaint i.e. that it was taking advice on the status of the contract and that Board's planned to consider that advice once received and make a decision on the matter. Keeping Dr Dawson informed was critical because the first tranche of \$20,000 under the second period of the contract was due on 8 June and Dr Dawson was asking for that payment be made.

[317] Overall, I am satisfied that interactions between Dr Dawson and Ms Evans and Ms Larsen around her visit to New Zealand in May 2006 came about because these trustees extended their own resources (transport and accommodation for Dr Dawson) for the benefit of Parentline. Further, in respect of the offer of accommodation at Ms Evans' cottage, that was an offer made by Ms Evans in response to Ms Hodgson's complaint that Dr Dawson expected accommodation to be provided whilst she was in New Zealand. Dr Dawson stayed four nights at Margaret Evans' cottage not the ten

Ms Hodgson claimed in her evidence to the Authority. Ms Hodgson was well aware of this I find.

[318] I find further, that there was no special relationship (developed or developing) between Ms Evans, Ms Larsen and Dr Dawson over the period April – June 2006 such that it led to a conflict of interest or bias in Dr Dawson’s favour when the Board (or individual Board members) were addressing the issues raised relating to Dr Dawson’s performance and the continuation or termination of Dr Dawson’s contract. And neither, I find, was Dr Dawson taking advice from Board members in relation to the contract dispute that developed between her and Ms Hodgson. This submission of Ms Hodgson is based solely on Dr Dawson’s question to Ms Hodgson on 29 May that she believed she had a binding contract and had Ms Hodgson advised the Board she was terminating the contract. Further, Dr Dawson is, I find, an intelligent person and it would be quite normal and appropriate for her to consider what and where her avenue of appeal was when she wished to preserve her contract with Parentline. Given Ms Hodgson had advised she was terminating the contract, the first line of appeal was to the Board – keeping Ms Hodgson informed (which Dr Dawson did). It was not rocket science to figure this out and even if Ms Evans did advise Dr Dawson of her rights under the Parentline’s complaints procedure – which she denied doing – I would not have found that to be inappropriate. It was, of course, inappropriate for Ms Hodgson to insist Dr Dawson’s concerns first be addressed to her. Ms Hodgson had declared her hand on the subject of Dr Dawson’s contract with Parentline. The Complaints Procedure provides that when a matter is not resolved at CEO level or where it involves the CEO, it is to be directed to the Chair and from the Chair to the Board for resolution. This is standard process in disputes procedures and the Board had no option but to address Dr Dawson’s concerns when it received her report.

[319] Lastly on this subject of alleged conflicts of interest - I must find that the real conflicts of interest in the matters before me included Ms Hodgson believing she could and should deal in the first instance with Dr Dawson’s progress report/complaint. It was also a clear conflict of interest for Ms Hodgson to believe she could have a role in Board discussions/decisions on staff remuneration matters that supposedly included her own remuneration. And the most significant conflict of interest in this matter lay in Ms Hodgson’s actions in conspiring – as a member of Te Ropu Taki Kaupapa - with other members of that group to remove Board members and have herself reinstated as CEO of Parentline.

[320] To conclude my general findings I close with brief findings on the early issues that arose in the relationship which, I find, on their own gave no cause for alarm and generally there was a constructive and supportive relationship between members of the Board and Ms Hodgson between July 2005 and May – June 2006. However, there is an underlying tone in respect to the communications around the issues of violent videos issue and the request for information on salaries (February 2006 Board meeting). Ms Hodgson's communications presented as a somewhat autocratic and arbitrary about face on the violent videos issue. Equally, her response to the Board on the matter of the significant increase in salaries between the 2003/4 and 2004/5 years was dismissive.

[321] Now to the crux of the matter before me – the AFO project. This was an important project for Parentline – it involved a partnership contract with MSD and it featured prominently in Parentline's strategic plan that was approved on 5 April 2006. The development of commercial opportunities arising from the project featured as a project in its own right.

[322] I find the project itself involved developing questions to be matched with a carefully calibrated scoring system; an IT framework to support the analysis of the questionnaires; a literature review and a report to bring it all together. I find further, that someone with Dr Dawson's qualifications and experience in outcomes measurement became absolutely essential both to the project itself and to selling it to MSD as the funder and partner in the project. Unfortunately, by April 2006, Dr Dawson was resigning from Parentline and returning to Australia to be nearer her ailing mother.

[323] When it proved impossible to recruit another psychologist with the skills necessary to advance the AFO project Ms Hodgson decided to contract Dr Dawson to develop the questions for the questionnaires to be administered to clients and others to measure the efficacy of Parentline's programmes. I find this was probably a mistake in itself because the project lost all coherence and focus following Dr Dawson's departure. I will return to this point.

[324] In any event, it was Ms Hodgson who dictated the terms of the contract with Dr Dawson and in doing this both she (and probably Dr Dawson) miscalculated²² the two

²² Neither was practised and efficient in the use of computers or electronic communications.

- way traffic that would be required between Dr Dawson and staff at Parentline to develop and settle on the questions/questionnaires. I am not attaching blame for this because it was the first time that Parentline had ever contracted for work of this nature to be delivered this way. But I would expect, that in accordance with the statement that the contract had been entered into on the back of the history of goodwill between Dr Dawson and Parentline, that expectations under the agreement would have been adjusted to recognise these issues and some leeway allowed (to both parties) in the performance of the contract and in terms of assessing Dr Dawson's compliance with the contract. Ms Hodgson allowed no leeway whatsoever and, not only did she not allow any leeway to recognise issues that should have been scoped and understood prior to entering the contract, she started, from early May, to shift the goal posts regarding the deliverables under the contract and she made increasingly imperious demands of Dr Dawson on the basis of these 'new' deliverables.

[325] But on 13 April when the contract with Dr Dawson was signed all was well in the relationship. Ms Hodgson called two emergency meetings to have the contract with Dr Dawson approved out to December 2006. Ms Hodgson did not want Dr Dawson to take up other opportunities in Australia.

[326] However, by 18 May 2006 – just six weeks after this important project had been approved as the centrepiece of Parentline's strategic plan and 4 weeks after contracting with Dr Dawson – Ms Hodgson withdrew from the proposed contractual arrangement with MSD and made the decision to terminate the contract with Dr Dawson.

[327] How did this come about?

[328] I find there was an underlying problem with this project. In the first place it was never properly scoped – what did it involve and what resources were required? I accept Ms Hodgson was talking with MSD about scoping the project in May 2006 but this seems somewhat late in the piece as Dr Dawson had been contracted to the project by April. This should probably have been picked up by the Board when the project was discussed and approved. Further, no project plan was developed – at least not in the early stages of the project when it should have been developed. As I understand the evidence such a research project has no validity unless it can be replicated. Essential to this is a clear statement of the purpose of the research, the methodology followed etc. This needs to be incorporated in a written statement (plan)

to guide and underpin the research together with a statement as to the team members, project leader(s), tasks, task allocation, time frames for completion of each stage of the project including the reporting stages. It is here one would expect to see (linked to the purpose of the research and methodology) a statement as to the literature review(s) to be undertaken. This task (the development of a project plan) was clearly within operational role of Ms Hodgson, not to do herself but to ensure that it was done. She did not do it and a project plan was not developed until Margaret Evans and Rona Larsen met with senior staff on 20 June. A plan was then developed in consultation with senior staff and approved by the Board at 21 June Board meeting.

[329] I find that the failure to have a clear project plan in place at an early date in the project meant that the project team and other staff became confused about the project, its purpose and value to Parentline, their roles in the project and that of Dr Dawson. They came to view her contribution in terms of putting a few questions together to ask children – a task that (rumour soon had it) anyone at Parentline could do. And the fact she was rumoured to being paid handsomely to do it led to resentment of her personally. This was fertile ground for fomenting a revolt among staff against the project and Dr Dawson when Ms Hodgson decided she wanted to withdraw from the project because she had decided it was “*too big*” for Parentline.

[330] Now, to address Dr Dawson’s *actual* performance – particularly her performance under the 13 April. As I understand the evidence, Ms Hodgson is saying firstly that Dr Dawson was a very poor performer during her employment with Parentline and that shortly after commencement of the contract with Dr Dawson it became evident that she was not performing in accordance with the contract and that she did not:

- Meet deadlines for submission of questionnaires and/or did not provide questionnaires in time to allow for sign-off by senior staff and the TRA representative by due dates;
- Did not provide the literature reviews she was contracted to provide.

[331] It is also Ms Hodgson’s evidence that on 18 May she told Margaret Evans and Rona Larsen of her concerns regarding Dr Dawson’s non-performance and that Parentline needed to consider terminating the contract with her. Further, Ms Hodgson

told the investigation meeting that it was on this date (18 May) that she decided to terminate Dr Dawson's contract.

[332] On the matter of Dr Dawson's performance as an employee I not accept the evidence of Ms Hodgson on this or that of Mr Flanagan. It is interesting – given the fifteen hundred plus pages of documentation presented to the Authority in this matter that neither Ms Hodgson nor Mr Flanagan pointed to performance reviews detailing Dr Dawson's poor performance as an employee. If an employee were subject to the type of supervisory regime they detailed it would be almost essential to have documented that together with the reasons for it. Further, this evidence is contradictory to the statement of intent set out in the contract with Dr Dawson that the contract had been entered into in light of the history of good will between Dr Dawson and Parentline.

[333] In analysing Dr Dawson's performance (or non-performance) under the contract for services between her and Parentline, I have considered the email correspondence and other documentation available from late April to 30 May (the day after Ms Hodgson told Dr Dawson and Margaret Evans that she had terminated the contract)²³.

[334] This period covers only the first two templates (Transformers and Parents Building Bridges) because on 19 May Ms Hodgson unilaterally extended the due date of the Totally Awesome Kids (TAK) template to 7 June 2006.

[335] That review shows that:

- On 24 April, Ms Hodgson asked Dr Dawson to send the Transformers questions a few days earlier to enable her to take them to a staff meeting on 26 May. Dr Dawson responded that the due date for the submission of the template was 26 April.
- Dr Dawson had the questions ready for the Transformers template by the due date (26 April). However, between 7 and 25 April there was an internet failure on the Gold Coast and once Dr Dawson accessed her emails on 25 April, she found that Jan Hight (Parentline's IT expert)

²³ The decision to terminate Dr Dawson's contract for poor performance was taken and communicated on 18 and 29 May respectively. Given this I have only analysed the evidence on Dr Dawson's performance until the end of May.

had not submitted the template for formatting the questionnaires. She notes this as an ongoing concern on 30 April. I also find that Sharepoint (a secure web-based system that allows for communications to be shared and changes tracked) was not set up at Parentline's end until 8 May 2006. Despite these difficulties Jan Hight confirms to Dr Dawson on 12 May that the PBB assessments have been received.

- The issue (that Ms Hodgson expected templates to be submitted a few days prior to the dates set out in the contract) gathered some momentum and on 3 May Ms Hodgson set out her expectations regarding the dates that templates were to be submitted. She requested Dr Dawson to send them five to six days prior to the dates stipulated in the contract and she now requested that Dr Dawson follow a practice of formally signing off the templates prior to sending them to Parentline.

On this, I accept the contract provides for the templates to be submitted and signed off by staff by the stipulated date and that there was a mismatch in expectations between Ms Hodgson and Dr Dawson on this point. However, the evidence does not confirm that this was a major issue between the parties at this time.

For example, on 28 April and 2 May Ms Hodgson secures Board approval for the contract with Dr Dawson until December 2006. Dr Dawson is advised of this by Ms Hodgson.

And on 9 May Ms Hodgson wrote (in an email to Dr Dawson):

“Once we meet for business on 29 May we will discuss the formal preview and signoff procedures”.

And on 15 May, Ms Hodgson wrote regarding the signoff by senior staff and TRA representatives:

“Gayle will formally view the two sent templates and signoff and Val Kathy and Megan will come back to me re their comments on the Parents BB template”.

- On the matter of the literature review, I find that it is Dr Dawson's evidence that is the more reliable guide as to what was required and I accept she discussed with Ms Hodgson at the time the contract was being developed that a literature review on the broad question of outcome measurement was needed to support the project. Further, I find that the literature review was completed by Dr Dawson²⁴.

I also find that Ms Hodgson was confused on this subject. On 9 May she wrote in a PS to an email to Dr Dawson:

"Another point. At the end of your part in this project or at the end of each template, I think we need a clinical statement from you saying you have researched the plan and designed this template for example anger management, by researching xxx and evaluating xxx in the literature".

(Emphasis mine)

I accept that staff engaged in the project began asking about literature reviews. However, they had no knowledge of the terms of the contract in this regard and it was only after discussions with senior staff that on or about 17 May Ms Hodgson settled on a demand that Dr Dawson provide literature reviews for each template submitted.

It was this demand that Dr Dawson described as "*a shifting of the goalposts*" and indeed it was.

[336] To recap on this, I find there were misunderstandings and other issues that arose with respect to the production of the first two templates. However, none of these issues were of such seriousness that it could be said that Dr Dawson was in breach of her contract with Parentline and Ms Hodgson did not see it that way either.

[337] On 12 May, Ms Hodgson emailed Richard Wood with questions about the project and in that email she stated:

"Parentline has full confidence in Narelle's professional performance and capacity".

[338] And on 17 May Ms Hodgson emailed Parentline staff:

²⁴ It is included in the documentation filed with this case.

“Prior to Narelle’s coming on the 26th we have planned two meetings that I would like you to attend as a priority. We want to supply to Narelle 12 template headings ...”

[339] To conclude on this subject, I note that in the written submissions that Ms Hodgson prepared on 30 May (she spoke to it at the Board meeting of 7 June), Ms Hodgson wrote the following:

“It has become evident that the communication and distance between the template designer and Parentline was difficult, intermittent and required a reality check”.

And:

“The template designer will have completed the three initial templates and an overview of Parentline’s assessment procedures by 7 June as per the letter of agreement”.

[340] In conclusion, I find, that on 30 May when Ms Hodgson wrote this document she was advising the Board that Dr Dawson would have met the terms of the contract – to provide templates and an overview of Parentline’s assessment procedures by 7 June (remembering that it was Ms Hodgson who unilaterally extended the timeframe for submission of that TAK template to 7 June). She also advises that distance/communication difficulties had arisen with regard to the development of templates requiring a reality check²⁵.

[341] That is how Ms Hodgson saw the issue relating to Dr Dawson’s performance as of 30 May. These statements simply do not accord with Ms Hodgson’s damning criticisms of Dr Dawson’s performance presented to the Authority.

[342] Despite Dr Dawson’s adequate performance of her contractual obligations in sometimes difficult circumstances not of her making, Ms Hodgson decided on 18 May to withdraw from the project and terminate the contract with Dr Dawson.

[343] I find she did this because she had been reflecting since her meeting (on 11 May) with MSD when the words “*big, big big*” were used in relation to the project, that the project was too big for Parentline. From the time she made this decision she started to back track on the project. In an email to Richard Wood on or about 12 May

²⁵ I accept that she also told the Board at this meeting that Parentline could continue the project without Dr Dawson.

Ms Hodgson talks about “*if a contract is agreed*” and she suggested shifting the cost of Dr Dawson’s involvement in the project after 7 June to MSD.

[344] It is interesting, and I note, that around this time (16 May) Ms Hodgson signalled to a Finance Sub-Committee of the Board that Parentline was in no position to take on responsibility for the IT aspects of the project. She also signals to that subcommittee that MSD has signalled the availability of funds for “*a demonstration model*”. I make no particular findings on these points. They could have amounted to proper advice to the subcommittee, but in the context of all that went on thereafter they are interesting developments.

[345] However, when Ms Hodgson had Jane McCallum trial the Transformers questionnaire on one child prior to discussions and training that was to take place – and in respect of which Dr Dawson was contracted to provide – she departed from what little script there was relating to the project. It was nonsensical and immensely damaging to the integrity of the project. The fact she could persuade a seemingly qualified staff member to do this demonstrates the problem with having no coherent project plan. The evidence relating to this trial also served to demonstrate Ms Hodgson’s own confusion about the project. She spoke about a questionnaire with eight pages of questions for a child and stated this was too much for a child and that it needed condensing. As I understand it, however, the questions submitted by Dr Dawson included questions for the child, the parent/carer, counsellor and teacher. Further, the questions were to be interpreted for each person interviewed to ensure they were appropriately expressed for each interviewee and that all interviewers were “*singing from the same song-sheet*” as Donna Ewart described it. And all of this was part and parcel of the discussions and training to be undertaken by Dr Dawson during her visit to Parentline over 26-29 May.

[346] Having found (from a shonky trial) that the questions asked of one child “*traumatized the child*” Ms Hodgson went to meet Ms Evans at her home on 18 May. I find on her own evidence that she had decided with senior staff prior to that meeting to withdraw from the project with MSD. However, I find that when she met with Ms Evans, Ms Larsen and Tonga Kelly that day she told them only that a template had been trialled and it did not work; that the project was too big for Parentline and she wanted to postpone or cancel it and that she wanted an organic/indigenous model. She could not explain what this meant. We see some but not all of the truth in these

statements to the assembled Board members. Ms Hodgson had decided the project was too big for Parentline. She did want to withdraw from the proposed contract with MSD but she did not say she had already taken a decision to withdraw from the project. And it was probably true the template did not work, but the trial (if one could call it that) was wholly inappropriate. I find that Ms Hodgson did not tell the Board members that day that Dr Dawson was not providing the work she had been contracted to provide.

[347] Ms Hodgson was sensibly advised to take up her concerns regarding the templates with Dr Dawson on her visit to Parentline later that month and, I find, Ms Evans specifically referred to the fact that the piloting of the questionnaires had not been expected to take place until after Dr Dawson's visit.

[348] Dr Dawson's proposed visit was discussed and Ms Hodgson complained that Dr Dawson expected to be put up at Parentline's expense during her visit. This was, I find, a realistic expectation on Dr Dawson's part since it had been agreed and recorded in the contract between her and Parentline that her reasonable expenses would be met by Parentline. At the very least, I find, this meant providing her (in addition to airfares) with accommodation for four nights, transport to and from the airport and transport to and from her accommodation to Parentline's offices and probably some contribution to her food expenses for 3-4 days. That Ms Hodgson was having none of this meant she put Parentline in breach of its contractual obligations under the contract.

[349] I find, further, that when Margaret Evans offered the use of her cottage for Dr Dawson that Ms Hodgson fell on that offer with thanks. For her to then turn the fact that Dr Dawson stayed in Margaret Evans' cottage for four nights into a fiction – that she was there for 10 nights and that this was evidence of an inappropriate relationship between Dr Dawson and certain Board members – is outrageous.

[350] Further, I find, that when Ms Hodgson discovered that Dr Dawson was arriving in New Zealand that day and that Rona Larsen was collecting her from the airport she became very, very angry. I could understand her being puzzled that Dr Dawson had not mentioned that she was coming to NZ on the 18th especially since there had been email communication between them that day. Dr Dawson said she thought Ms Hodgson would have known of her arrival since Parentline had funded the air tickets. At the end of the day, however, Dr Dawson was an independent contractor, who I

have found was substantially meeting her contractual obligations and she had no other duty to Parentline and Ms Hodgson than that. Her movements were entirely for her to decide and given she still had a house to pack up prior to 26 May it is not surprising she would be making her way to New Zealand some days prior to her appointments with Parentline to do that. Ms Hodgson's anger regarding Dr Dawson's whereabouts at this time was inappropriate. Neither was it logical to argue Dr Dawson should have been in Australia getting on with her work – with laptops and all the necessary knowledge in her head or accessible via internet it did not matter where Dr Dawson performed the work.

[351] Ms Hodgson's concern at not having been told that Dr Dawson was coming to New Zealand on 18 May was greatly exacerbated by the advice she received that Rona Larsen was picking Dr Dawson up at the airport. Her reaction was, I find, extreme and I can only conclude she took umbrage that *her dear friend* Rona Larsen had formed or was forming a friendship with Dr Dawson. I have already found **there** was no special friendship between Dr Dawson and Rona Larsen at this time and that there was nothing sinister in the fact that Rona Larsen was collecting her from the airport.

[352] However, from the time that Ms Hodgson learned that Dr Dawson was arriving in New Zealand that day and that Rona Larsen was collecting her, she determined to terminate the contract with her.

[353] After leaving Ms Evans' home that day Ms Hodgson returned to the office and emailed Richard Wood at MSD withdrawing from the proposed contract with that organisation. Shortly thereafter she emailed another Board member, Kirstyn Buezeval attaching the email to Richard Wood and informing Ms Buezeval that she had informed Margaret, Tonga and Mark Flowers of the decision to withdraw from the contract. She had done no such thing and her email to Ms Buezeval was misleading and deceptive.

[354] Moving on chronologically now.

[355] On Ms Hodgson's part, communications between her and Dr Dawson on 18 and 19 May 2006 were tart, abrasive and denying. Ms Hodgson did not accommodate Dr Dawson's reasonable requests for independent accommodation, transport, or her requests for access to Parentline's premises to complete the TAK template and to

collect her belongings. It must have been confusing and stressful for Dr Dawson to be treated this way, although she was most temperate in her description of these events. However Mr Hodgson's treatment and conduct towards Dr Dawson in her communications on 18 and 19 May were nothing compared to what was to come.

[356] Ms Hodgson's treatment of Dr Dawson during her visits to Parentline over 26 - 29 May was appalling.

[357] I also accept Donna Ewart's evidence that prior to Dr Dawson's arrival (probably between 18 and 22 May) Ms Hodgson called a meeting of staff and asked them if they wanted to continue with the project. All the staff said "no".²⁶ Given the lack of information that had been provided to staff about the project and Dr Dawson's role in it, this is not surprising.

[358] I also accept Ms Ewart's evidence that at this meeting Ms Hodgson told staff that the templates would be developed in house for Parentline only and that Parentline would receive MSD funding for this.

[359] And I accept Ms Ewart's evidence and that of Narelle Dawson that at the meeting of 26 May Ms Hodgson commenced by confirming to staff the project was not working and that Parentline would not be proceeding with it. I accept that Jane McCallum then advised those present that the template had been trialled and that it was "*clumsily written*". At some stage Ms Hodgson handed the meeting over to Dr Dawson to "*undertake the training*". It is hard to fathom the logic of this given that Ms Hodgson had advised the project would not be proceeding, but nothing about this matter surprises me any more.

[360] On the subject of the one on one meetings Ms Hodgson had with Dr Dawson on 26 - 29 May I find that Ms Hodgson's conduct towards Dr Dawson was contemptible. Far from practising "*good employee relations*" (in allowing Dr Dawson the weekend to think about a proposal²⁷ that was a *fait accompli*) Ms Hodgson's conduct could hardly have been worse. Of course, given Dr Dawson was an independent contractor, she did not enjoy the same rights to fair and reasonable treatment enjoyed by employees. Had she been an employee and had she brought a complaint about this treatment to the Authority, she could rightly have expected very generous

²⁶ Ms Ewart told the Authority that she said "no" because she was too busy and she thought the project was too big and had not had a proper evaluation.

²⁷ The termination of her contract.

compensation indeed for the treatment meted out to her by Ms Hodgson over this period.

[361] Further, I find, that the exchange that Ms Hodgson insists occurred on 26 May (*when she says Dr Dawson told her that she was taking advice from Margaret Evans Rona Larsen and that the contract would be continued*) actually occurred on 29 May²⁸ - albeit it was not in the terms described by Ms Hodgson. I find the genesis for this statement (made repeatedly by Ms Hodgson to the Authority) was Dr Dawson's query on 29 May that she believed she had a binding contract and her question of Ms Hodgson "*had she discussed the termination of the contract with the Board*". It was at that moment that Ms Hodgson phoned Ms Evans and stated she was terminating Dr Dawson's contract.

[362] Ms Evans, cognisant of the risk to Parentline in unilaterally terminating what could be a binding contract, told Ms Hodgson to record her concerns in writing to allow the matter to be discussed by the Board at its meeting on 7 June.

[363] I will diverge for a moment here. There was much criticism of the Board interfering in operational matters. In the first instance I have regard to the findings of the Court of Appeal in *Hickey v Maori Legal Services – Te Ture Manaaki O Rehua Trust* CA 15/04, where the Court said on this subject:

“There is no overarching legal principle that requires the Board to respect such a distinction although it is a practice adopted by many organisations including those in the not for profit sector. The actions of Mr Dewes or the Board do not amount to disadvantageous treatment of Ms Hickey just because they constitute the exercise of a management role rather than a governance role”

[364] Further, the evidence is clear that Ms Hodgson commonly sought the advice of Ms Evans on operational matters. I accept too that the Board (predominately through Ms Evans) did involve itself in what otherwise would have been strictly operational matters over the AFO project. It did this because it perceived there was evident risk to the reputation and bottom line of the organisation in some of the actions being proposed by Ms Hodgson – particularly her proposal to terminate what could be a binding contract. The risk was, I find real and Board's should put their hands on the tiller in such circumstances. Intervention in such circumstances was recognised by Mr

²⁸ Ms Hodgson's resignation confirms this was the date this conversation took place.

Flowers. He did not see the risks to Parentline at the time and thought that the central problem could have been resolved by negotiating out of the contract with Dr Dawson. It was a perspective but the Board, as a whole, saw it differently and in the end the Board's decision was unanimous.

[365] Before turning to the subject of Ms Hodgson's memorandum to the Board dated 30 June I need to intersperse here findings on another topic.

[366] I find that following the date Ms Hodgson withdrew from the proposed contract with MSD (18 May) Ms Hodgson made herself busy chasing funding from MSD for an alternative project i.e. the in-house organic/indigenous model she had come to favour. She wrote to Peter Hughes (CEO of MSD) on 22 May (copied to Richard Wood) asking for a special grant to work on templates internally. She said in that letter:

"The area which caused me to slow the process down was the fourth element template design regarding measuring Parentline's 21 various services to children and families.

We trialled several templates and discovered very quickly that our researcher/psychologist, Dr Narelle Dawson, International Measurement scales and the Parentline client staff testing showed a huge gap in freely and simply collecting the data appropriate to the adult or child client".

[367] I don't know what the second paragraph in this statement means and certainly it is not the case that Parentline had trialled several templates to that point. However, more importantly I note that Ms Hodgson did not tell Peter Hughes and Richard Wood that she had decided to terminate Dr Dawson's contract or that this in-house project would be proceeding without the input of a psychologist specialised in outcomes measurement.

[368] I note too that by 12 June Ms Hodgson had stitched up a grant from MSD, whereby Parentline would receive the sum of \$60,000 to develop *"a framework for measuring the effectiveness of Parentline's range of services provided to children and families (the initiative), with a view to creating an indigenous measurement of outcomes templates for children at risk and their families"*.

[369] The Board did not know that Ms Hodgson had withdrawn from the original contract proposal with MSD and it was to be sometime before Ms Hodgson advised a

Board member²⁹ that she had secured funding to develop and trial “indigenous templates”. I will return shortly to what she did tell the Board about these developments.

[370] Moving on. I find that in response to Ms Evans’ request that she prepare a written statement regarding her concerns in relation to Dr Dawson’s performance for presentation to the 7 June Board meeting, Ms Hodgson did prepare a memorandum for that Board meeting. However she did not submit it with the Board papers. It is interesting to note that in her oral evidence Ms Hodgson said that she met with Mark Flowers (prior to the 7 June meeting) and read this memorandum out to him. She said that she did not submit it to the Board, because his advice was “*not to submit it to the Board because it was none of the Board’s business*”.³⁰

[371] However, when Ms Hodgson later decided that the Board should formally receive the document she submitted it (via Ms Evans) writing:

“I quickly addressed the need to minute last night’s meeting and enclose my understanding of the meeting given that Gayle did not return to the room to take notes. Please address, alter, add etc and send back so I can forward out. [This paragraph addresses the minutes of the previous evening’s meeting].

Re the memo

*You will see * regarding mention of a memo (attached). I was going to send to all the trustees on 30 May but I decided not to ensure all interactions were strictly professional and to keep **all** discussions re any of those issues to face to face with the Parentline Board. (you can check this fact with Moyna and Anne). That was a mistake on my part.*

The memo shows a well thought through analysis of my MFO plan showing all aspects of my decision.

I believe I covered all these aspects at the Trust Board meeting.

I think the Board should see this memo and I know I made a mistake in not including it in the Trust Board post outs.

Question – how should I show the memo notes and re-arrange the minutes?

What is your advice?

Maxine”.

²⁹ On 27 June Ms Hodgson advised Ms Evans that she had secured funding for this project.

³⁰ I make no findings that Mr Flowers did say this only that Ms Hodgson told the Authority this. It was not put to him for comment. Mr Flowers did tell the Authority that the fact Ms Hodgson did not put up a written report for consideration at the 7 June meeting “*was not as he would have liked it*”.

[372] Ms Hodgson's evidence on this (taken together) reveals a dismissive, misleading and deceptive approach by her to communications with the Board.

[373] I find Ms Hodgson's advice to the Board at the 7 June meeting differed somewhat from her written statement of 30 June because I find that by 6 June³¹ Ms Hodgson was in receipt of Dr Dawson's report to her and the Board detailing her concerns over Ms Hodgson's proposal to terminate her contract and had given it to senior staff who had a meeting about it that day to respond to it. It seems from the evidence (it is difficult to be sure of this with 1,500 plus pages of documentation) that this is the first time that the Board or even individual Board members were advised by Ms Hodgson that there were concerns relating to Dr Dawson's meeting deadlines for the submission of templates.

[374] The Board twice asked Ms Hodgson to leave the meeting, firstly to allow Mr Flowers to consider this written documentation submitted to that Board meeting and for the Board to discuss it and secondly after having considered and discussed that material to consider Ms Hodgson's oral advice on the topics in question.

[375] Ms Hodgson later took great umbrage at being asked to leave the meeting, so the Board could consider and discuss the matters and the information provided. I will consider the tone of the Board meetings on 7 and 21 June later, and the manner of the request to Ms Hodgson that she and Ms Fletcher withdraw to allow the discussions in committee. But in principle, I would say it was entirely appropriate to ask Ms Hodgson to withdraw. It would have amounted to a conflict of interest for Ms Hodgson to remain and/or to take part in the discussions on a subject she had a vested interest in – particularly the termination of Dr Dawson's contract.

[376] Lastly on the matter of the 7 June meeting, Ms Hodgson sought (in papers submitted to the Board) *agreement to postpone MSD/Parentline project due to template provision. CEO seeking to reach agreement around an extended phase 1 and to keep MSD relationship intact.*

[377] There was no mention by Ms Hodgson at the 7 June meeting that the proposed contract had in fact been canned, just that she had advised MSD *that the original timetable for phase 1 would not be met.*

³¹ Paul Flanagan's evidence.

[378] Ms Hodgson did advise the Board in the papers delivered to Board members that she “*was seeking to reach agreement around an extended Phase One and keep MSD relationship intact*”. I find with regard to this advice to the Board for the June 7 meeting that it was misleading or likely to mislead the Board and that the Board was misled by it. The Board did not know until after Ms Hodgson left Parentline that she had, on 18 May, unilaterally withdrawn from the proposed contract between MSD and Parentline and that it was not an ‘extended Phase One’ that was being contemplated by Ms Hodgson but a much scaled down in – house exercise. It did not involve a partnership contract with MSD and it could not (the way it was then conceived by Ms Hodgson) have had the integrity³² needed to advance Parentline’s reputation and commercial interests in the way that was envisioned by the project that took centre stage in Parentline’s strategic plan approved only weeks before. It is, I find it is this type of half advice/advice dressed in spin that led Board members to despair in relation to the amount and quality of information received from Ms Hodgson and which led Mr Flowers to tear out his hair trying to reconcile the Board member’s statements that Ms Hodgson was withholding information and Ms Hodgson’s advice to him that she was providing information to the Board.

[379] Fortunately for Ms Hodgson the Board confirmed her proposal and agreed that the original project be adapted. However the Board was not convinced that Dr Dawson’s contract should be terminated with no further ado and the Board decided unanimously to seek legal advice on the status of that contract.

[380] This was an entirely unsatisfactory outcome from Ms Hodgson’s perspective and she went on to re-double her efforts to bring the Board to its senses on the subject of Dr Dawson.

[381] Moving on in chronological order from the 7 June meeting

[382] On the matter of the dispute between Ms Hodgson and Ms Evans regarding her attendance at the meeting with Tanya Peterson to obtain advice on the status of the contract with Dr Dawson I put it in the same class of those issues that pop up from time to time in this matter – that Ms Hodgson’s involvement in this gave rise to conflict of interest issues because she had demonstrated a vested interest in the

³² As it was conceived at this time it was to proceed without a psychologist qualified in outcomes measures and there is no evidence that thought had been given to the analysis of any data produced. Again there was no project plan to promote the new project.

outcome. Further, such contracts should be interpreted on the plain meaning of words of the contract without regard to advice as to what one or other party to the contract thought they meant when drafting it. Certainly, in other circumstances, obtaining advice on a contract would have been within the operational scope of a CEO's duties but with Ms Hodgson having clearly declared her position on the contract and having the propensity to make her views known in strident terms, I cannot say there was a breach of duty towards her in first advising her that it was not appropriate for her to attend this meeting and then directing her to that effect.

[383] The meeting on 18 June 2006 at Margaret Evans' home attended by Ms Hodgson, Ms Fletcher, Ms Evans and Ms Larsen marks the moment when this saga took a very disturbing turn. I find the sole reason Ms Hodgson wanted this meeting was to keep up the pressure on the Chair and Deputy Chair of the Board on the subject of Dr Dawson's alleged poor performance with a view to Ms Hodgson ultimately getting her own way and ridding herself and Parentline of Dr Dawson. Somewhere about this time Ms Hodgson lost all perspective on the matter of Dr Dawson, albeit I find Dr Dawson and her performance just became the unfortunate focal point in a determined push by Ms Hodgson to get her own way. It could have been any other issue where the Board said "no" to Ms Hodgson.

[384] On the matter of Ms Hodgson's allegations against Dr Dawson that she improperly accessed Parentline premises and computers raising concerns about criminal activity and the theft of Parentline's intellectual property, I find that Parentline staff commonly worked outside of normal hours and that Dr Dawson very frequently worked late at night and on weekends. I find that this was well known to Parentline staff and to Ms Hodgson and it was also known to Parentline staff that Dr Dawson accessed their computers (using her own log in details), either when her own computer was down or when she needed a scanner. I find these allegations of impropriety by Dr Dawson in accessing Parentline's premises and computers to be, in their entirety a fabrication on Ms Hodgson's part. It was a fabrication put together for the base reason that Ms Hodgson wanted to secure the Board's agreement to terminate Dr Dawson's contract on the basis she was not performing under the contract. I have found, however, that Dr Dawson was in substantial compliance with her contractual obligations to Parentline. Despite this, I find that at Ms Evans' home that day Ms Hodgson, assisted by Ms Fletcher, indulged in an assassination of Dr Dawson's performance and character that was completely untrue and unwarranted. Ms Hodgson

conceived and drove this attack and it was entirely reprehensible conduct on her part. Lastly I find that in promoting this untruthful “concern” first to Ms Evans and Ms Larsen and then to the Board, Ms Hodgson was in breach of her statutory obligations of good faith i.e. not to mislead or deceive her employer.

[385] Ms Evans wisely cautioned Ms Hodgson about relaying these allegations to the Board because they would be seen as vindictive. This was not “*advocating for the contractor*” as Ms Hodgson would have it. It was good advice based on Ms Evans and Ms Larsen’s personal knowledge of Dr Dawson’s work habits. Unfortunately Ms Hodgson did not take this advice. Ms Evans did tell Ms Hodgson that she supported her right to put the matter before the Board.

[386] Rather oddly, on 19 June Ms Hodgson emailed Ms Evans that she intended to pay Dr Dawson the first instalment (\$20,000) due under the second phase of the contract. I say oddly, because the issue of the continuation or otherwise of Dr Dawson’s contract was not to be addressed by the Board till 21 June. Ms Hodgson was advised to hold off on paying Dr Dawson until the Board considered the matter. Ms Hodgson told the Authority the Board’s decision to pay Dr Dawson the first \$20,000 payable under the second period of the contract was one of the main reasons she decided she had to resign her position. This she said was because the decision compromised her relationship with MSD. Ms Hodgson did not mention this in her letter of resignation or the attached memorandum and given she herself initiated this payment to Dr Dawson I am sceptical of her claims on this point.

[387] At the Board meeting on 21 June the Board considered:

- The legal advice regarding the status of Dr Dawson’s engagement i.e. that she was an independent contractor; and
- The AFO project plan developed in consultation with staff which, I find, brought them on board with the project despite earlier voiced reservations.

[388] I note that nowhere in the Board papers or other advice submitted for that meeting does Ms Hodgson advise the Board that she had, on 12 June, signed up to a letter of grant for \$60,000 with MSD to develop indigenous templates in house. It is possible though, that the grant (dated 12 June) was not in fact advised to Parentline and signed by Ms Hodgson and Ms Fletcher on that date. I say this because it was not until 27 June 2006 Ms Hodgson informed Ms Evans in an email that a grant had been

approved. This email is interesting for another reason too. It is breezy and upbeat and it contains no hint of the traumatic state that Ms Hodgson was apparently in, as described in her letter of resignation and the associated memorandum penned on 25 June and delivered on the 26th.

[389] I find, that in the Board discussions (held on 21 May) Mr Flowers did raise the issue of negotiating out of the contract with Dr Dawson and much has been made of the fact no consideration was given to negotiating out of this contract. I find, however, that it was Ms Hodgson who set the scene for the advice taken on this contract. Ms Hodgson simply terminated it (or tried to). It was not in her mind to negotiate with Dr Dawson. When Dr Dawson raised her complaint with the Board, the Board had no option but to seek advice as to its status particularly given that Ms Hodgson was claiming it was “*a letter of agreement*” not a contract. The Board obtained advice that it was a binding contract and decided in a unanimous decision to continue with the contract. The project plan, too, was approved. The Board was entitled to take these decisions.

[390] Then, Ms Hodgson was invited by Ms Evans to put her concerns re Dr Dawson’s late night entries into Parentline’s premises before the Board. This I find was an escalation of Ms Hodgson’s reprehensible conduct relating to Dr Dawson and, I repeat, a breach of her duty to be honest with the Board.

[391] I now turn to address the issues of the tone of the exchanges between Ms Hodgson and the Board/individual Board members over the months of May-June 2006 and particularly at the 7 and 21 June Board meetings.

[392] Ms Hodgson is very critical of the conduct of the Board and Ms Evans towards her at this time and her views have been explained elsewhere in this determination. Mr Flowers was concerned at the lack of respect shown towards Ms Hodgson at Board meetings particularly the meetings of 7 and 21 June 2006. Other witnesses disagree with this evidence and their evidence, too, has been covered.

[393] Before addressing the issue of the tone of the meetings held on 7 and 21 June I need to address Mr Flowers’ evidence in greater detail.

- Mr Flowers accepted there were issues such as CEO reports to the Board and financial reporting that needed tightening up on. He said he helped Ms Hodgson with this and she seemed open to his assistance. He felt the issues

were not insurmountable and that a CEO/Board retreat was necessary to ensure that the Board/CEO roles were clearly delineated. I find this is constructive thinking on his part but even keeping in mind the seriousness of the relationship breakdown between Ms Hodgson and the first Board of Parentline, it cannot be said that that Board did not try in good faith to find ways forward out of the difficulties in the relationship between that Board and CEO. This Board authorised Ms Hodgson to take advice on the appropriate organisational structure for Parentline. The Affirmative Review was another initiative approved and paid for by the Board. Further, the Board put its money where its mouth is when it participated in a lengthy mediation with Ms Hodgson in April 2005. Agreements were reached and had those agreements been implemented the issues Mr Flowers saw as needing to be addressed would have been addressed. But it was Ms Hodgson who walked away from those agreements, despite being party to them.

- Mr Flowers was critical that the issues of concern relating to the AFO project were not brought forward to the Board in reports to allow proper discussion. On this, I must say that Dr Dawson advised the Board in writing of her concerns that Ms Hodgson had terminated what she believed was a binding contract. She set out clearly the events and issues as she saw them. Ms Evans made this available to Board members for the 7 June meeting and provided a succinct summary of the issues facing the Board. Ms Hodgson was the only one not to provide a written report. Mr Flowers said this was not as he would have liked it. I address this in greater detail at a later point but briefly I find that it was Ms Hodgson who failed to put appropriate submissions before the Board on the issues of concern to her.
- Mr Flowers was also critical of the fact that “*was made to receive a letter from staff*” at the meeting of 7 June, and he took it that Margaret Evans was encouraging staff to come to the Board meeting. He did not think the Board should receive it at least not until there had been a proper discussion about the whole matter with Ms Hodgson having a proper opportunity to comment. He said this was an example of the mess the Board was in and it was premature for the staff to be communicating with the Board. It was his evidence there seemed to be no understanding of or respect for the proper lines of communication.

On this point Mr Flowers criticism of Ms Evans was entirely misplaced. It was Ms Hodgson who arranged for staff to be given a copy of Dr Dawson's report and who pressed Ms Evans in telephone and email communications to have the Board meet Ms Aitken (a local HR consultant) and staff at the 7 June meeting and when the Board decided against meeting with staff at that meeting, it was Ms Hodgson who tabled their letter. It is just one of many examples of Ms Hodgson drawing staff into her issues with the Board and I prefer the evidence of Ms Ewart and Dr Dawson as to what Ms Hodgson said at the meeting on 26 May – particularly given that on 18 May Ms Hodgson had indeed withdrawn from the proposal to contract with MSD in a joint MSD/Parentline project.

[394] I can agree that Mr Flowers picked up frustration and annoyance among Board members regarding Ms Hodgson's performance and conduct – particularly at the 21 June meeting. However, Mr Flowers has not weighed the contribution of Ms Hodgson to the matters that underlie this tone of frustration and annoyance expressed by Board members.

[395] The relationship between the Board(s) of Parentline and Ms Hodgson its CEO was unusual. Ms Hodgson had been her own boss for 25 years. There had been a culture of challenge and defiance in her relationship with the first Board and after a honeymoon period with the second Board tensions had arisen over a number of issues. I find that Ms Hodgson never truly accepted the oversight of a Board of Trustees. This coupled with the fact she is a formidable advocate for any objective in her sights led her to readily up the force of her advocacy for any position. She frequently spoke (in her evidence) of heated conversations with individuals – always when the other party to the discussion was not easily yielding to her point of view. Ms Hodgson has, I find, a combative style of communication when she is not getting her own way.

[396] This set the context for exchanges on the subject of the AFO project and Ms Hodgson's conduct in May and June 2006 and the tone for the meetings of 7 and 21 June 2006. So I accept that there was (on occasion) an air of tension and sharp and immoderate language used at these meetings in discussions that took place both in the open Board meetings and in committee and that Board members were sometimes frustrated and annoyed with Ms Hodgson and that this showed. But these are some of the things the Board was faced with:

- Ms Hodgson had been asked to provide a written statement regarding her concerns regarding the AFO project and Dr Dawson's performance. She did prepare a written statement but she did not provide it to the Board and instead spoke to it. In essence she wanted the Board to agree to postpone/adapt the AFO project and she wanted to continue the project without Dr Dawson. In support of this she asked the Board to have regard to "*Parentline's CEO years of experience, nous, gut reaction and wisdom*". To be fair, Ms Hodgson did cite some other reasons in support of her proposals e.g that she had been too ambitious in respect to the timeline for the project but nowhere, in her written or oral advice to the Board on these proposals, is there a cogent, considered submission accompanied by practical examples of her concerns or the "*proof*" of Dr Dawson's non-compliance with her contract (that she now says she provided to the Board on 7 June).

Frankly, I find Ms Hodgson's advice to the Board on 7 June to be a poor presentation in support of a proposal to downsize a very important project for Parentline, involving a contract with MSD, and which had been approved only two months previously as the centre piece of Parentline's strategic plan, It is even less acceptable as support for the proposal that Parentline terminate what was a binding contract with Dr Dawson – a contract that only weeks before Ms Hodgson had rushed through emergency meetings of the finance subcommittee for its approval.

- Then on 21 May Ms Hodgson raises with the Board her concerns that Dr Dawson had been entering Parentline's premises at late hours and accessing computers. This happened immediately after the Board had decided to continue Dr Dawson's contract. The members of this Board are intelligent business people who give their time voluntarily to support community organisations. They saw this for what it was and that is not surprising given it was a transparently self-serving sham Ms Hodgson was promoting. Neither, am I surprised that some expressed their frustration with it and (her for submitting it) in less than complimentary terms.

[397] However, despite the air of annoyance and frustration with Ms Hodgson's performance and conduct that was apparent at the June 21 meeting, I do not accept

that the Board arrived at any conclusion nor was it expressed that Ms Hodgson “*had to go*” or that it should seek her resignation. Neither do I accept that Mr Flowers made it clear to other Board members (in committee) that the Board was leaving Ms Hodgson with no choice but to resign with all the implications this had for a constructive dismissal claim. If things were this bad, I find, he would have insisted on entering at least a dissenting voice regardless of his acquiescence in the unanimous votes taken at that meeting. Further, when Mr Flowers spoke to Ms Evans after his resignation, she asked him to remain on the Board to see the issue through. Had he done so matters may have taken a different course because he would have brought a different perspective to the issues before the Board. Even had he ended up on the losing end of a vote to accept Ms Hodgson’s resignation that fact and his continued contribution may have caused the Board to pause and reflect when staff and Te Roopu Taki Kaupapa interceded with the Board to rescind its acceptance of her resignation.

[398] Lastly on this I do not accept that Ms Hodgson was directed to leave the Board meetings on 7 and 21 in a dismissive tone and I don’t accept she was recalled to the 7 June meeting and told to “*explain herself*”. She was asked to put her perspective on the matters for discussion and resolution. I note on this that Ms Hodgson said she had never previously been asked to leave a Board meeting to allow matters to be discussed in committee³³. That is not the case. Board Minutes record that Ms Hodgson was asked to leave a Board meeting in December 2004 to allow matters to be discussed “in committee” – there is no evidence that Ms Hodgson took umbrage with this. I find that Ms Hodgson was aware of this convention and it was entirely appropriate that this happen given Ms Hodgson had an interest in the matter under discussion.

[399] In closing on this issue, I conclude, that if indeed there was a lack of respect demonstrated towards Ms Hodgson during exchanges and Board meetings over the months of May – June 2006 and that the June Board meetings, Ms Hodgson contributed to it by her confrontational style of communication, by failing to provide cogent and persuasive support for her proposals (which itself was disrespectful of the Board and its role) and by submitting patently untruthful information to the Board to shore up her escalating campaign against Dr Dawson.

[400] Moving on. It seems to me to be drawing a long bow to say that Ms Hodgson *agreed*³⁴ with the Board’s decision to continue Dr Dawson’s contract and to take no

³³ She did accept it had happened once the particular instance was put to her.

³⁴ Ms Evans’ evidence.

further action re the complaints about Dr Dawson accessing Parentline's premises and computers however she did not dissent further on 21 June and seemingly she accepted the Board's decisions and advised she would be the AFO project leader which she later advised staff at a staff meeting.

[401] It important to recap here just what Ms Hodgson had achieved in respect of her proposals to the Board in relation to the AFO project. She had achieved her objective of downscaling the project to the development and trialling of in – house indigenous templates but she had not achieved her objective of terminating the contract with Dr Dawson. How Ms Hodgson expected to imbue the project with the necessary integrity without a psychologist with specialist qualifications in this type of research I don't know. I don't accept Ms Hodgson's evidence that Parentline staff had these skills.

[402] But Ms Hodgson was not putting her failure to rid herself and Parentline of Dr Dawson behind her. I find that on the weekend of 24-25 June Ms Hodgson decided to resign and that on Sunday 25 June she gathered with trusted advisors Ann McClure, Moyna Fletcher and Val Longman to draft or redraft her resignation. Ms Hodgson's resignation and the attached memorandum, both of which were sent to Board members and to members of Te Roopu Taki Kaupapa, are expressed in highly emotive terms and on first reflection these communications have all the hallmarks of a resignation given in the heat of the moment (*Boobyer v Good Health Wanganui Ltd* WEC 3/94). However, on more careful reflection these communications lack the essential feature of a resignation given in the heat of the moment because it was drafted and submitted days after the Board confirmed the arrangements for progressing the adapted AFO project and the continuation of Dr Dawson's contract.

[403] Having considered all the evidence in this matter I must find this time was being used by Ms Hodgson to regroup and restrategise with a view to stepping out with greater resolve to achieve her objective of ridding herself of Dr Dawson. It is a particular strength of Ms Hodgson's - a strength that stood her in great stead in her efforts to promote the interests of children. However, this strength was now being turned to negative ends.

[404] This brings me back to a finding that I made early in this determination i.e. that in Ms Hodgson's mind and that of some others she had become the personification of Parentline. Further, the evidence reveals that in her own mind "*Ms Hodgson's interests*" had by this time become fused with the "*interests of Parentline*" and even

with the interests of the children and the families that Parentline supports. Contemporaneous documents from this time support a finding that Ms Hodgson believed at this time, that everything that was done was done in the best interests of “*Parentline and the children*”.

[405] On the contrary, not only was Ms Hodgson’s determination to be rid of Dr Dawson not warranted on the grounds that she was not performing it had no connection to the interests of the Parentline or its clients. But Ms Hodgson had lost all perspective on this subject at this time and matters were to get worse.

[406] Now to the question of Ms Hodgson’s resignation and the reasons for it. The Court of Appeal in *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW*[1994] 1 ERNZ 168 said at page 172:

“In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach. As to the duties of an employer, there are a number potentially relevant in this field. How some should be defined precisely is a matter no doubt still open to debate: see the discussion in the Auckland Shop Employees case. But in our view it can now safely be said in New Zealand law that one relevant implied term is that stated in the judgment of the Employment Appeal Tribunal, delivered by Browne-Wilkinson J, in Woods v W M Car Services (Peterborough) Ltd quoted in the Auckland Shop Employees case. As the Judge put it:

“In our view it is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Courtaulds Northern Textiles Ltd v Andrew [1970] IRLR 84. To constitute a

breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract; the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it: see British Aircraft Corporation Ltd v Austin [1978] IRLR 322 and Post Office v Roberts [1980] IRLR 347. The conduct of the parties has to be looked at as a whole and its cumulative impact assessed: Post Office v Roberts.

"We regard this implied term as one of great importance in good industrial relations..."

[407] The first question to answer in determining whether Ms Hodgson was constructively dismissed or not is to decide whether or not the resignation was caused by a breach of duty by the employer. Sadly, I must find that Ms Hodgson did not resign for the reasons (being a variety of alleged breaches of duty by the Board of Parentline) cited in her communications of 26 June. I accept that Ms Hodgson had become overwrought albeit it was (in the main) the result of a fiction of her own making. I must find, however, that the predominant reason Ms Hodgson resigned in such dramatic fashion³⁵ was she believed she was indispensable to Parentline and she expected the Board to run in panic to her door at the thought of losing her. My finding on this point is supported by Ms Hodgson's own evidence at paragraph 84 where she expresses criticism of what she describes as the Board's blunt letter of its "*acceptance of her resignation*". She states there "*There was absolutely no attempt by them to convince me not to resign*". Ms Hodgson also wrote in an email to Kirstyn Buezeval and Mark Flowers where she advised them that her resignation had been accepted and that Te Ropu Taki Kaupapa would be meeting on 6 July to consider her leaving conditions. She notes in that email "*Seems like this group expected some discussion and/or mediation and want to address my rights via mediation*". I find that Ms Hodgson was surprised the Board accepted her resignation and that she had expected it to seek her out with a request that she withdraw it. Had the Board done so she would, in all probability, have insisted on Dr Dawson's head as the price of withdrawing her resignation. It was a very risky strategy on Ms Hodgson's part to resign in the expectation that the Board would convince her to stay and it had disastrous results for her.

[408] I confirm too, that in normal circumstances a resignation freely given is not a matter for acceptance or rejection by an employer (*Abdalla v Chief Executive Officer*

³⁵ A reference to the words of her communications and the fact it took 3 hours day to hand deliver the resignation to Board members and Te Ropu Taki Kaupapa members

of the Southland Institute of Technology unreported CC 4/06) and it is a common misconception that an employer accepts or rejects a resignation. It is, in normal circumstances, simply for the employer to acknowledge a resignation.

[409] Given my finding that Ms Hodgson fails to meet the first test of constructive dismissal i.e. that the resignation was caused by a breach of duty by the employer, the next step is to explain Ms Hodgson's departure from Parentline.

[410] As I have said in normal circumstances an employer simply acknowledges a resignation. But these were not normal circumstances. On the face of it a distraught Ms Hodgson was signalling her *premature* resignation. Her resignation was accompanied by a lengthy and emotive statement detailing her concerns that her responsibilities as CEO had been usurped, and that she had been treated unfairly in the process to the extent that her rights as an employee of the Board had been violated. This was emphatically not a resignation from an employee who had simply decided to retire.

[411] No employer, acting in good faith, may ignore such missives. The Board of Parentline (or at least some of its members) thought Ms Hodgson was up to something and indeed she was. However, *on the face of it*, her resignation shows Ms Hodgson was most unhappy. Further, Ms Hodgson writes of her resignation being "*premature*". I find that despite its misgivings over Ms Hodgson's performance and leadership of Parentline and the intuition that she was "*up to something*" the Board was required as an absolute minimum to engage with Ms Hodgson to at least inquire as to the meaning of her resignation and to satisfy itself that it was genuine and to attempt to resolve the issues.

[412] The Board did not do that and its actions in simply accepting Ms Hodgson's resignation amounted to a serious breach of its duty of good faith to Ms Hodgson such that it amounted to a dismissal. This dismissal recalls to my mind the consideration given to this concept by Williamson J. *Wellington and Taranaki and Marlborough Clerical, Administrative & Related Workers IUOW v Greenwich* (1983) ERNZ Sel Cas 95. He referred to dismissal as the "*sending away*" of the employee by the employer.

[413] The circumstances of Ms Hodgson's dismissal were such that it can only be found to be unjustified.

[414] Thereafter, the events that unfolded seem to have occurred in an altogether different universe and I would have found these things difficult to believe had I not investigated them myself.

- A group of Te Roopu Taki Kaupapa members (the communications were undertaken by Jim Ritchie in the main) communicated on numerous occasions to both with the Board and Ms Evans. These communications that Ms Hodgson had changed her mind about resigning; advised that she must not be lost to the organisation and requested the Board reconsider its acceptance of her resignation. Staff, too, pleaded with the Board not to accept Ms Hodgson's resignation.
- The Board accepted Ms Hodgson's resignation without discussion with her – a breach of duty that I have found amounted to a dismissal. Then it did not waiver in its acceptance of Ms Hodgson's resignation despite it becoming plain that Ms Hodgson had changed her mind. I find that in continuing to confirm Ms Hodgson's resignation without first stopping and talking to Te Roopu Taki Kaupapa and staff the Board compounded its initial breach of good faith towards Ms Hodgson as an employee and it was acting contrary to the core values of Parentline which it had voluntarily confirmed in the process of revising the Trust deed.
- Ms Hodgson, however, failed to communicate with the Board on this issue at all after 6 July and despite the efforts of others she gave the Board no personal advice that she had reconsidered the situation and that she did not now wish to proceed with her resignation. The evidence supports a finding that the plan (developed by Ms Hodgson and some Te Roopu Taki Kaupapa members) was that the Board was first to rescind its acceptance of Ms Hodgson's resignation then she would consider withdrawing it. Jim Ritchie referred to Ms Hodgson having to "*eat humble pie*" if it was approached the other way with Ms Hodgson signalling to the Board that she had reconsidered her resignation and did not now wish to resign. In taking this approach Ms Hodgson was not acting consistently with her obligations of good faith as an employee and she and Te Roopu Taki Kaupapa failed to act in accordance with the core values of Parentline.

- Within three days of her resignation Ms Hodgson affirmed her contract in an email to Mark Flowers and Kirstyn Beuzeval when she said she would be leaving Parentline in 18 months to coincide with Parentline's 30th anniversary. In *Western Excavating Ltd v Sharp* [1978] 1 All ER 713 at 717 per Lord Denning MR, Lawton and Everleigh LJJ concurring it was held that:

*“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. **Moreover, he must make up his mind soon after the conduct which he complains of; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.**”* (Emphasis mine).

I find Ms Hodgson affirmed her contract despite, just 3 days previously, having detailed in her resignation wide-ranging breaches of duty by the respondent that she (apparently) saw as very serious –so serious that it left her with no choice but to resign. Thereafter, until 24 July Ms Hodgson behaved as if she had not resigned and email correspondence written just before her departure shows she was making appointments to meet people in the course of her duties in August 2006.

- When Ms Hodgson's efforts together with other Te Roopu Taki Kaupapa members did not achieve the desired end of reversing the Board's decision to accept her resignation, Ms Hodgson commenced plotting with Te Roopu Taki Kaupapa members, Professor Ritchie and Mr Ruthe to remove the Chair and Deputy Chair of the Board and to have herself reinstated as CEO. I find, that despite her protestations to the contrary that she was grieving for her mother over this time; Ms Hodgson was in the thick of this conspiracy. Certainly, I accept Ms Hodgson devoted her time predominately, between 8/9 and 14 July,

to her family, but the evidence shows that from 18 July she was present at Parentline's offices for at least some of the time. However, she failed to make any contact with the Board on the issue of her resignation and departure while at the same time she was closely involved with these other Te Roopu Taki Kaupapa members in the plan to remove Board members and reinstate herself as CEO. Parentline's offices were the conduit for communications on this – signed off on by Ms Hodgson. And at least one of Parentline's staff was harnessed to this endeavour.³⁶

I must seriously question the judgment of Ms Hodgson, Professor Ritchie and Mr Ruthe doing this and of course in doing this Ms Hodgson was in breach of her duties of fidelity and good faith to the Board. Further, while they may have had regard to their apparent right to do this under the Trust deed their lack of judgment was compounded by the fact they did this for the reasons they did. The role of Te Roopu Taki Kaupapa was to protect the core values of Parentline. I don't deny that Ms Hodgson as the founder of Parentline was a very important part of the fabric of Parentline. But protecting the core values, kaupapa and tikanga of Parentline did not extend to securing for Ms Hodgson a job for life. That Ms Hodgson, Professor Ritchie and Mr Ruthe got drawn down this path is further evidence of the fiction that Ms Hodgson's interests and Parentline's were one and the same.

On this, I find of course, that Ms Hodgson was well within her rights to resign and sue the Board for breach of contract if she wished. Te Roopu Taki Kaupapa were entitled to and could have been expected to challenge robustly what they saw as a breach of duty by the Board towards Ms Hodgson and a failure by the Board to consult and consider their representations on the matter. However, they all went one ridiculous step too far when they took steps to remove Board members and to reinstate Ms Hodgson to her position as CEO.

[415] Then on 24 Ms Hodgson returned to work from bereavement leave and it is her evidence that the documents removing Margaret Evans and Rona Larsen from their roles was available to her that morning. What followed has been recounted by Ms Hodgson to the Authority as "*a home invasion*" and "*a terrorist attack*". Certainly I

³⁶ Ann McClure.

accept it was a surprise to Ms Hodgson and she was upset about it. However, at least some of that distress related to the fact she had not first taken the planned step of removing the Chair and Deputy Chair from the Board. However, I do not accept, on all the facts of this case, that the events of 24 July were felt by Ms Hodgson as a “*home invasion*” or “*a terrorist attack*”. I do accept it was extremely distressing for staff most of whom had no knowledge that Ms Hodgson had even resigned.

[416] I can also find, however, that despite her contribution to the events that led to her departure from Parentline on 24 July this was the terrible end game that brought Ms Hodgson’s association with Parentline to a close. It was an association that quite literally had become her life and I accept the longer-term effects on her have been devastating.

[417] On the matter of the Board’s actions that day, I would just say the Board knew Ms Hodgson and of her propensity to turn everything into high drama. It compounded its dismissal and further breached its duty of good faith towards Ms Hodgson by the manner it went about meeting with her on 24 July to advise her of the decisions it had taken – particularly its decision to take over the management of Parentline that very day. Again, this was not consistent with its obligations of good faith to Ms Hodgson or with the core values of Parentline. There were a few days available before Ms Hodgson was due to take annual leave. The Board could have otherwise directed Ms Hodgson to obtain representation and to meet with it at another location. This communication could have made it clear to Ms Hodgson that she would ignore this direction on pain of being removed from Parentline. It would then have been up to Ms Hodgson. This may have lessened the harm caused to Ms Hodgson and to the staff of Parentline who ultimately had to be informed of her resignation and departure. Lastly on this matter, I have no criticism of the Board in attending at Parentline as a group that day. The reason for this was to demonstrate that the decisions taken were Board decisions not the decisions of Ms Evans and Ms Larsen. And, in the first instance it was only Ms Evans and Ms Larsen who asked to meet with Ms Hodgson that day. Other Board members waited outside and were only called in after Ms Hodgson asked to gather senior staff to support her. It was not a case of the Board, as a group, ambushing Ms Hodgson that day.

[418] There have been no winners here and it is my assessment that it is the staff of Parentline, most of whom played little or no part in these events, who have suffered the most from the folly that played out all around them.

[419] In closing on my findings in matters related to Ms Hodgson's departure from Parentline, I refer once more to my findings in paragraph 303 where I identified themes which emerge from an analysis of Ms Hodgson's conduct towards her employer. I also refer to the words of the Court of Appeal in *Carter Holt Harvey Ltd v National Distribution Union* (cited above) that "*good faith connotes honesty, openness and an absence of ulterior purpose or motivation*". The weight of the evidence considered in this matter supports a finding that Ms Hodgson's conduct toward the Board of Parentline³⁷ demonstrates ulterior motives and multiple, serious and sustained breaches of her duty of good faith towards her employer – breaches that I find were founded on her refusal to accept, or even contemplate, that the Board of Parentline had a legitimate role of governance in respect of the organisation or that it had the right to set standards for the performance and conduct of the CEO and the right to hold her accountable. That is and always was the core of the problem.

[420] I acknowledge, of course, that the Board itself breached its obligations towards Ms Hodgson when it dismissed her and sent her away on 24 July but looking at the thing in the round (as it were) it is Ms Hodgson's breaches of her duty of good faith that stand-out as the more blameworthy.

Determination

Was Ms Hodgson dismissed constructively or otherwise? If Ms Hodgson was dismissed was that dismissal justified?

[421] In reliance on my findings above it is my determination that Ms Hodgson was not constructively dismissed from Parentline. However, Ms Hodgson was dismissed from her role as CEO of Parentline and that dismissal was unjustified.

³⁷ Ms Hodgson was employed by a Board (singular).

If Ms Hodgson was unjustifiably dismissed what remedies are available to her?
What, if any, contribution on Ms Hodgson's part should be set against remedies awarded to her.

[422] Ms Hodgson was the founder and longstanding Manager and CEO of Parentline and the manner of her dismissal and the circumstances of her departure from Parentline amounted to a serious breach of duty towards her. A dismissal in the circumstances of this case would, if contribution were not an issue, warrant remedies of 12 months salary as lost remuneration (reduced by the monies Ms Hodgson received as notice) and compensation pursuant to s.123 (1)(c)(ii) in the sum of \$25,000. I would have set remedies at this level because the impact on Ms Hodgson would have arguably have been greater - in the absence of contribution on her part - than it has proved to be. The likely affects on her health and the age at which she found herself in the job market would have made mitigation difficult. However, seeking remedies in this matter is somewhat theoretical because the assessment of contribution is a very important factor to be weighed in doing justice between the parties in this matter.

Contribution

[423] In deciding the nature and extent of remedies to be provided in respect of a personal grievance, Section 124 of the Act requires the Authority or Court to consider the extent to which the employee's actions contributed to the situation that gave rise to the grievance.

[424] As I understand it the first steps to be followed in evaluating contribution are those established in *Paykel Ltd v Ahfield* [1993] 1 ERNZ 33 (with recognition that we are operating under the 2000 Act). Firstly the Authority or Court must have made a finding that the worker has a personal grievance: and then it must consider the extent to which the actions of the employee contributed towards the situation that gave rise to the grievance (not to the dismissal itself). This requirement addresses causation. Then, if there is a causal link, the Authority or Court must consider if those actions require a reduction in remedies. The actions that will lead to a reduction in remedies are those that may be described as blameworthy.

[425] The development of the case law has addressed the issue of reduction of remedies where process failures have been at the core of the finding of unjustified

dismissal. *Ioane v Waitakere City Council* CA 21/03 and *Telecom New Zealand Ltd v Nutter* CA 127/03 are authority for the position where a dismissal would have been justified but for procedural unfairness then allowance needs to be made in setting contribution for the likelihood that, had a proper procedure been followed, the employee would have been dismissed.

[426] The matter before me is not assisted by this case law. The wrong done by the Board in this case is related to its acceptance of Ms Hodgson's resignation without first engaging with her to ascertain her real intentions and to at least attempt to resolve matters that were resolvable. It did not involve a dismissal for misconduct where there was failure in the process followed by the employer.

[427] It is Mr Hammond's submission for Ms Hodgson that she did not contribute to the Board's failure to take steps to engage with her with a view to saving the relationship. That is too narrow a perspective to take, I find, as it focuses only on the grounds on which I have found Ms Hodgson to have been unjustifiably dismissed. It does not consider the actions of the worker that contributed to the grievance.

[428] I note too, that in considering contribution there has often been a focus on what the employer knew of the applicant's poor performance or misconduct at the time of the dismissal. This poses something of a difficulty in this case. At least one of the issues that was known to the employer (Ms Hodgson's fabrication of the allegations that Dr Dawson had been improperly accessing Parentline's premises and computers) is alone sufficient to warrant a significant, if not total reduction in remedies, much of what has been revealed as a result of the employer's inquiries since Ms Hodgson's departure, was not known to the Board at the time it accepted her resignation – thereby dismissing her. The Board had no inkling of the instances of very serious misconduct on Ms Hodgson's part e.g. her actions in awarding herself a \$26,000 wage increase and a \$3,911 bonus without Board authorisation (see my findings pages 133 -147). Further, Ms Hodgson's central role in the conspiracy to remove Board members had not yet occurred.

[429] This issue, too, now seems to be settled. I refer to the findings of Couch J in *Salt v Fell* [2006] 3 NZELR, 240 where referring to the findings of the Court of Appeal in *Ark Aviation v Newton* [2001] ERNZ, 133 he said, in regard to a proposition that misconduct not known to the employer at the time of the dismissal should not be taken into account in assessing contribution under s.124.

“That proposition misconstrues the issue. Contribution under s124 is to be assessed on the basis of the actions of the employee, not what the employer knew of the actions of the employee. While it is well-established law that a dismissal can only be justified on the basis of what was known by the employer at the time the decision to dismiss was made, assessment of the actions of the employee relevant to contribution under s.124 is not subject to the same limitation”.

[430] My reading of these cases suggests that, conduct that is unknown to the employer at the time of the dismissal and that comes to light after the dismissal and which is of the same type of conduct that has given concern in relation to the dismissal may be weighed in setting contribution under s.124.

[431] For the record these are some of the things the Board did know at the time it accepted Ms Hodgson’s resignation. It knew that:

- Ms Hodgson had unilaterally informed Dr Dawson that her contract was terminated with no consideration of the potential risk that posed for the organisation.
- Ms Hodgson’s management of the AFO project had been poor, no project plan; staff confused about the project, their roles, Dr Dawson’s role and the expectations of her under the contract between her and Parentline; a ‘trial’ had been conducted with no regard to the discussion and training that was to proceed that trial.
- Ms Hodgson had failed to present a written report to the Board on 7 June (as requested) setting out (in a cogent manner with examples) her concerns relating to the project and Dr Dawson’s alleged poor performance
- Ms Hodgson had presented Dr Dawson’s well known propensity to work late hours and on weekends as concerns that she might have been engaging in criminal activity including the possible theft of Parentline’s intellectual property and that Ms Hodgson was proposing the expenditure of \$5000 of Parentline’s precious funds to further these silly and vindictive allegations.
- Ms Hodgson was drawing staff into her issues with the Board.

[432] Ms Evans spoke of all these issues at the investigation meeting.

[433] What all these things have in common is the core issue of Ms Hodgson's determination to run Parentline as she saw fit and the manipulative, misleading and deceptive conduct this engendered. As has been shown these patterns of behaviour are repeated in this story again and again and again.

[434] As a result, I am setting Ms Hodgson's contribution at 100%. She is not entitled to any remedies in respect of her dismissal.

[435] In closing on this point I am ultimately drawn to what are essentially the obiter comments of the Court of Appeal in *Ark Aviation v Newton* (cited above).

"While it is not strictly in issue in the present case we should make it clear that we do not rule out the possibility that in some situations misconduct of an employee only discovered after a dismissal may be so egregious as to require the discretion to provide for a remedy under s.40 (2) [s.124 of the ERA] not to be exercised at all in favour of the employee whose grievance has been established. We have in mind deliberate and serious misconduct by an employee, which significantly affects the employer, and which amounts to a serious abuse of the trust and confidence that underpins the relationship"

And:

"A contract of employment is a special relationship under which workers have mutual obligations of confidence trust and fair dealing"³⁸ An employee guilty of a fundamental breach of those contractual obligations arguably cannot be said under s.40 (1) to have lost wages or other money or any benefit, or under s.41 (1) (b) to have lost remuneration, as a result of the personal grievance. If that is so no obligation to order reimbursement arises at all. Nor would reinstatement or compensation for humiliation, loss of dignity or injury to feelings, both of which are discretionary awards, be appropriate.

The answer may also be implicit in the term grievance in the definition of 'personal grievance' under s.27. The essence of a grievance in its ordinary meaning is the infliction of a wrong or hardship on a person. An employee guilty of a fundamental breach of such central obligations to the employer justifying dismissal cannot be said to have been subjected to wrong or hardship and thus, to have a personal grievance at all....."

[436] I find that the multiple, sustained and sometimes very serious breaches of duty by Ms Hodgson to her employer warrants the above approach to remedies.

³⁸ To this must be added the mutual obligations of good faith incorporated into the ERA 2000 after this decision was issued.

Determination

- Pursuant to s.124 of the Act I find that Ms Hodgson's contribution towards the situation that gave rise to her grievance is total. She is not entitled to remedies.

Counterclaims

Was Ms Hodgson entitled to receive the increase in remuneration that was paid to her from August 2004? If not should Ms Hodgson be directed to pay back the monies received by her?

[437] In arriving at a determination on these counterclaims I am cognisant of the standard of proof issues that must guide my determination. In *Honda NZ Ltd v NZ (with exceptions) Shipwrights etc Union* pre-1991 Sel Cas, 855, the Court of Appeal upheld the Employment Court in its findings, in that case, that if a charge against a worker is serious then “*the proof needs to be as convincing as the charge is grave*”. The standard of proof remains ‘on the balance of probability’. It must also be recognised, however, that as the Board's only employee and the most senior member of staff at Parentline, charged with the duties of CEO, there was a correspondingly high obligation on Ms Hodgson's part to act in accordance with her contractual obligations towards her employer and in particular her obligations of good faith. This observation is recognised in case law e.g. *Carlton and United Breweries v Bourke* [1994] 2 ERNZ, 1.

[438] Now to these counterclaims I find firstly, that the enhancements to Ms Hodgson's terms and conditions of employment (holiday entitlement, 3 weeks to six weeks; notice, one month to three months; and the right to an extended period of bereavement leave) were not approved by the Board of Parentline. I must conclude therefore that these enhancements to Ms Hodgson's terms and conditions were self-awarded. This in all probability explains the fact the Board did not have a number of pages of Ms Hodgson's cv. The enhanced notice and holiday entitlements are recorded in those document.

[438] Ms Evans said she had no problem with Ms Hodgson being entitled to 3 months notice and 6 weeks leave. Nevertheless these enhancements to Ms Hodgson's terms

and conditions of employment did not come about through negotiation/agreement with the Board.

[439] As a prelude to deciding the matter of the salary increase that Ms Hodgson received with effect from 30 August 2004 I am setting out, in full, two important documents that underpin my determination. These are documents 086 and 109. Other documents contain information relevant to my findings and will be referred to, to illustrate my findings, but documents 086 and 109 are central to my findings.

Background to the 2004 salary increases.

[440] It is not in dispute, I understand, that staff salaries were reviewed (commencing early in 2004) and that the review was conducted in conjunction with budget planning for the 2004/5 budget.

[441] It is the Board's position that it did not knowingly approve the \$26,000 salary increase that Ms Hodgson received in 2004 (effective from 30 August 2004). Witnesses for the Board ask the Authority to consider the fact that Board minutes contain no approval for a salary increase for Ms Hodgson; that the Board had issues with Ms Hodgson's performance by mid 2004; and that arrangements were being made for a performance review to be conducted in relation to Ms Hodgson's performance. This was a necessary step to reviewing the CEO's position, responsibilities and KPI's and this entire exercise needed to be completed before comparable rates could be surveyed and Ms Hodgson's salary set. It was noted that Ms Hodgson's performance review was not completed until August 2004 (the approval for increases to staff salaries being approved at the 14 July 2004 Board meeting – effective from 1 September that year). Lastly, it is the Board's position that Ms Hodgson would not have been permitted to work with the subcommittee appointed to review staff salaries if her own salary had been under consideration at this time.

[442] Lastly, the Board witnesses say, that given the issues it had regarding Ms Hodgson at this time, the Board witnesses say the Board would not have approved a 40% increase in Ms Hodgson's salary.

[443] It is Ms Hodgson's position that nowhere in the Board minutes does it say she is not included in the salary increases approved for staff and that she has always considered herself a member of the staff at Parentline – she was a member of the

team. She also points to the fact that she provided data on comparable social service salaries to the Board subcommittee charged with reviewing staff salaries in 2004 and that document (095-099) included the results of research done to benchmark her salary. She said this data (in relation to her salary) was specifically discussed during the subcommittee meetings and the subcommittee was discussing increases for staff including herself.

[444] Now to the discussions/documentation on this.

[445] On 11 February 2004 Ms Hodgson circulated the following document (Document 086) to Board members for consideration by the Board of Parentline at the meeting of the Board

Doc. 086

“Parentline Staff Salaries

A Parentline staff salary review is a priority for Parentline. I request that the Parentline Board investigate, assess and plan to update salaries as funding allows.

Four Parentline staff have had offers of work from other agencies. Two senior staff received recruitment letters from CYF.

One staff member left to work for Family Start on a salary increased in the vicinity of \$8000.

This issue shows the greatest risk to the stability and functioning of our proudly acclaimed multi-disciplinary and multi-service agency.

I have updated staff continually on the very real efforts that the Board, CEO and the collaborative community funding committee is undertaking to address shortfalls.

Up to 2 ½ years ago Parentline salaries were on the cusp of equivalent peer salaries ready for discussion with an appointed committee.

The salary of CEO has had some work and investigation undertaken.

I propose that a Board member and the CEO investigate and advise on salary increases as funding allows and report back to the March Board meeting”.

[446] It was resolved at that meeting that a subcommittee of the Board be set up (Wayne McLean and Marlene Julian) assisted by Ms Hodgson to address staff wages.

[447] On 24 February 2004 Ms Hodgson sent a memo to Mr McLean and Ms Julian enclosing comparative material on social service salaries. I find that the attached material is that set out in documents 095-099. (I note that Mr McLean could not confirm this was the material attached to Ms Hodgson's memo of that date). This material is important because it is a document Ms Hodgson relies on to show that her salary was the subject of discussion and recommendation by the subcommittee to the Board. This document includes (among the comparative data on the going rates for social workers and the like) comparative material on similar CEO's positions. It is Ms Hodgson position that this was specifically discussed by the subcommittee.

[448] Between 24 February 2004 and May that year there were meetings between Ms Hodgson, Ms Julian and Mr McLean. It would appear there were no minutes kept of these meetings but Mr McLean recorded in his diary the outcome of meetings he had with Ms Hodgson and Ms Julian. It was his habit, he said, to record key outcomes of meetings in his diary. His diary notes (Docs. 1285 -1290) record the principles that were to underpin the increase in staff wages.

- That all staff were to have a performance review before any wage increase.
- That increases needed to be modest (in line with CPI) and in line with what Parentline could afford.

[449] The minutes of the 10 March 2004 Board meeting include the following statement:

“Wayne informed the Board of the process used to assess staff wages against Health, CY&F and Social Services. Wayne indicated to the Board that Parentline staff requires pay parity to bring them into line with other organisations. The assigned subcommittee of Wayne, Marlene and CEO will make a formal proposal at the next meeting”.

[450] Prior to the 14 April 2004 Board meeting, Ms Hodgson presented the following document to the Board (circulated with the papers). It was noted in the CEO's report that Marlene Julian would speak to this paper. It is Ms Hodgson's evidence and that of Ms Fletcher and Ms McClure that this was not a document that was prepared by them. I find, however, that it was a document prepared by some combination of Ms Hodgson, Ms Fletcher and Ms McClure. My reason for this finding is set out at para. 464 below. It is not disputed that it was circulated to Board members by Ms Hodgson.

Doc. 109***Salaries Paper****From Sub-committee:**Wayne, Marlene and Maxine****Increase Wage Proposal to Parentline Board****Total cost of proposed wages* 981,100.00*Total wages as per 2003/4 budget* 868,922.00***Total cost of increase for current staff*** ***\$112,178.00***

- *2 additional staff required*
- *(Poutautoko and social worker)* 91,000.00

Total increase from 2003/4 to 2004/5 \$203,178.00*Total cost of wages for year 2004/2005* \$1,172,100**Suggested***New Salary levels are represented at the lower level of salary range as investigated from Health, Runanga, CYF and Social Services Waikato.**Future Parentline budgets should have provision for an annual wage increase guided from the Consumer Price Index.**Priority should be given to accepting this salary increase recommendation as new funding to Parentline allows.****Suggested Resolution****When funding is available the above salary increases should be put in place.*

[451] The 14 April 2004 Board minutes (amended in the minutes of the 5 May meeting) record *Recommendation: The Parentline Board actively and urgently pursue increase in funding in order to actuate staff salary increases*".

[452] These minutes also record that the proposed 2004/5 budget was being discussed and developed at this time. The minutes record the draft budget will be presented to

the next Board meeting in June. There is also a discussion at this meeting on the proposed performance review for Ms Hodgson (The Appreciative Inquiry Review).

[453] On the matter of the 2004/5 budget it was reported in these minutes that Mr McLean was satisfied with Budget. However, he reported on the vulnerability of the VIP funding and recommended a conservative view on this funding. The budget was amended accordingly (VIP funding was reduced from \$100,000 to \$65,000 – confirmed in the 14 July 2004 Board minutes). A decision was also taken to defer passing the Budget until the cash flow projection had been examined by Michael Redman who would report back to the Board.

[454] At the May 5 2004 meeting the Board minutes record that Ms Hodgson will be meeting with Mr McLean to discuss the Budget. (Mr McLean's diary entry for 24 May is consistent with this minute).

[455] At the 9 June 2004 Board meeting, Whaea, Gayle McLean spoke to her previously circulated report. Among other things this report notes that "*staff performance reviews continuing*".

[456] On July 14 2004 the Board minutes record the following resolution. It was moved and carried [Michael/Wayne] "*that the Board accept the Parentline Draft Budget dated 9/6/04. The recommendation that the salary increase start on 1 September 2004. The VIP funding is to be reduced to \$65,000.*

[457] On 26 August 2004 (Document 125) Ms Hodgson directed her PA Ann McClure to activate wages increases including a \$26,000 increase for her. Ms McClure was advised that the increases were to take effect from 30 August 2004.

[458] The increase for Ms Hodgson took her salary from \$64,000 to \$90,000 per annum – representing a 40.6 percent increase in her salary. Background papers – discovered at Parentline after Ms Hodgson's departure but which were not put before the Board during the salary review/budget planning process in 2004 reveal that the increases other Parentline staff received were in the order of 20-30% managers; 8-16% social workers 5-7% administrative staff.

[459] Lastly, before proceeding to my determination on this issue, I record:

- Ms Hodgson's job description stipulates that in respect of her *staff* responsibilities, she was to carry out a yearly salary review for staff.
- That information was admitted by the Authority that shows that the total value of the 2004 salary increases paid to the staff of Parentline (*excluding* Ms Hodgson) was \$108,767. (Document "K").

[460] This is how I see all this evidence.

[461] When Ms Hodgson put up the salaries paper to the Board recommending a review of staff salaries she:

- Referred to staff salaries falling behind and staff being poached. I find that poaching was not an issue in respect of the CEO's position.
- She told the Board that *she* had updated *staff* continuously on the real efforts that the Board *and the CEO* and the funding committee were taking to address shortfalls. I find that here Ms Hodgson is clearly distinguishing herself from the recommendation to the Board that it review staff salaries. This is confirmed when Ms Hodgson goes on to report "*The salary of the CEO has had some work and investigation undertaken*".

[462] I find from this document that when Ms Hodgson commenced the review of staff salaries in February 2004 she was recommending to the Board increases for staff *excluding* herself. Further, I find, that that the data put to the subcommittee by Ms Hodgson in February 2004 which contains data on comparable CEO salaries in the social services sector does not, in the face of all the other evidence on this matter, establish that Ms Hodgson's salary was being considered at this time or that the subsequent approval of wage increases for staff included her. It establishes only that Ms Hodgson had done was she said she had done in her memo to the Board (doc.086) – she had undertaken some work on the CEO's salary.

[463] The Board had, I find, concerns relating to Ms Hodgson's performance and were pursuing a performance review for her to be followed by a revision of her job description, setting KPI's etc. All this was to be done before the Board turned its mind to a review of Ms Hodgson's salary. I find, therefore, that the Board was not contemplating a review of Ms Hodgson's salary when it reviewed staff salaries in 2004.

[464] That my finding that Ms Hodgson's salary was not under review at this time, is correct, becomes abundantly clear when I turn my mind to the information provided to the Authority, that the figure put up by the wages subcommittee to the Board on 14 April (see document 109 above) as the total cost of the [proposed] increase for current staff was \$112,178. If Ms Hodgson was indeed staff, as she claims, then she was *current staff*. However, the figure of \$112,178 is insufficient to include an increase of \$26,000 for Ms Hodgson. As already noted the total value of the increases for staff was \$108,767 (Doc "K"). I find, from evaluating all this information, that were the figure of \$112,178 to include an increase for Ms Hodgson that figure would have had to be in region of \$135,000. Ms Hodgson, Ms Fletcher and Ms McClure all disown document 109. However, I find that it was prepared by Parentline staff because it has been prepared in reliance on figures set out on pages 2 & 3 of Document "L" This is a document that Ms Fletcher said she, Ms Hodgson and Ms McClure worked on. Further, document 109 is presented in the same format as that adopted in presenting the information in "L" i.e. the calculations detailing the sums needed to provide salary increases to current staff are presented by working backwards from the proposed budget figure for wages (albeit I recognise a second budget figure is recorded in Document 109 given that the cost of employing two new staff is separately identified). Further, I find it is clear on the face of document 109 that it is a document presented by the wages subcommittee (Wayne, Marlene and Maxine) to the Board. Ms Hodgson owns that document.

[465] I find, therefore, that Ms Hodgson's salary was not included in the revision of staff salaries in 2004; that Ms Hodgson knew this and the figure recommended to the Board, by the wages subcommittee on the cost of the increase for *current* staff did not include a \$26,000 salary increase for Ms Hodgson. (I note there was no suggestion that other staff might forego salary increases so Ms Hodgson's salary fitted within the figure for increases in salaries for staff of \$112,178. It was Ms Hodgson's position that *all* staff salaries were being reviewed including hers and that the figures in Doc.109 included the \$26,000 increase for her).

[466] It was the position of counsel for the respondent that Ms Hodgson was able to pay herself this increase in salary of \$26,000 within budget only because actual wages for the 2003/4 year were only \$840,382 and not \$868,922. That is a possible explanation but it seems somewhat unlikely to me unless, at the time document 109 was prepared and presented to the Board (14 April 2004), Ms Hodgson had the

knowledge that the Y/E June 2004 figures would result in a healthy surplus in the salaries budget.

[467] Another explanation lies in another set of documents submitted to the Authority i.e. Doc “L”. Here this matter takes a quite serious turn.

[468] As noted above, Ms Fletcher (in her oral evidence) confirmed the three-page document that makes up document “L” was worked on by herself, Ms Hodgson and Ann McClure. This is a document found at Parentline after Ms Hodgson’s departure. It was never presented to the Board.

[469] This document sets out all the salaries for Parentline staff *including* Ms Hodgson at the *increased* rates. The total cost of staff salaries for the 2004/5-year was calculated in this document (2nd page) to be \$1,072,100³⁹. However, a decision was taken somewhere in discussions – prior to the budget being approved - that the two new staff represented in document 109 to cost \$91,000 would not in fact be employed⁴⁰. The calculations on the 2nd then 3rd page show the progression of thinking on this. In the event the figure that went into the budget approved on 14 July 2004 (Document “G”- is considered to be the correct document)⁴¹ to cover all salaries for that financial year is \$981,100 (being \$1,072,100 less 91,000 = (\$981,100). This figure *did* provide for the \$26,000 increase paid to Ms Hodgson that year.

[470] Bringing all this together then. When Ms Hodgson told the Authority that Document 109 contained a salary increase for her she was right. However the \$26,000 salary increase she enjoyed that year was in fact *buried* in the figure of \$981,100 – the total figure that went into the budget to cover salaries for the financial year 2004/5.

[471] Ms Hodgson cannot have it both ways. I reiterate, if Ms Hodgson believed she was *staff* then the figure described in Document 109 at the Total cost of increase for current staff (\$112,178) needed to be sufficient to cover her increase of \$26,000. Of course that was the critical figure for the Board “*what would it cost in total to give*

³⁹ In p.3 of document “L” the figures do not in fact add up to \$1,072,100 because one salary of \$42,000 has been omitted from the relevant column. I am satisfied however that there were (including one new staff member proposed at that time) 9 staff that were to be on \$42,000 per annum (increased rates).

⁴⁰ Ms Hodgson’s evidence was that an extra social worker was in fact employed during the 2004/5 financial year. However, I accept that when the 2004/5 budget was approved this salary was not provided for.

⁴¹ Unfortunately none of the relevant budget or documents representing wage recommendations or the background documents held at Parentline’s offices is dated).

current staff a salary increase?" and it is expressed in bold in document 109. On my analysis, however, the figure of \$112,178 is not the true figure of the total cost of the wage increase for current staff as was represented in document 109. The figure \$112,178 is simply the result of subtracting the 2003/4 budgeted figure for salaries (\$868,922) from the 2004/5 figure budgeted for salaries (\$981,100).

[472] In burying the cost of her own salary increase in the figure budgeted for salaries for the 2004/5 year and in misrepresenting to the Board the true cost of salary increases, Ms Hodgson was in breach of her duty of good faith to the Board of Parentline. This was a very serious breach of duty and it was totally inconsistent with Ms Hodgson's contractual obligations to the Board as the CEO of Parentline. There can hardly be a more serious breach of duty by an employee towards his or her employer.

[473] Lastly on this issue another document (Document "S") found at Parentline after Ms Hodgson's departure suggests that another round of increases was planned for staff *and* Ms Hodgson as part of planning for the 2006/7 budget. This document suggests plans were afoot to increase Ms Hodgson's salary to \$110,000 per annum.

Determination

- The Board did not approve a \$26,000 increase in Ms Hodgson's salary in 2004.
- Ms Hodgson's defence, that she was staff for the purpose of the discussions and approval to increase staff salaries in 2004, fails.
- Ms Hodgson is directed to repay this windfall (being approximately \$52,000 gross) to Parentline. The parties are directed to resolve the details of the repayment to be made by Ms Hodgson. Leave is reserved for the parties to return to the Authority for directions in the matter if they cannot agree.

Was Ms Hodgson entitled to the bonus she received in June 2006? If she was not entitled to that bonus should she be directed to repay that sum to Parentline?

[474] Prior to the 5 April 2006 Board meeting Ms Hodgson circulated the papers for that Board meeting including the Agenda, which recorded under the heading of the

CEO's report that a paper on staff salaries was being presented. The attached paper (1645) read:

“Parentline staff had a wage rise 2 ½ years⁴² ago and 5 years before that. The last rise brought the staff, social workers, counsellors, psychotherapists, psychologist and the CEO⁴³ into the relevant wage brackets but not the top end.

Over the last few months current staff have reported that they are being approached by other agencies to work for them. We need to make a decision on capacity and suitability regarding staff retention at Parentline.

I state equivocally (sic), that Parentline staff are very well trained and qualified in their disciplines. Therefore I propose that the Trust Board form a small subcommittee to review the salaries.

I am investigating current levels for salaries from 4 different agencies so the subcommittee can reach a decision.

The Chairperson has been briefed on this matter and suggested herself and one other trustee (Suzanne was talked about) to meet with the CEO”.

[475] At the 5 April Board meeting the following document (1644) was circulated. Ms Hodgson was now suggesting an interim bonus distributed relatively equally among staff as a holding position pending the development and approval of the 2006/7 budget.

“Recommendation

As an interim to the 2006-07 budget, the CEO, Parentline recommends a bonus payment to staff.

The impact is between 3% and 5%. This action is recommended in order to bring salaries into the current market bands. This recommendation equates to \$39,216.00.

ACC, WDHB and CYF are actively recruiting and poaching staff and several Parentline staff have been approached.

⁴² This was misleading. The last increase in staff salaries had been approved just 18 months previously.

⁴³ The reference to the CEO's salary in this paper does not negate my findings above in relation to the 2004 salary increase received by Ms Hodgson.

Recommendation

That Parentline Charitable Trust Board passes this one-off bonus for staff which equates to \$39,216.

Maxine Hodgson, CEO Parentline”

[476] The minutes of the 5 April Board meeting record at page 3.

“Salaries Bonus Proposal

Moyna and Gayle left the room while this issue was discussed.

Resolved Unanimously: It was moved that the CEO proceed with a one off bonus for staff to the amount of \$39,216. Kirstyn/Tonga”.

[477] It was Ms Evans’ evidence that following this meeting a light bulb went off in her head and she wondered if Ms Hodgson thought this approval included a bonus for herself. She decided to telephone Ms Hodgson to make it clear that she was not included in the approval for the purpose of a bonus payment. Ms Evans said she discussed this with Ms Larsen and Ms Buezeval and said she was going to telephone Ms Hodgson to ensure that she understood this. Ms Larsen and Ms Beuzeval confirm Ms Evans discussed this with them.

[478] It was Ms Beuzeval’s that the Board were talking about a retention bonus for staff and that this did not include Ms Hodgson albeit this was not explicitly stated at the Board meeting on 5 April. She could understand how Ms Hodgson could have thought she was included as staff for the purpose of the bonus discussions.

[479] Ms Evans said she phoned Ms Hodgson the next day on the point and she later advised Ms Larsen and Ms Buezeval that she had done so. Ms Larsen confirms she was advised of this by Ms Evans. Ms Beuzeval cannot recall Ms Evans telling her she had phoned Ms Hodgson to make it clear the bonus payment approved did not include her. It was Ms Evans’ evidence that when she spoke to Ms Hodgson on this matter she told Ms Hodgson that she must distance herself from any discussion of benefit to herself personally and that no bonus should be paid to her without formal and specific authorisation by the Board. She said she told Ms Hodgson that her performance review was an annual requirement in her contract and a bonus could be considered along with the next review in August 2006.

[480] Ms Hodgson denies absolutely that Ms Evans telephoned her to advise she was not entitled to a bonus. It is her evidence that she was staff for the purposes of the bonus proposal and that the \$39,216 figure approved included a 3.5% bonus for herself.

[481] The bonus was paid out to staff on 12 April 2006. No bonus payment was made to Ms Hodgson at that time. It is Ms Hodgson's evidence that she decided, after the approval given on 5 April 2006, that she wanted a 5% bonus so she did not activate the payment of the 3.5% bonus to herself.

[482] The Minutes of the 28 April emergency meeting of the Finance Subcommittee⁴⁴ record that there was discussion on the subject of the CEO's bonus and it is recorded "*Kirstyn to contact Mark Flowers and Wayne McLean to get market rate for Bonus for CEO position.*"

[483] There no record that the Board took any further action on this. However on 16 May Ms Hodgson emailed Kirstyn Buezeval (Doc 255). She asked Ms Buezeval to ratify a 5% bonus for her.

"I recommend that as Parentline CEO that I receive a 5% Bonus which is in line with agreeded (sic) on Trustee instruction [to] myself as CEO to provide such to Parentline staff, as a one off Bonus. Please ratify that this Bonus can be paid".

[484] Ms Beuzeval did not respond to this email. It was her evidence that she did not respond because "*she did not think she had the authority to respond*". However, she did not advise Ms Hodgson of this. She said she had intended to bring the matter to the Board but she didn't because of the Narelle Dawson issue. She accepted this was an error on her part.

[485] On 29 June, three days after she submitted her resignation Ms McClure paid Ms Hodgson (authorised by Ms Hodgson) a bonus of \$3199.00 (net \$1909.81) (Document 753) In her oral evidence Ms Hodgson said in response to a question as to why she authorised this payment to herself. She said she "*only activated it "when it was clear there was no consideration of her position from the Chair and Deputy Chair"*".

[486] Before considering my findings on this issue I note another background document (551). It is a document that only came to light after Ms Hodgson's departure from Parentline. It sets out current staff salaries in one column and in another column it records against each staff member's name the % bonus payment that staff member is to receive. The third column

⁴⁴ This is the first of the Finance Subcommittee meetings where Dr Dawson's contract was approved.

records the value of the bonus and a fourth column records for each staff member a revised salary figure incorporating the bonus received. This document records a 3% bonus for Ms Hodgson in the sum of \$2,742.⁴⁵

[487] These are my findings on this issue.

- In documents 1645 and 1644 Ms Hodgson is again referring to staff being poached and she distinguishes herself from staff in her recommendation to the Board to review salaries.
- The Board, in considering Ms Hodgson's recommendation, was approaching the issue from the perspective of a retention payment for staff (*excluding* Ms Hodgson). For this reason Ms Hodgson was included in the Board discussions when Ms Fletcher and Gayle McLean were asked to withdraw because salary discussions for staff were to about to be considered by the Board.
- In those discussions the Board was focussed on consideration of a *retention* payment for staff, pending the upcoming budget discussions.
- It is the case that all the background papers i.e. internal papers associated with staff salaries and bonus papers that were held at Parentline's offices included Ms Hodgson in the sums calculated for recommendations to the Board. (Docs.551, "L" and "S"). The Board was never presented with these documents and did not ask for them because, they said, they trusted the CEO.
- At the 5 April Board meeting the Board gave approval for *the CEO* to proceed with a one – off bonus payment *for staff* in the sum of \$39,216. This Board recommendation itself distinguishes the CEO from staff. The Board did not know the figure \$39,216 included a 3% bonus for Ms Hodgson and did not approve a bonus for Ms Hodgson.
- The staff were paid out their bonuses on 12 April. Ms Hodgson did not receive a bonus payment at this time because I find that Ms Evans – who had had a "*light bulb*" go off in her head - phoned Ms Hodgson and advised her this approval did not include a bonus payment for her. Ms Hodgson was, I find, told that consideration of a bonus for her would be tied to her performance review to take

⁴⁵ By this time Ms Hodgson's salary had morphed to \$91,400. She explained in her oral evidence that this was the result of a COL increase. Board witnesses did not seem to be aware of this. However, I note that at the August 2005 Board meeting the Board approved a CPI increase to wages to the maximum cost of \$30,699. If this increase was applied to Ms Hodgson then salary of \$90,000 it would result in a salary figure for her of \$92,610 – somewhat more than her April 2006 salary of \$91,400. I can find no other evidence to explain the discrepancy but it is the case that the Board approved a COL increase in *staff* wages in August 2005.

place in August i.e. a bonus for Ms Hodgson was to be *performance* based not a *retention* bonus. I find this because I accept Ms Evans' evidence in preference to Ms Hodgson's on the matter of the phone call made to Ms Hodgson. Further, Ms Evans signalled her intention to telephone Ms Hodgson to both Ms Evans and Ms Buezeval; Ms Larsen confirms Ms Evans reported to her that she had made that phone call. I also find, on the evidence, that, in all aspects of the work she undertook for Parentline, Ms Evans was extremely thorough and timely and that it is more likely than not that Ms Evans did make this call to Ms Hodgson.

- I find, that on 28 April, when the Finance committee Board was discussing the question of a bonus payment for Ms Hodgson, it was discussing a payment per se not a question of whether it would be 3% or 5%. Ms Hodgson's evidence on the Finance Committee discussion on 28 April and her email of 16 May to Kirstyn Buezeval is an after the fact explanation for paying herself a bonus that had not been approved by the Board. In any event Ms Hodgson asked Ms Buezeval to ratify her bonus payment and did not get that ratification.

Determination

- The bonus Ms Hodgson received on 29 June 2006 in the sum of \$3,199.00 (3.5%) was not approved by the Board. Ms Hodgson knew there had been no approval of a bonus for her and she was acting in a misleading and deceptive manner when she authorised that payment to herself.
- Ms Hodgson is directed to repay this sum to the Board of Parentline. The parties are directed to attempt to resolve the detail of the sum to be reimbursed by Ms Hodgson. Leave is reserved for the parties to return to the Authority for a determination if they cannot do so.

Reimbursement Payments

[488] I have no record that these issues were put to Ms Hodgson. So I make no findings on them. Leave is reserved for counsel to return to the Authority to have these issues considered if they decide they wish to have them resolved.

Costs

[489] The parties are directed to attempt to resolve costs between them. If they are unable to do so they may file submissions and costs will be determined.

Final note: It saddens me to sign off on this determination. Readers should, in reflecting on the findings in this determination, keep in mind the contribution Ms Hodgson, the Board and staff of Parentline have made to the community and society in general.

Janet Scott

Member of the Employment Relations Authority