Social Workers Registration Board
Kāhui Whakamana Tauwhiro

Complaints and Disciplinary Tribunal

DECISION NUMBER:RSW1/D1/SWDT/2017

IN THE MATTER	of a charge laid under the Social Workers Registration Act 2003
BETWEEN	the **Complaints Assessment Committee** **Complainant**
AND	**Jennifer Kaye Lourie,** registered social worker of Hamilton **Respondent**

Hearing held in Hamilton on 8 February 2017

The Tribunal reconvened on 27 April 2017 to consider penalty

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Present:	**Jo Hughson (Chairperson)** **Darryn Russell, Phil Comber, Kim Fry, Peter McGurk (Members)** **Fleur Nicholas (Hearing Officer)** **Jacqui Kennedy (Stenographer)**
Counsel:	**Ms Harriet Goodhew (Counsel for the Complaints Assessment Committee)** **Ms Lourie and her support person (8 February 2017)**

Introduction

1. Ms Lourie holds a Bachelor of Applied Social Science (Social Work). She registered as a social worker with the Social Workers Registration Board ("the Board") on 13 November 2013. Ms Lourie does not hold a current practising certificate. Her competence certification does not expire until 11 August 2018.

2. Over the relevant time period, Ms Lourie was employed by Serco New Zealand Limited ("Serco") as a Senior Case Manager at Kohuora Prison (Auckland South Corrections Facility). She had commenced permanent employment in this role on 7 April 2015 at which time she held a current practising certificate the fee for which had been paid by her previous employer, Child Youth and Family. Ms Lourie's practising certificate expired on 30 June 2015 but she did not apply for a practising certificate for the practising year which commenced on 1 July 2015.

3. Ms Lourie was not required by Serco to hold a professional qualification or to be registered as a social worker to perform the role of a Case Manager.

4. A Complaints Assessment Committee ("CAC") appointed under the Social Workers Registration Act 2003 ("the Act") laid a charge pursuant to section 82(1)(b) in relation to Ms Lourie being employed or engaged as a social worker without a current practising certificate between 1 July 2015 and 1 May 2016.

5. The charge read as follows:

> "Pursuant to section 72(3) of the Act the Complaints Assessment Committee charges that Jennifer Lourie, registered social worker, of Hamilton:
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> > Between 1 July 2015 and 1 May 2016 was employed or engaged as a social worker without a current practising certificate;
> >
> > And this conduct amounts to conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker pursuant to s82(1)(b) of the Act."

6. At the hearing the CAC was represented by Counsel and Ms Lourie represented herself although she attended the hearing with a support person. An agreed statement of facts signed by Ms Lourie on 31 January 2017 was produced to the Tribunal. A bundle of documents was produced by consent which contained documents concerning Ms Lourie's registration and her annual practising certificate ("APC") history, relevant correspondence between the Board and Ms Lourie, Ms Lourie's Case Manager Success Profile (Serco), and the Code of Conduct for Social Workers (V3 January 2014).

7. The CAC called Dr Michael Dale as an expert witness to give an independent opinion on whether Ms Lourie was employed or engaged as a social worker as alleged in the charge. Dr Dale is a registered social worker who is a Senior Lecturer in the School of Social Work at Massey University. The Tribunal considered a statement of

evidence and oral evidence from Dr Dale. Dr Dale summarised (including with reference to academic writing[1]) the position that probation practice has a lengthy association with the social work profession and continues to reflect core social work values, knowledge and skills with probation still being regarded as a social work field of practice. Dr Dale's evidence was that he does not consider there to be a material distinction between the roles of Case Manager and Probation Officer; the difference is merely that the Probation Officer role is focused on offenders in the community, while the Case Manager role is focused on offenders within prison.

8. The Tribunal also heard and considered oral evidence given by Ms Lourie both in chief and under cross examination. Ms Lourie did not call any witnesses.

Legal principles

9. The burden of proving the charge rests with the CAC. The standard of proof is the balance of probabilities. The greater the gravity of the allegations the stronger the evidence required to satisfy the burden.[2]

10. Relevant to the well-established purposes of disciplinary proceedings,[3] the purpose of the Act is set out in section 3(a)(i) and (ii) including the protection of the safety of the public by prescribing or providing for mechanisms that ensure that social workers are both competent to practise, and accountable for the way in which they practise. Section 3(d) provides that the Act is to "enhance the professionalism of social workers."

11. Holding a current practising certificate is a mandatory requirement for any registered social worker who is employed or engaged in social work (s. 25). The requirement to hold an APC is a fundamental mechanism by which the purposes of the Act are achieved. This requirement persists unless the social worker is recorded by the Board as non-practising or is otherwise removed from the register.

12. The Tribunal must be satisfied that the following elements of the charge laid against Ms Lourie under section 82(1)(b), are established:

- That at all material times Ms Lourie was a registered social worker; and
- That at all material times she was employed or engaged as a social worker for the purposes of the Act; and
- That at all material times Ms Lourie did not hold a current practising certificate; and

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[1] MP Dale and A Trlin *Probation Practice as Social Work – Viewpoints of Practitioners in New Zealand* (2007) Social Work Review XIX (2)
[2] *Z v CAC* [2009] 1 NZLR
[3] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720, 724-725; *Re a Medical Practitioner* [1959] NZLR 784, 800, 802, 805 and 814

- That Ms Lourie's conduct in continuing to be employed or engaged as a social worker without having obtained a current practising certificate, amounts to conduct unbecoming of a registered social worker; and

- That this conduct reflects adversely on Ms Lourie's fitness to practise social work.

13. Ms Lourie defended the charge on the basis that she was not employed or engaged as a social worker between 1 July 2015 and 1 May 2016 and therefore, that she was not required to hold a current practising certificate.

14. The terms "*social work*" and "*employed or engaged as a social worker*" used in s. 25 are not defined in the Act. However in previous decisions the Tribunal has explained that it is clear on the face of the section that the requirement to hold a current practising certificate is not restricted to employment in a role titled "social worker."[4] It envisages circumstances in which a registered social worker may not be formally employed as a social worker but nonetheless is engaged in tasks and is undertaking responsibilities that can properly be considered social work. This is consistent with the broad purpose of the Act.

15. Thus, in every case where the Tribunal is required to determine whether the registered social worker is employed or engaged in social work, the Tribunal will be required to make a factual assessment of the nature of the role which the practitioner is performing including of the practitioner's job description and their day to day work tasks.

16. In *CAC v Angelo*[5] the Tribunal adopted the approach set out in a Crown Law opinion which was referred to by counsel for the CAC. This opinion was jointly obtained by the Board and the Ministry of Social Development ("MSD") in November 2013 and commended a broad approach be taken to what constitutes social work. The opinion concluded that a registered social worker is "*employed or engaged as a social* worker" and required to hold a current practising certificate if he or she:

> "*3.1is engaged with casework decisions at any level; and/or*
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> *3.2 in the context of performing his or her role, expressly or implicitly holds himself or herself out as a registered social worker, or is held out in that way by his or her employer or colleagues."*

17. In assessing whether or not a person is employed or engaged as a social worker this Tribunal has in previous cases also considered whether or not a person is using his or her "social work skills and training" (*CAC v Kuruvilla*[6], *CAC v Hungahunga*[7]), and

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[4] *CAC v Kuruvilla* [RSW1/D1/SWDT/2016]
[5] RSW9/D1/SWDT/2015
[6] RSW1/D1/SWDT/2016;
[7] RSW6/D1/SWDT/2016

the extent to which they are doing so in the role in which they are working (*CAC v Iakimo*[8]*)*.

18. Applying this approach the Tribunal has previously held that individuals in the roles of an "advocacy coordinator" for Auckland Action Against Poverty (*CAC v Russell*[9]), a community support worker in an outpatient mental health service (*CAC v Kuruvilla*), a youth worker member services at Canteen (*CAC v Angelo)*, a House Parent and Teen Services Coordinator in a Teen Unit (*CAC v Hunghunga*) and a Probation Officer (*CAC v Going*[10]) were employed or engaged as a social worker.

19. As for the test of conduct that is unbecoming of a social worker and which reflects adversely on a practitioner's fitness to practise as a social worker, there are a number of decisions of this Tribunal where s. 82(1)(b) has been considered. In those cases the Tribunal adopted the approach of the Medical Practitioners Disciplinary Tribunal and High Court appeals from that Tribunal in which a charge of conduct unbecoming which reflects adversely on a practitioner's fitness to practice was considered under the Medical Practitioners Acts 1995. The Tribunal as presently constituted has no reason to depart from that approach.

20. In *B v Medical Council*,[11] Elias J discussed the test as follows:

> "There is little authority on what comprises "conduct unbecoming." The classification requires assessment of degree. But it needs to be recognised that conduct which attracts professional discipline, even at the lower end of the scale, must be conduct which departs from acceptable professional standards. That departure must be significant enough to attract sanction for the purposes of protecting the public...
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> The structure of the disciplinary processes set up by the Act, which rely in part upon judgment by a practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only usual practice but also patient interests and community expectations, including the expectation that professional standards not be permitted to lag. The disciplinary process in part is one of setting standards."

21. The Court of Appeal in *F v Medical Practitioners Disciplinary Tribunal*[12] endorsed the earlier statements which had been made by Elias J in *B v Medical Council* where

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[8] RSW9/D1/SWDT/2016
[9] RSW6/D1/SWDT/2015
[10] RSW6/D1/SWDT/2015
[11] [2005] 3 NZLR 810
[12] [2005] 3 NZLR 774

Her Honour made the important point that the threshold (in cases of professional misconduct and conduct unbecoming under the Medical Practitioners Act 1995) is "inevitably one of degree". The Court of Appeal expressed the issue in this way at paragraph [80]:

> "In cases of both professional misconduct and conduct unbecoming it will be necessary to decide if there has been a departure from acceptable standards and then to decide whether the departure is significant enough to warrant sanction."

22. Importantly in *F v Medical Practitioners Disciplinary Tribunal* the Court of Appeal went on at paragraph [80] to hold that in order to determine that the conduct is significant enough to warrant disciplinary sanction the Tribunal must satisfy itself that the conduct reflects adversely on the practitioner's fitness to practise.

23. As such, in cases where a charge is laid under s 82(1)(b) alleging conduct unbecoming of a social worker, the Tribunal must first decide whether there has been a departure from acceptable standards such that it was conduct unbecoming of a social worker. If the Tribunal is satisfied that first step is met then the Tribunal will need to go on and decide the threshold step being whether the established departure "reflects adversely on a practitioner's fitness to practise as a social worker" and therefore is significant enough to warrant disciplinary sanction for the purposes of protecting the safety of the public and/or enhancing the professionalism of social workers.

24. As the Tribunal has said in previous decisions, this approach recognises that for purposes of a charge laid under s. 82(1)(b), it may not be in every case where the Tribunal finds there has been a divergence from recognised standards, that it will also find that the proven conduct reflects adversely on the social worker's fitness to practise.

25. In relation to the "reflects adversely on fitness to practise" rider, it is not necessary that the proven conduct should conclusively demonstrate that the registered social worker is unfit to practise.[13] There was no suggestion that Ms Lourie was unfit to practise as a registered social worker at the time of the conduct the Tribunal has reviewed.

Facts

26. Ms Lourie completed a Bachelor of Applied Social Science (Social Work) in 2001 and first registered as a social worker on 13 November 2013. This meant that she had completed a programme of study which met the registration requirements of the Act which are to be considered 'competent to practise social work in Aotearoa New Zealand; be a 'fit and proper person'; and had met the practical experience requirements.

[13] *Re Zauka*, 236/03/103C, Health Practitioners Disciplinary Tribunal

27. Ms Lourie has remained registered as a social worker since that date. In the years prior to being employed as a Senior Case Manager by Serco, Ms Lourie's evidence was that she had been employed by Child, Youth and Family. At the hearing Ms Lourie advised that she had recently resigned from her employment with Serco and was in the process of taking up new employment with an NGO which had undertaken to support her with an application for an annual practising certificate.

28. Board registration documentation shows that until her last current practising certificate expired on 30 June 2015, Ms Lourie had held an annual practising certificate ("APC") from the time she first registered in November 2013. The fee for Ms Lourie's annual practising certificate had been paid by Child Youth and Family.

29. It was accepted by Ms Lourie that she did not renew her APC for the practising year 1 July 2015 to 30 June 2016 and that as at the date of the hearing, she had not subsequently applied for and obtained an annual practising certificate.

30. Notwithstanding the non-renewal of her APC for the practising year which commenced on 1 July 2015, Ms Lourie continued to work in her Case Manager role for Serco.

31. In correspondence with the CAC and the Board prior to the CAC laying the charge, and in her evidence before the Tribunal, Ms Lourie stated her belief that while there were some case management responsibilities, she was not working as a social worker in her role as a Case Manager. She stated there was no support from her employer to assist her in maintaining a current practising certificate. To an extent she was supported by her employer whose HR representative had advised the Board in a letter dated 20 January 2016 that Ms Lourie's role "is not one of a Social Worker, therefore Serco NZ Ltd. cannot provide the work practice elements that would be required for Jennifer to meet any social [sic] practice sign off that would give her registration and annual certification".[14]

32. Ms Lourie's Success Profile which set out the key accountabilities for her role as a Case Manager was produced to the Tribunal in the agreed bundle of documents. An initial question for the Tribunal (before it knew whether or not Ms Lourie intended to give evidence), was whether it could be satisfied from reading the Success Profile and in particular the key accountabilities of the role that Ms Lourie was employed or engaged as a social worker in that role.

33. The Success Profile for the role of Case Manager did not expressly require Ms Lourie to hold a professional qualification or to be registered as a social worker in order to perform her role. Essential qualifications for the role were stated to be "a background in rehabilitative services, allied health services, psychology, social work or related area is desirable, as is experience working with Maori and Pasifika people. A tertiary qualification is desirable".[15] Essential professional skills were

[14] Agreed Bundle of Documents, Tab 27, page 62
[15] Agreed Bundle of Documents, Tab 30, page 69

stated to include "knowledge and experience of case management and/or rehabilitation and reintegration practice".

34. The Success Profile stated that the primary purpose of the Case Manager role is to[16]:

> "…..provide end to end case management of prisoner to reduce their likelihood and seriousness of re-offending on release. The role includes all elements of case management from assessment, development of plan to address rehabilitation and reintegration needs, monitoring delivery, undertaking reviews to ensure the plan is being delivered successfully, and planning for release. Case managers will also be expected to work one-to-one with prisoners to address motivational issues and deliver brief interventions."

35. The Role Essentials associated with the role context and purpose were stated to include, relevantly[17]:

- Case management (assessment of the needs of allocated prisoners using specialist assessment tools to identify the risk and rehabilitation and re-integrative needs of prisoners; development of a Prisoner Management Plan (PMP) which addresses their needs that is consistent with practice standards, briefing the allocated reintegration officer on the contents of the PMP and any issues relevant to the prisoner and the reintegration officer building a constructive relationship; chair case conferences to agree and review PMPs, actively monitor delivery of the PMP for allocated prisoners, encourage prisoner motivation through the use of a range of techniques and tools including motivational interviewing, regular review of PMPs, provision of Parole Board reports, monitoring of Parole Board decisions and ensuring all post-Parole actions are completed; develop Transition Offender Plans for allocated prisoners in accordance with practice standards, and develop effective and constructive relationships with Probation Officers to ensure coordinated transitions from prison to the community);
- Team Working (including self-reflection on areas of strength and development, ensuring proactive engagement in own management, supervision and performance planning and proactively contributing to staff meetings and briefings);
- Partnership (including proactively identifying potential partners both within the prison and in the community); and
- Resource Management.

36. The Tribunal had the benefit of hearing evidence from Ms Lourie. Ms Lourie's evidence was that she was the only registered social worker working as a Case

[16] Agreed Bundle of Documents, Tab 29, page 67
[17] Agreed Bundle of Documents, Tab 29 pages 67/68

Manager at Kohuora Prison. She confirmed, with reference to her Success Profile and the key accountabilities that the actual performance of the role did not reflect all of the key accountabilities set out in the Success Profile. Her evidence was that because of staff under-resourcing and very high prisoner: case manager ratios at Kohuora Prison she was unable to attend to many of the tasks she had understood that she was to be responsible for, when she took up the role. Ms Lourie described how she spent significant amounts of her time writing reports for the Parole Board, referring to this aspect of her job as being predominantly in the nature of "data entry", with only 20% of her time spent working with allocated prisoners. Having heard from Ms Lourie the Tribunal considered that the content of the Parole Board reports she prepared were more likely than not informed by the information she had obtained from allocated prisoners on interview (as to their risks, rehabilitation and re-integrative needs). In her evidence Ms Lourie stated that she was one of the only Case Managers who always interviewed a prisoner prior to completing a parole report, and that this aspect of her work was guided by ethical standards. Ms Lourie also described how she met with each of the allocated prisoners within her caseload approximately once a month for motivational interviewing and assessment as part of their case management.[18] She referred to covering the caseloads of other Case Managers from time to time. Under cross examination Ms Lourie accepted that in some respects she was using her social work skills and knowledge in her role as a Case Manager although she stated she was also using her overlapping counselling qualification, and counselling skills and training. In this regard Ms Lourie's evidence was that she had worked mainly in social work and only minimally as a counsellor, in the past.[19]

37. Dr Dale's evidence (which the Tribunal accepts) was that in his opinion, in discharging her functions and accountabilities Ms Lourie was using her foundational social work training (including core interpersonal skills associated with establishing rapport with prisoners, interviewing and assessment skills associated with obtaining and evaluating information provided by the prisoner and drawn from other sources including court documents and prisoner records, and the application of core social work practice theory such as motivational interviewing, working with client resistance, cross-cultural practice and the location of the client within an ecological framework), as well as her social skills and knowledge. It was Dr Dale's opinion that in discharging her role as a Case Manager Ms Lourie was a registered social worker who was involved in working directly with clients via case management of individual clients through the assessment and parole processes. Ms Lourie did not take significant issue with the opinion that she was using her social work qualification, skills, knowledge and past experience when she worked as a Case Manager. Again, her evidence was that she was also using her counselling training, skills and knowledge.

38. Ms Lourie did not provide any direct evidence from Serco to corroborate her own evidence about the nature and performance of her role as a Case Manager in the

[18] Transcript of proceedings, page 90
[19] Transcript of proceedings, page 107

relevant period. However the Tribunal considered Serco's position, as communicated by the HR Manager in her letter of 20 January 2016, which was that the role was not a social work role because it was not titled as such.

39. There was evidence before the Tribunal in the agreed statement of facts and in the bundle of documents that Ms Lourie had been sent three reminders by the Board (a standard reminder in May 2015 and two further reminders June 2015 prior to her APC expiring) about the need for her to renew her APC[20]. The renewal process was set out in those reminders. Delivery records for this correspondence which were before the Tribunal show that all three reminders were received by Ms Lourie but that only the first reminder was opened.

40. On 10 September 2015 Ms Lourie was contacted by the Board by letter, after her APC had expired. She was warned that if her APC had not been renewed by 21 September 2015 the matter would be referred to the Chair of the Tribunal for a decision as to whether to establish a CAC to investigate[21]. Written evidence was requested as to why the matter should not be referred to the Tribunal, by 21 September 2015. It was an agreed fact that there is no record of Ms Lourie responding to this request.

41. Ms Lourie was sent the "Registrar's message" on 15 September 2015, which warned practitioners of the potential consequences of continuing to practise without a current practising certificate. [22] The message set out the steps the Board was taking to address the issue of social workers practising without an APC and it included links to information on how to apply for an APC online, and how to renew competency. The agreed evidence was that this correspondence was not opened by Ms Lourie.

42. On or about 16 October 2015 the Board send a letter to Ms Lourie by registered mail, to the mailing address which the Board held for Ms Lourie. The letter informed Ms Lourie that the matter of her practising without an APC had been referred to a CAC for consideration. Ms Lourie was informed of the membership of the CAC and she was invited to make a written statement.[23] This correspondence was returned to the Board.

43. On 3 November 2015 the Board emailed Ms Lourie and asked her to confirm her current work status and mailing address. A copy of the 16 October 2015 letter referred to above was attached as well as a Guide to CAC's for Social Workers.[24] It was an agreed fact that Ms Lourie did not respond to this email.

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[20] Agreed Bundle of Documents Tabs 4,6 and 8
[21] Agreed Bundle of Documents, Tab 10
[22] Agreed Bundle of Documents, Tab 11
[23] Agreed Bundle of Documents, Tab 13
[24] Agreed Bundle of Documents, Tab 15

44. On 1 December 2015 the Board sent a letter to Ms Lourie notifying her that the CAC had appointed an investigator to make further inquiries on behalf of the CAC.[25] The evidence before the Tribunal was that the investigator emailed Ms Lourie on 7 December 2015 and requested her to provide her employment details from the period of 1 July 2015.[26]

45. The following day Ms Lourie telephoned the investigator and stated her belief that she was not working as a social worker. Further, that she had informed the Board the previous year that she did not want her "registration" to continue when it "expired". The investigator's file note records that Ms Lourie advised that she had assumed her "registration would just lapse" and that was why she had not responded to the Board's APC reminder notices.

46. On 15 December 2015 Mr Ngatai, then Principal Advisor at the Board, emailed Ms Lourie and noted that no communication had been received from her declaring that she was not practising as a social worker.[27] Ms Lourie then telephoned Mr Ngatai and explained that she had not engaged with the Board about the renewal of her APC as she believed she did not have the ability to renew her APC. She also stated that she had "trust issues" with the Board and therefore did not engage about the APC renewal. Ms Lourie gave evidence about issues she had with the Board, at the hearing. The record of this telephone call, as made by Mr Ngatai[28] and commented on by Ms Lourie[29], shows that Ms Lourie re-stated that she did not believe her work at Kohuora Prison was social work and that her manager had frequently told her not to use social work terminology.

47. In January 2016 Ms Lourie provided a three page written response to the CAC in which she provided details of some "context" around why she had not renewed her APC including recent professional and personal history and previous involvement with the Board. In this response, the reasons Ms Lourie gave for not renewing her APC were in essence the same as reasons she had previously given, as set out above. Ms Lourie apologised for not having replied to the Board's correspondence. In support of Ms Lourie Serco's HR representative at the Auckland South Correctional Facility sent a letter of 20 January 2016 (referred to above) as well as the Case Manager Success Profile.

48. At the conclusion of the evidence the Tribunal retired to consider the charge. The Tribunal delivered its decision that it had found the charge proved, by Minute dated 13 February 2017. The reasons for that decision now follow.

Findings - liability

[25] Agreed Bundle of Documents, Tab 16
[26] Agreed Bundle of Documents, Tab 17
[27] Agreed Bundle of Documents, Tab 21
[28] Agreed Bundle of Documents, Tab 23
[29] Agreed Bundle of Documents, Tab 26

49. As above, the purpose of the Social Workers Registration Act 2003 includes the protection of the public, ensuring that social workers are accountable, and enhancing the professionalism of social workers. Registered social workers have a responsibility to meet the statutory requirements of registration including practising certificates in order to practise legally. Non-compliance with this requirement is not an insignificant matter.

50. The Tribunal was required to consider whether Ms Lourie was employed or engaged as a social worker. The Tribunal considered the background and correspondence set out above, the evidence of Dr Michael Dale on behalf of the CAC, the agreed statement of facts and oral evidence of Ms Lourie. As discussed, the Tribunal also considered Ms Lourie's Success Profile which outlined the role of Senior Case Manager and key accountabilities, as well as the documents in the agreed bundle of documents (including the letter from Serco's HR representative referred to above).

51. It is not necessary for a registered social worker's job title to be that of "social worker" for that person to be employed or engaged as a social worker. As was the case in *CAC v Kuruvilla* this case highlights the potential for difficulties where the employer of a registered social worker does not require the person to be registered to carry out their role.

52. The Tribunal was satisfied it had sufficient evidence before it as to the nature of Ms Lourie's case management work to enable it to make a finding that on the balance of probabilities she was engaged in social work (and therefore as a social worker) in the relevant time period, notwithstanding that her job title was "Case Manager" not "Social Worker", and notwithstanding that Ms Lourie may also have been using her training and skills as a counsellor.

53. Ms Lourie's role as a Case Manager as set out in the Success Profile, Mr Dale's evidence with reference to this and the similarities between the accountabilities of a Case Manager and a Probation role, and Ms Lourie's own evidence about her performance of the role satisfied the Tribunal that she was involved in working directly with prisoners via case management and was involved in or informed decisions regarding individual prisoners through interviews and assessment particularly for parole purposes. The Tribunal considered that the key accountabilities described in the Success Profile describe tasks which fall into the realm of social work and that essentially the Profile set out a social work role, the case management aspects of which Ms Lourie performed to the extent that time and resources enabled her to do so.

54. The Tribunal was satisfied that on the balance of probabilities the totality of the evidence established that in the relevant period Ms Lourie was applying her social work skills and knowledge and that the degree of responsibility and professional judgement which she was required to exercise in her role as a Case Manager was consistent with the role being a social work role. The Tribunal considered that in order to prepare parole reports, Ms Lourie was drawing not only upon information which she obtained from prisoners during interviews, but also her theoretical

knowledge and her past experience in social work; that by virtue of her training and registration as a social worker, she was applying her knowledge and skills in the case management processes she was involved in and as such was engaged as a social worker for the purposes of the regulatory regime under the Act.

55. As Ms Lourie has been found to have engaged as a social worker at the relevant times, given that Ms Lourie was at all material times registered, she was required to hold a current practising certificate pursuant to section 25 of the Act. It was not in dispute that Ms Lourie did not renew her practising certificate from 1 July 2015 and that she was engaged as a social worker for the ten months specified in the charge despite not holding a practising certificate at any time during that period. Ms Lourie had received information from the Board about renewal of her practising certificate prior to her then current practising certificate expiring, which she ignored. Further, after registering with the Board in late 2013, she had applied for and obtained a practising certificate, which was renewed for the period commencing 1 July 2014 to 30 June 2015. Having renewed her practising certificate on at least one occasion since registering in November 2013 Ms Lourie ought to have been familiar with what was required of her.

56. It was Ms Lourie's primary responsibility as a registered social worker to ensure that a current practising certificate had been issued before she was in a position to continue to be engaged in social work practice, as the Tribunal has found she was.

57. As the Tribunal said in *CAC v Angelo:*

> "The Tribunal accepts that the requirement under section 25 that a registered social worker who is employed or engaged in social work must hold a practising certificate is a "cornerstone" of the Act [quoting *CAC v Sanders*[30]].That requirement is not avoided simply because an employer does not require the social worker to hold registration. The requirement to ensure that a current practising certificate is held is ultimately an individual responsibility."

58. The Tribunal considers that when viewed objectively, Ms Lourie's conduct in continuing to be engaged in social work over the period of ten months despite not holding a current practising certificate represents a significant departure from the standards which are reasonably expected for a registered social worker who acts in compliance with the standards normally observed by those who are fit to practise as a registered social worker. The Tribunal is satisfied therefore that the conduct was 'conduct unbecoming' of a registered social worker.

59. The Tribunal is also satisfied that Ms Lourie's conduct in practising social work in breach of this mandatory legal requirement reflects adversely on her fitness to practise as a social worker. The conduct was not an acceptable discharge of Ms Lourie's professional obligations notwithstanding the reliance Ms Lourie placed on the position of her employer. As the Tribunal has stated in all of its previous decisions, the requirements for practitioners who have chosen to register to apply

[30] 11 NAPC 05/13/SWDT, 22 March 2013

in time for the renewal of their APC is fundamental to the professionalism of a registered social worker. This is a requirement that is one of the cornerstones of the regulatory regime which registered social workers choose to participate in to assure employers, clients and the public that they are professional and fit and competent to practice. The fact that the regime is voluntary does not remove the personal responsibility for registered social workers to comply with the legal requirement to hold a current practising certificate if they are continuing to practise social work. Lack of employer support does not obviate the practitioner's personal responsibility. For these reasons, the Tribunal determines that an objective assessment of Ms Lourie's conduct leads to the conclusion that the conduct was sufficiently serious to warrant discipline.

60. The Tribunal acknowledges that in her correspondence with the Board in late 2015 and January 2016, and in her evidence before the Tribunal, Ms Lourie raised several factors which she stated were relevant to her failure to apply for an annual practising certificate. These included her reliance on advice from her employer when she was first employed that she was not employed as a "social worker", and could not be provided with the work practice elements that would be required for her to meet her registration and APC requirements. Further, her belief that because other Case Managers were employed by Serco who were not registered social workers she was not required to be registered or to hold an annual practising certificate. Ms Lourie also referred to her "stupidity, naivety, lack of clarity and information" as the reasons for her failure to apply for an annual practising certificate.

61. The CAC did not dispute that Ms Lourie did not understand that she was in fact required to keep up her annual practising certificate in her new role as a Case Manager but submitted these are matters relevant to penalty, rather than to the issue of whether or not the charge was proved. The Tribunal agrees that these are subjective considerations relating to the knowledge or personal circumstances of the practitioner which are relevant to questions of penalty rather than to the objective assessment the Tribunal has been required to make of whether the conduct was a falling short of accepted standards and was "conduct unbecoming" which reflects adversely on Ms Lourie's fitness to practise. As the Tribunal stated in *CAC v Going* if in every case the Tribunal was required to take into account subjective considerations relating to the registered social worker then the purpose of the disciplinary processes under the Act would be undermined.

62. In conclusion, the Tribunal finds the charge of conduct unbecoming that reflects adversely on Ms Lourie's fitness to practise is proved.

Findings - penalty

63. Having found the charge proved, the Tribunal called for written submissions from the CAC and submissions and evidence from Ms Lourie on matters relevant to penalty and costs. Written submissions were received from Counsel for the CAC in

early March 2017. The Tribunal reconvened by teleconference to consider penalty and non-publication orders, on 27 April 2017 after receiving financial and other information provided by Ms Lourie including a letter dated 10 April 2017 (in which Ms Lourie addressed some further points relating to suppression of her name and her current financial position relevant to her ability to pay a fine and costs, were such orders to be made). The parties were invited to be heard orally at the commencement of the teleconference before the Tribunal retired to consider these matters. While Counsel for the CAC attended and made further submissions orally, Ms Lourie did not attend. The Tribunal then retired to consider whether to impose penalty orders, and if so, which orders.

64. The Tribunal has the power to make any of the orders set out in s. 83(1) of the Act. The overall decision is ultimately one involving an exercise of the Tribunal's discretion.

65. The principles relevant to penalty in the disciplinary context are comprehensively set out by Collins J in *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*.[31] In summary, the Tribunal's role in determining the appropriate penalty in any case involves consideration of the following eight factors:

- The protection of the public, which includes deterring other social workers from offending in a similar way;
- To set professional standards;
- That penalties have a punitive function, both directly (such as a fine) and as a by-product of sanctions imposed;
- Rehabilitation of the social worker, where appropriate;
- To impose penalties that are comparable to those imposed in similar circumstances;
- To reserve the maximum penalties for the worst offending;
- To impose the least restrictive penalty that can reasonably be imposed in the circumstances;
- To assess whether the penalty is a fair, reasonable and proportionate one in all the circumstances.

66. The Tribunal accepts the submission of the CAC that the penalty to be imposed must protect the public and enhance the professionalism of social workers, consistent with the purposes of the Act and the well-established principles of

[31] High Court Wellington CIV 2012-404-003916 [12 December 2012]

professional disciplinary proceedings. Further, punishment can be considered, but this is of secondary importance.[32]

67. This Tribunal has recently considered a number of charges laid pursuant to s. 82(1)(b) in circumstances where a registered social worker has not renewed their annual practising certificate. As the Tribunal stated in *CAC v Kuruvilla*, while each case turns on its own facts, there are also a number of similarities that arise, including notification to the social worker by the Board of the requirement to renew the practising certificate; relatively lengthy periods of time during which the practising certificate is not held, and prior awareness of the renewal processes for practising certificates.[33] In those cases the Tribunal has also had regard to the social worker's cooperation with the CAC, involvement in the Tribunal process and financial position.

68. Counsel for the CAC submitted that taking into account the seriousness of a registered social worker practising without a current practising certificate and its importance in maintaining the principal purpose of the Act, and having regard to previous decisions of a similar nature, censure and a fine are the appropriate penalties pursuant to s. 83(1)(b) and (c) of the Act.

69. Ms Lourie urged the Tribunal not to impose a financial penalty but the focus in her evidence and submissions were essentially on potential mitigating factors relevant to penalty.

70. The Tribunal has had regard to the need to impose a penalty in respect of the conduct charged and which the Tribunal is satisfied has been established. As such when considering comparable cases the Tribunal has considered cases where the length of time involved has been at the lower end of range of time periods the Tribunal has considered. That said the Tribunal accepted the CAC's submission that a period of almost a year is aggravating.

71. The Tribunal also considered that the lack of action including in the face of reminders sent to Ms Lourie by the Board about the need to renew her APC (both before and after its expiry date) was of some concern. It is not acceptable for practitioners to ignore correspondence received from their professional regulator, as Ms Lourie did. This correspondence provided Ms Lourie with the opportunity to clarify what was required of her well before she eventually responded to the CAC many months after her APC had expired.

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[32] *Katamat v Professional Conduct Committee* [2012] NZHC 1633, 21 December 2012; *PCC v Singh* [2014] NZHC 2848, at [57] and [62]

[33] *CAC v Nelson* RSW4/D1/SWDT/2015, 18 December 2015; *CAC v Russell* RSW6/D1/SWDT/2015, 18 December 2015; *CAC v Estall* RSW8/D1/SWDT/2015, 18 December 2015; *CAC v Angelo* RSW9/D1/SWDT/2015, 19 April 2016; *CAC v Haswell* RSW5/D1/SWDT/2015, 19 April 2016; *CAC v Kuruvilla* RSW1/D1/SWDT.2016, 19 April 2016; *CAC v Hungahunga* RSW6/D1/SWDT/2017 and *CAC v Going* RSW8/D1/SWDT/2017

72. As above, Ms Lourie's evidence was that she understood her employer did not consider she was engaged as a social worker and would not have supported her to meet the requirements of registration including the renewal her APC for that reason. The Tribunal understands those circumstances and has taken them into account as a mitigating feature as it was clear that this was a significant factor at least in terms of Ms Lourie's perception of what support and professional development she could expect from her employer relating to her registration and practise as a social worker.

73. That said, Ms Lourie had chosen to register as a social worker and by virtue of that she was personally required to ensure she complied with her legal and professional obligations including to obtain a current practising certificate if she wanted to continue to practise social work. Having received correspondence from the Board sufficiently in advance of her practising certificate expiring, the Tribunal considers that it would have been prudent for Ms Lourie to have taken up the matter of her current practising status with the Board at that time.

74. The Tribunal accepts the CAC's submission that a mitigating factor in this case is Ms Lourie's cooperation with the CAC in preparation for the hearing including agreeing a statement of facts and consenting to the admission of the bundle of documents. This is relevant because it indicates that Ms Lourie now has at least some insight into her conduct. The Tribunal considers that Ms Lourie deserves some credit for her cooperation, as well as for the effort she made to participate in the hearing and her willingness to give evidence before the Tribunal which assisted the Tribunal with its inquiry.

75. Notwithstanding Ms Lourie's oral evidence that she was of very limited financial means and was insolvent, the Tribunal sought and received from Ms Lourie further information pertaining to her current financial situation, supported by statutory declaration. An acceptance letter confirming details of Ms Lourie's summary instalment order situation was received by the Tribunal. It is not necessary to set out the details provided, other than to say that the information received by the Tribunal was sufficient to satisfy the Tribunal that Ms Lourie's financial position is indeed precarious.

Penalty decision

76. The Tribunal is satisfied this is a case where it is of sufficient significance to impose penalties. The Tribunal considers that penalty orders should be imposed in this case to protect the public through the maintenance of professional standards, which includes deterring other practitioners from behaving in a similar way.

77. The penalty orders the Tribunal imposes are as follows:

- Ms Lourie is censured (s 83 (1)(b)); and
- Ms Lourie is to pay a fine of $400 (s. 83(1)(c).

78. A censure is an appropriate penalty to reflect the failure to comply with the mandatory requirements which flow from registration as a social worker, and that this failure reflects on Ms Lourie's professionalism.

79. With regard to the fine, the maximum available under the Act is $10,000.

80. The Tribunal considers that a fine of $400 reflects the length of time over which Ms Lourie continued to be engaged in social work without a current practising certificate (ten months), ensures consistency with other cases of this nature which the Tribunal has considered recently, and takes into account Ms Lourie's current financial circumstances.

81. The Tribunal considers these orders are fair, reasonable and proportionate in all the circumstances and they are the least restrictive penalty orders that can reasonably be imposed in this case.

82. The Tribunal also has the power to make an order of costs. The costs incurred by the CAC when conducting its investigation, and when prosecuting the charge need to be considered as well as the Tribunal's own costs (all excluding GST).

83. The costs and expenses incurred by the CAC and the Tribunal in this case were in the region of $10,620.

84. A useful statement as to the applicable principles when considering the issue of costs, which the Tribunal adopted in *CAC v Hungahunga*, is contained in the decision of *Vatsyayann v PCC* [34] when Priestley J said:

> [34] "So far as costs orders were concerned, the Tribunal correctly addressed a number of authorities and principles. These included that professional groups should not be expected to bear all the costs of a disciplinary regime and that members of the profession who appeared on disciplinary charges should make a proper contribution towards the costs of the inquiry and a hearing; that costs are not punitive; that the practitioner's means, if known, are to be considered; that a practitioner has a right to defend himself and should not be deterred by the risk of a costs order; and that in a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards. The Authority went on to consider High Court judgments where adjustments were made when GST had been wrongly added to costs orders".

85. Counsel for the CAC accepted that on the basis of the financial information provided by Ms Lourie, she is not in a position to pay a contribution towards costs in addition to a fine, and therefore a costs order was not sought by the CAC.

86. Having considered all of the information before the Tribunal in relation to Ms Lourie's current financial situation the Tribunal is satisfied that Ms Lourie does not

[34] [2012] NZHC 1138

have sufficient financial means to meet a costs order in addition to a fine. Accordingly there will be no order as to costs.

87. But for Ms Lourie's financial position, as this has been determined, the Tribunal would have ordered Ms Lourie to make a contribution in the region of 40% of the total reasonable costs incurred by the CAC and the Tribunal.

Application for non-publication orders

88. At the hearing on 8 February 2017, Ms Lourie made an oral application pursuant to s. 79 of the Act for permanent non-publication orders in respect of her name and identifying details. The application was not supported by affidavit evidence although Ms Lourie gave oral evidence including under oath on matters relevant to suppression when she gave evidence in respect of the charge, and by way of submission. The grounds on which these orders were sought by Ms Lourie can be summarised as:

    (a) Concern that a finding of conduct unbecoming will cause members of the profession to infer that she had harmed clients in some way;
    (b) As a result of evidence given at the hearing, publication of her name may lead to her being in breach of her employment contract which states that she should not talk to the media; and
    (c) The high public profile of Serco will lead to wider publication of her disciplinary finding than otherwise might be the case; and
    (d) Ms Lourie's current health and other personal circumstances.

89. Counsel for the CAC indicated that she consented to interim non-publication orders in respect of Ms Lourie's name. A member of the media who was present was heard and submitted that it was not desirable for Ms Lourie's name to be suppressed, even on an interim basis, given the importance of open justice.

90. At the commencement of the hearing the Tribunal considered Ms Lourie's application and the submissions made by the parties and the member of the media. The Tribunal was satisfied that it was desirable to make the orders sought on an interim basis and indicated that it would give the parties an opportunity to address the Tribunal on whether the interim orders should be made permanent once the Tribunal had heard the charge and indicated the likely outcome. Accordingly, when the Tribunal retired to consider the issue of liability it announced that the interim orders would remain in place until further order of the Tribunal.

91. The Tribunal heard further submissions on the issue of non-publication orders, from Counsel for CAC when the Tribunal reconvened to consider penalty on 27 April 2017. The CAC opposed the application for a permanent order.

92. The Tribunal considered a letter from Ms Lourie dated 10 April 2017 which contained further submissions in support of her application for a permanent non-publication order. No further affidavit evidence was filed in support of the application, either by Ms Lourie or any other person on her behalf.

93. Section 79(1) of the Social Workers Registration Act 2003 has, as its starting point that every hearing of the Tribunal must be in public. However section 79(2) provides that if, after having regard to the interests of any person, including without limitation, the privacy of any complainant and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may make an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

94. Counsel for the CAC made the following submissions in opposition:

95. The starting point, by reference to section 79 of the Act is that disciplinary proceedings should be conducted in public and be transparent. When deciding to make any order, the Tribunal needs to consider whether such order is "desirable'. The interests of any person, the privacy of the complainant and the public interest must be taken into account.

96. In reliance on established principles the following should be taken into account[35]:
    - The openness and transparency of disciplinary proceedings, with reference to *M v Police*[36], *R v Liddell*[37] and *Lewis & Wilson & Horton;*[38]
    - Accountability of the disciplinary process;
    - The public interest in knowing when a practitioner has been charged with a disciplinary offence;
    - The principle of freedom of speech enshrined in section 14 of the New Zealand Bill of Rights Act 1990; and
    - The need to avoid unfairly impugning others.

97. These public interest factors have been analysed and applied by the Health Practitioners Disciplinary Tribunal in the context of an analogous statutory test under section 95(2) of the Health Practitioners Competence Assurance Act 2003.

98. In a recent Court of Appeal decision *Y v Attorney-General*[39] at [32] the Court of Appeal considered suppression in the context of disciplinary proceedings involving a lawyer and noted that publication is usual for disciplinary cases:

> "Given the almost limitless variety of civil cases and the fact that every case is different, the balancing exercise must necessarily be case dependent. Sometimes the legitimate public interest in knowing the names of those involved in the case (either as parties or as witnesses or both), or in knowing the detail of the case, will be high. *Hart v Standards Committee (No 1) of the New Zealand Law Society* was such a case. As this Court observed:[40]

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[35] These were discussed in *Director of Proceedings v Y* 591/Med13/258P, 23 December 2013
[36] *(1991) CRNZ 14*
[37] [1995] 1 NZLR 538
[38] [2003] 3 NZLR 546
[39] [2016] NZCA 474
[40] *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4 at [6]-[7]

> The public interest and open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make informed choices about who is to represent them. That principle is well established in the disciplinary context and has recently been confirmed in Rowley.
>
> Consequently, a professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure."

99. Counsel for the CAC submitted that on the information and evidence before the Tribunal and the grounds relied upon, there was an insufficient basis for a non-publication order in respect of Ms Lourie.

Discussion

100. Section 79(1) requires that every hearing of the Tribunal must be held in public and therefore there is a presumption that the names of those charged and found guilty of a disciplinary offence will be published.[41] However the Tribunal may prohibit the publication of some or all parts of a proceeding including the social worker's name, or any particulars of the affairs of any person.

101. The Tribunal is required to consider and balance the private interests of any person with the public interest.

102. The relevant public interest factors are those identified by Counsel for the CAC, as set out above.

103. Different considerations apply in relation to the making of permanent non-publication orders following a guilty finding, to those which apply in respect of interim orders. This was discussed by Panckhurst J in *Tonga v Director of Proceedings*[42] in the following way:

> "[35] To my mind there is a presumption in favour of openness, and therefore name publication in s.95. Obviously the section is to be read as a whole…The requirement of public hearing necessarily impacts in relation to ss(2) of the section. It empowers and enables the Tribunal to ameliorate the impact of a public hearing by making orders in terms of the sub-section where it is desirable to do so, including, of course, an order granting name suppression. The scheme of the section means, in my view, that the publication of names of persons involved in the hearing is the norm, unless the Tribunal decides it is desirable to order otherwise. Put another way, the starting point is one of openness and transparency, which might equally be termed a presumption in favour of publication.

[41] B v B High Court 4/92, 6 April 1993 per Blanchard J at [98]
[42] HC, Christchurch, CIV 2005-409-2244 21 February 2006 at [42]

> [42] …following an adverse disciplinary finding more weighty factors are necessary before permanent suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding has been made, the probability must be that the public interest considerations will require that the name of the practitioner be published in the preponderance of cases. Thus the statutory test of what is "desirable" is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may include in favour of the private interests of the practitioner. After the hearing, by which time evidence is out and findings have been made, what is desirable may well be different, the more so where professional misconduct has been established."

104. Gendall J in *Anderson v PCC*[43] agreed with the remarks of Panckhurst J in *Tonga v Director of Proceedings* (above). His Honour referred to what might constitute the relevant private interests of a person seeking name suppression as follows:

> "Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interests such as protection of the public, maintenance of professional standards, both openness and "transparency" and accountability of the disciplinary process, the basic value of freedom to receive and impart information, the public interest in knowing the identity of a practitioner found guilty of professional misconduct, the risk of other doctors' reputations being affected by suspicion, are all factors to be weighed on the scales.
>
> ..Of course publication of a practitioner's name is often seen by the practitioner to be punitive but its purpose is to protect and advance the public interest …….. It also reflects the principles of openness of such proceedings and freedom to receive and impart information."

105. The Tribunal considers these same principles and observations apply in the context of applications for permanent non-publication orders under s. 79 of the Act.

106. The onus is on the practitioner seeking non-publication orders to establish the grounds for it.

107. The Tribunal has considered Ms Lourie's private interests. However it is not satisfied that on the evidence before it any of these, either when they are considered individually or cumulatively, outweigh the public interest factors which favour her name being published.

108. The Tribunal considers that the effect of publication of Ms Lourie's name on her professional reputation must be assessed in the light of the particular nature of the charge, being one of conduct unbecoming relating to practising without a current practising certificate. As Counsel for the CAC submitted, there is no suggestion that

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[43] HC, Wellington CIV-2008-485-1646 14 November 2008 at [36] and [37]

Ms Lourie has conducted herself unethically or has harmed clients in any way. Nor does the charge relate to Ms Lourie's competence. The Tribunal considers that the adverse disciplinary finding in this case is unlikely to have any significant impact on Ms Lourie's ongoing or future practise of social work.

109. That is not to suggest that Ms Lourie's offending was insignificant. The requirement to hold a current practising certificate is an important one and is one of the mechanisms by which the public is protected, that there is accountability and by which professional standards are enhanced. It is not a minor matter that Ms Lourie continued to practise social work for a period of 10 months without an APC.

110. The Tribunal accepts the submission of Counsel for the CAC that there is an interest in protecting the ability of persons appearing before the Tribunal to give full and truthful evidence. However, Ms Lourie's contention that her having given evidence raises the possibility of a breach of her employment agreement is speculative and the Tribunal does not consider that possible employment consequences associated with her evidence is a relevant factor for the purposes of determining whether permanent name suppression is desirable. This was a situation where Ms Lourie was giving evidence before a statutory tribunal in her own defence in a public disciplinary hearing at which media were entitled to be present.

111. Counsel for the CAC submitted that the concern held by Ms Lourie about the possible reach of details of the decision and the employer reflects a potentially higher level of public interest, would not be a proper basis on which to make a permanent non-publication order under s.79. The Tribunal accepted that submission. It is not for the Tribunal to speculate as to the likely level of media and public interest in this case were it to be reported.

112. The Tribunal has taken into account the concerns Ms Lourie raised in her evidence given under oath about her health and other personal circumstances. In terms of Ms Lourie's health and personal interests, the Tribunal does not consider the difficulties in Ms Lourie's personal and professional life in themselves constitute sufficient grounds to displace the presumption in favour of publication in this case.

113. Counsel for the CAC indicated in her written submissions dated 3 March 2017, which were served on Ms Lourie, that without a current report or assessment, (from Ms Lourie's treating health practitioner) it is not possible to have an accurate picture of Ms Lourie's health and therefore the Tribunal cannot sufficiently link the effects of publication on her health or other personal circumstances. Subsequently, Ms Lourie did not file any evidence from a medical practitioner or other treatment provider or from an expert as to her current health circumstances, in affidavit form or otherwise. In those circumstances the Tribunal accepts the submission of Counsel for the CAC that there is insufficient evidence to support a permanent non-publication order on health grounds. That is not to say the Tribunal has not had regard to or placed any weight on the evidence which Ms Lourie gave and her submissions on these matters. Careful consideration was given to these matters but in the end, the Tribunal was not satisfied these were sufficient to outweigh the relevant public interest factors.

114. The Tribunal accepted Counsel for the CAC's submission that Ms Lourie has not identified sufficient grounds for suppression to outweigh the public interest in openness and transparency; and therefore suppression is not desirable in this case. Accordingly the application for permanent non-publication of Ms Lourie's name is declined.

115. In relation to Serco, at the commencement of the hearing, after hearing from the parties, the Tribunal of its own motion made an interim order in respect of the non-publication of Serco, essentially to preserve the position for this entity. It was anticipated that Ms Lourie would draw this matter to the attention of Serco and/or that Counsel for the CAC would consider this issue prior to the Tribunal reconvening to consider whether a permanent order would be made. When the Tribunal reconvened on 27 April 2017, no further information or evidence pertaining to Serco was placed before the Tribunal.

116. The Tribunal does not consider there are adequate grounds supported by the evidence which establish the desirability of a non-publication order in respect of Serco, given the relevant public interest factors at play and the need to observe the principles of open justice. Accordingly the interim order in relation to Serco is not to be made permanent.

117. The Tribunal directs the Executive Hearing Officer to publish a copy of this decision on the Board's website in the usual manner, at the expiration of the statutory appeal period.

DATED
This 23rd day of May 2017

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Jo Hughson
Chairperson