

## **Private lives and professional suitability: themes and discourses in Care Standards Tribunal decisions about registered social workers**

*Social Policy Association Conference, Edinburgh, June/July 2009: please do not reference without the author's permission.*

Fran Wiles  
Lecturer in Social Work  
Faculty of Health and Social Care  
The Open University

F.Wiles@open.ac.uk

### **Abstract**

Social workers, and students embarking on qualifying courses for social work in the UK, must now register with the relevant social care council for their nation and 'sign up to' the Codes of Practice. The codes specify that social workers must not 'behave in a way, in work or outside work, which would call into question [their] suitability to work in social care services' (General Social Care Council 2002). It has been suggested (Clark 2006) that the recent changes in social work regulation have extended expectations about social workers' personal standards, values and ways of life beyond their contractual obligations in the workplace. It has also been argued that social care regulation is shaped by discourses of 'failure' (Langan 2000) and 'risk', which place social workers under increased scrutiny - in their personal as well as professional lives - by colleagues, employers, service users and members of the public (McLaughlin 2007a).

My doctoral research is concerned with social work students' perceptions of professional regulation and how this affects their sense of identity, in both private and professional life. The initial stage of the research has included an examination of discourses which are created and reproduced in key texts about social work regulation. I have been particularly interested in the 'published decisions' of the Care Standards Tribunal which consider appeals against care council rulings in England and Wales. To date, the majority of CST hearings (thirty-one) have been concerned with appeals from people refused registration by the GSCC. A further four have related to interim suspensions, and nine to removal from the register. The CST reports offer an insight into how the panels have interpreted the rules, for example how the term 'misconduct' is to be defined. While it is right to investigate concerns about conduct - after all, social workers work closely with children and adults when they may be at their most vulnerable - in some cases questions arise about the relationship between social workers' private lives and their professional suitability.

In this paper I present an initial analysis of some themes and discourses emerging from an overview of CST decisions. Particular attention is given to discourses of risk, expectations about social workers' character and conduct, and the implications for their private and professional lives.

## **Introduction**

Social workers, and students embarking on qualifying courses for social work in the UK, must now register with the relevant social care council for their nation and 'sign up to' the Codes of Practice. The codes are wide ranging and relate to standards of professional behaviour and practice: of particular interest for this paper is code 5.8 which tells social workers that they must not

Behave in a way, in work or outside work, which would call into question [their] suitability to work in social care services. (Code 5.8, General Social Care Council 2002<sup>1</sup>)

This discussion relates specifically to England, where the research is taking place, but there is a similar framework of rules and procedures in all four UK nations.

My doctoral research is concerned with social work students' perceptions of professional regulation and how this affects their sense of identity, in both private and professional life. The initial stage of the research has included an examination of discourses which are created and reproduced in key texts about social work regulation. I have been particularly interested in the 'published decisions' of the Care Standards Tribunal (CST) which consider appeals against care council rulings in England and Wales.

It has been suggested (Clark 2006) that the recent changes in social work regulation have extended expectations about social workers' personal standards, values and ways of life beyond their contractual obligations in the workplace. In this paper I present an initial analysis of some themes and discourses emerging from an overview of CST decisions. Particular attention is given to discourses of risk, expectations about social workers' character and conduct, and the implications for their private and professional lives. First, however, it will be helpful to briefly outline the policy context for social work regulation.

## **Policy context**

The Care Standards Act 2000 created a range of measures to strengthen social workers' accountability to the public: in England these included the setting up of the General Social Care Council (GSCC) in 2001 and the introduction of compulsory social work registration in 2005.

As a strategy for protecting the rights and well-being of services users, social work regulation has much in its favour. Social workers occupy powerful positions which impact on the lives of people who use services, at a time when they may be at their most vulnerable. The Codes of Practice provide a transparent set of standards by which service users, practitioners, employers and members of the public know what to expect from a social worker. Breaching the codes raises questions about whether a social worker is entitled to remain on the social care register (and thus legally able to practise). Between April 1<sup>st</sup> 2003 and 31 March 2008, seventeen social workers were removed or suspended from the GSCC register on the grounds of unsuitability<sup>2</sup>. A further sixteen social workers were admonished (publically cautioned) due to issues

---

<sup>1</sup> Each country in the UK has its own regulatory body. The codes of practice, however, were developed jointly and apart from some differences in wording are common to all four countries.

<sup>2</sup> The terms 'suitable' and 'unsuitable' are used by the care councils in relation to registration.

arising with their conduct. Thirty-nine social workers were temporarily suspended while the GSCC investigated their case (General Social Care Council 2008a, p.17). Even adding these figures together, this is not a large proportion of the 109,341 social workers registered during that period. However, as the GSCC points out, 'although the number is small the potential to have an adverse effect on the lives of people who use services is considerable' (GSCC 2008a, p.7). Without regulation, it is likely that some 'unsuitable' social workers would still be in direct contact with service users.

### **Social work regulation as a discourse**

My interest in social work regulation sprang partly from Langan's argument (2000, p.158) that the 1998 white paper *Modernizing Social Services* – which preceded the Care Standards Act - constructed a discourse of failure and loss of trust in public services, rendering social workers 'highly receptive to new strategies ... commissions, councils and inspectorates, or national frameworks offering service models and national standards, the key innovations in the 'modernizing' proposals'. Drawing on Foucault's work, a discourse can be defined as 'a system of representation which regulates the meanings and practices which can and cannot be produced' (Smith 1998: 254). Discourses, then, create conditions which make certain courses of action seem inevitable; the new regulatory system could be seen as an example.

Discourses give rise to rules of conduct, texts and institutions which strengthen and perpetuate them (Smith 1998: 254). One of the GSCC's first actions was to produce the Codes of Practice which set out guidelines for how social care workers should conduct themselves. These in place, it became possible to introduce systems for registering the workforce and responding to breaches of the codes by registered workers. A discourse confers power on some people to define the status of others, according to certain categories (Foucault 1967). Once accepted onto the GSCC register, people become 'registered social workers', a subject position which confers both obligations and permission to be employed. Other people and institutions also come to occupy particular subject positions within the regulatory discourse: members of the public, employers, GSCC staff and so on. The Care Standards Tribunal (CST) considers appeals against decisions made by the GSCC and the Care Council for Wales. At this relatively early stage in its life, it is not entirely clear what role the CST plays in the regulatory discourse.

In considering how regulatory discourses are created and maintained, there is no intention to undermine the importance of service users' rights and well-being or to ignore the very real abuses of professional power that the regulatory bodies must deal with. Even the briefest look at the CST reports highlights the challenging balance to be struck between the individual rights of both professionals and people who use social care services, and the difficult course that has to be steered between individual rights, public opinion and regulatory requirements and roles.

### **An example of a CST report**

The CST has nineteen legal members and sixty nine 'specialist' (lay) members, and is presided over by a Senior Circuit Judge (Pearl 2008). The specialist members are selected in accordance with certain requirements including experience and qualifications relevant to the cases under discussion. Reports of all appeal decisions can be found on the CST's public website.

Before discussing the reports selected for analysis, I would like to present some extracts from the GSCC's first conduct case, that of YD<sup>3</sup> v. GSCC (Care Standards Tribunal 2006a). YD had been suspended from the GSCC's Social Care Register on the grounds of misconduct:

The Committee found that, by advertising herself as an escort with an internet agency with links to websites associated with prostitution, [YD] had brought the profession of social work into disrepute and damaged public confidence in social care services.

The Committee decided not to remove [YD] from the Social Care Register as it accepted that to advertise as an escort is not illegal and that no individual member of the public was harmed or was put at direct risk by her activities (GSCC 2006).

Although YD appealed against her suspension, the CST did not find in her favour. The panel's report is of interest because, as one of the earliest appeals against a GSCC decision, it deliberated over the meaning of terms and concepts contained within the Codes of Practice. The Tribunal's first task was to determine what is meant by misconduct. As it is alleged that YD has contravened the Codes of Practice, the panel looks to these for their answer, but finds that '[there] is no express definition in any document produced by the GSCC' (Care Standards Tribunal 2006a, paragraph 10). Although the GSCC has produced a set of 'conduct rules', it is true that neither these nor any other document contain much guidance on what misconduct consists of. In fact, the GSCC's definition of misconduct supports the idea that a discourse continually reproduces itself by the definitions and 'truths' which it creates:

**Misconduct** means conduct which calls into question the suitability of a Registrant to remain on the Register; [and] **Register** means the Register maintained under section 56 of the Act (GSCC 2003, p.6).

The panel then proceeds to examine the codes of practice further, and notes

...the requirement, at Paragraph 5, for a social care worker to "uphold public trust and confidence in social care services." In particular, Paragraph 5.8 states that a social care worker must not "behave in a way, in work or outside work, which would call into question your suitability to work in social care services." (Care Standards Tribunal 2006a, paragraph 10)

The panel goes on to ask:

So, is there certain behaviour that would automatically call into question someone's suitability to work in social care services (a sort of moral absolute) or is it dependent upon the circumstances of the individual and environment? Likewise, does the dynamic of publicity (as in it being public knowledge) make someone guilty of misconduct when they would not be if it remained private? (Care Standards Tribunal 2006a, paragraph 11)

---

<sup>3</sup> Some reports on the CST's public website are referred to by their full name, and others by their initials. I have used initials for all appellants. The full references are provided at the end of this paper.

The report initially seems undecided about the answer, and appears to suggest that each situation will be considered on its own merits (which is also the message conveyed in the GSCC conduct rules and guidance on suitability). However, given that the stated purpose of registration is to 'uphold public trust', the CST considers the perception of the public to be equally important (possibly more so) than the context for the behaviour. It explains:

We have come to the conclusion that misconduct is about lack of integrity and how an individual is perceived by others: if someone cannot be trusted in this part of their lives, where else are they not to be trusted? The answer might be that they are utterly trustworthy elsewhere, of course, but that does not matter because we believe that once doubt has been cast on how they are seen by others, the damage is done. It may be said by outsiders that if one person has done this and been allowed to get away with it, maybe others have done the same. It calls into question the whole credibility of the system (Care Standards Tribunal 2006a, paragraph 13)

Finally, the CST continues:

Working in social care, an individual is working with vulnerable clients. .... This places on an individual a responsibility. A responsibility to behave appropriately and to be above reproach, "whiter than white", to be that role model and not to let people down is a reasonable expectation of a professional. (Care Standards Tribunal 2006a, paragraph 18)

The implication appears to be that, regardless of context, social care workers need to behave as role models (and at all times, even in their private lives). From a discursive analytic perspective, it can be seen that the extracts cited above offer some fascinating material. Three themes are selected for discussion in this paper: private life; risk; and what is to be expected of a social worker. There are overlaps between these themes and they are open to alternative readings, but they are a useful basis for making comparisons between the reports. First, however, I will clarify what methods were used.

## **Method**

In England and Wales, between December 2006 and February 2009, there were forty-four appeals against GSCC decisions. The majority (thirty-one) were made by people whose applications to register with the General Social Care Council (GSCC) had been turned down. A further four related to suspensions / interim suspensions of registered social workers, and nine to removal from the register. I began by briefly reading all the reports and disregarding those which did not seem to be directly related to conduct. These included disputes about qualifications (fourteen cases) and failure to renew registration (six cases). Two cases were 'struck out' due to a procedural problem, and therefore not given a final hearing. In all the remaining twenty-one cases, suitability was questioned on account of conduct, competence or health. Of these, eight appeals were upheld (that is, successful from the appellant's point of view) and thirteen were dismissed. This is summarised in the table below – the categories are a subjective judgement based on the way the case has been reported, and there are overlaps for example between conduct/ competence/ health issues. Of the twenty-one cases, thirteen appeals were from male social workers and eight from

female workers. It is not possible to reliably report on ethnicity and age, as these characteristics are not always explicit from the reports.

**Table 1: Cases selected for analysis**

	Upheld	Dismissed	Total
Inappropriate relationship with a service user	2 (1 with conditions)	3	5
Not competent due to mental health issues	1	1	2
Competence	1	0	1
Conduct (criminal or disciplinary offences)	2	9	11
Conduct/ competence	1	0	1
Conduct/ mental health issues	1	0	1
Total	8	13	21

Finally I selected twelve reports for a more detailed analysis, with a view to getting a more or less equal spread between upheld and dismissed cases. Of these, five related to female workers and seven to men. Extracts from some of these twelve reports are discussed under the three themes identified above.

The method used to analyse the reports is drawn from a discursive framework used by Jean Carabine (2001) in her study of ‘unmarried motherhood’ from the 1830s – 1990s. Carabine adopts a Foucauldian genealogical approach to discourse analysis, which starts from the idea that ‘knowledge, truth and discourse are all socially constructed and historically specific’ (2001, p. 280). In particular she advises examining texts to identify

- themes and categories which [relate to] the discourse
- inter-relationships between discourses
- the discursive strategies and techniques that are used
- absences and silences
- resistances and counter-discourses
- the effects of the discourse.

As noted earlier, the YD case alerted me to possible themes to be explored more widely. In making sense of the reports, I have drawn on other aspects of Carabine’s framework, for example to consider how silences/ absences are used. I also reflected on the discursive resources used to construct the argument (and the panel’s eventual decision), and considered how people were constructed as subjects in the discourse. It

should be acknowledged that this is work in progress (which at this stage primarily forms the background for the interviews currently being carried out with social work students), and that there is room for a more detailed analysis and exploration.

### **Analysis of the reports**

I will discuss the reports under the thematic headings identified above, before bringing them together to draw out some possible implications.

### ***Private life***

As noted earlier, the GSCC Codes of Practice are used to guide practitioners in meeting the required professional standards. Abiding by the codes is a condition of being registered, and breaching them calls into question a social worker's suitability to remain registered. According to the GSCC, the most commonly breached code is 5.8: 'Behave in a way, in work or outside work, which would call into question a social worker's suitability to work in social care services' (General Social Care Council 2008a, p.18).

For the purposes of my analysis I took the term 'private life' to include criminal offences taking place outside work (as opposed to disciplinary offences); health issues; behaviours such as drinking alcohol; personal and sexual relationships; employment other than in social care; and personal circumstances. All of these feature in the CST reports in one form or another. I have already referred to Clark's assertion (2006) that regulation extends expectations about social workers' standards, values and ways of life beyond the demands of the workplace. In the light of this, I wanted to explore how the boundary between private and professional life was conceptualised, and whether there was any evidence that the two domains were somehow being merged.

So, what kind of out of work behaviour cause concerns about professional suitability? In the YD case the CST panel suggests (Care Standards Tribunal 2006a, paragraph 14) that 'membership of a political party, campaigning for or against a government's particular policy, sexual orientation and everyday life choices' are all examples of behaviour that would *not* call a person's suitability into question. On the other hand, 'murder, arson, rape or a serious criminal act' would always cause be cause for concern. The panel acknowledges that there may also be 'a grey area' in which a 'reasonable dividing line between acceptable and unacceptable is more difficult to draw' because '[what] to some people would be considered normal, everyday behaviour, could be regarded as morally reprehensible by other[s]' (Care Standards Tribunal 2006a, paragraph 15). The panel finds that 'to advertise oneself as a prostitute ... falls on the wrong side of where any line of appropriate behaviour is to be drawn' (Care Standards Tribunal 2006a, paragraph 19). The reasons for this judgement are not discussed in great detail, other than to declare that '[p]rostitution involves deceit. The use of a false name by the woman, for example. It is, of course, still a criminal offence' (Care Standards Tribunal 2006a, paragraph 16).

As McLaughlin (2007b, p. 250) has pointed out, there may be some questions about the CST's reasoning in this case because:

... what is striking is the Tribunal's failure adequately to distinguish between escort work (legal) and prostitution (illegal), and that it feels able to conclude

that the social worker was the latter by interpreting e-mail exchanges as implying that sexual intercourse had taken place.

Nevertheless, the YD case has raised debate in the social work profession (Leason 2006, cited by McLaughlin 2007b) and highlighted the difficulty of deciding where 'dividing line' should be drawn in relation to alleged misconduct.

Privacy itself is one of the rights promoted by Article 8 of the Human Rights Act, and as such it is frequently reflected in the CST reports. For example, people's names are sometimes abbreviated to prevent identification (although as the initials do not appear to be pseudonyms they provide only a limited degree of privacy). The right to privacy is not absolute, however. In the case of DSH, a social worker who had a six week sexual relationship with an adult service user, the Tribunal accepts the GSCC's argument that in becoming registered, social workers bring their private life into contact with their public life, and therefore:

any 'right' to an unrestricted social life must give way to the wider public interest in ensuring that professionals do not present a risk to service users. (Care Standards Tribunal 2008a, p. 13)

Thus it appears from this case that – as Clark suggests - the private and professional lives of social workers cannot be separated. However, in some appeals, although private behaviour may be open to scrutiny, it does not always lead to an assessment of unsuitability. For example, in BA v. GSCC, and in VL v. GSCC, the social workers declared criminal offences which did not affect the panel's decision. Similarly the relationships that VL and DSH developed with service users did not – after consideration – render them professionally unsuitable. This is despite the GSCC's clear statement, in its Codes of Practice, that social care workers must not '[form] inappropriate personal relationships with service users' (General Social Care Council 2002, code 5.4). Although DSH, CB and VL are all in breach of this code, this in itself is not seen as sufficient to warrant sanction; the Tribunal also considers the extent of risk to the public which might be involved.

### ***Risk***

McLaughlin (2007b) argues that regulation is linked with a discourse of risk in which service users are constituted as vulnerable and in need of protection. This is evident from the way in which the GSCC describes its regulatory role:

The GSCC exists to improve the quality of social care and through our actions we aim to improve the standards of the workforce. By addressing poor practice and taking action where necessary, we provide protection for people who use services and ensure a workforce fit for its purpose. (General Social Care Council 2008a, p.25)

In my analysis of the CST reports, therefore, I was concerned to find out how risk was conceptualised and how this related to the way that both social workers and service users were portrayed.

In general, the risks under discussion in the CST reports are future ones: potential rather than actual risks. In the case of *CB v GSCC*, the social worker had a sexual relationship with a woman who used mental health services, which led to his being imprisoned under section 38 of the Sexual Offences Act 2003. *CB* appeals against suspension because, he argues, he is not a risk while in prison and he has been assessed by the prison service as being at low risk of re-offending when he is released. The Tribunal accepts the logic of this argument to some extent, but having considered the evidence expresses ‘considerable doubts as to the Appellant’s appreciation of his duties towards those for whose welfare he might be responsible as a social worker’ (Care Standards Tribunal 2007b, paragraph 18). The risk to service users is not the Tribunal’s only concern, however. Even though *CB* is currently in prison, the panel considers that a suspension order is necessary on the grounds of ‘the public interest’, which includes ‘the maintenance of public confidence in the profession (Care Standards Tribunal 2007b, paragraph 8). In other words, the risk here is to the reputation of the social work profession rather than to service users per se, and the suspension seems to have a largely symbolic function.

Risk is also linked with remorse. Concerns appear to be reduced when the social worker can demonstrate that he or she has reflected on the incident, accepted their culpability and is unlikely to re-offend. Both *DSH* and *CB* had relationships with service users and were found to be unsuitable for registration by the *GSCC*, but whereas *CB* lost his appeal, *DSH* was successful because:

In giving evidence the Appellant showed remorse for his actions and a willingness to attend training courses to fully understand the boundaries that a social worker must work within. He said that his life has [been] and is about being a social worker. We see little risk that he will ever make such an error of judgement again (Care Standards Tribunal 2008a, paragraph 55)

Similarly, although *VL* initially conceals her dismissal from a previous job because of her relationship with a service user, she nevertheless wins her appeal because of her exemplary work references and obvious expression of regret for her actions.

As argued above, demonstrating that a social worker presents a risk depends to some extent on constructing service users as vulnerable. In the cases of *CB* and *DSH*, although the relationships are described as consensual (and initiated by the other party), the women are represented as dependent and emotionally fragile on account of their mental health conditions. This is perhaps exacerbated by their absence from the Tribunal proceedings as witnesses, either in person or in writing. In contrast, *Mr D* - the male service user with whom *VL* has a relationship - is seen as active and powerful:

... during one of her visits, *Mr D* told the Applicant that he had fallen in love with her and wanted to have a sexual relationship with her. The Applicant protested that this would not be possible.

... *Mr D* invited the Applicant to come to his home in the evening to “discuss important matters” and then persuaded her to share a meal with him. *Mr D* then further persuaded the Applicant to stay and to have sexual intercourse with him. The Applicant expressed her reluctance to become involved with *Mr D* in this way

but found herself unable to resist his advances. (Care Standards Tribunal 2008b paragraphs 9, 10).

In general, risk is conceptualised as one-way: the harm that a social worker might do to a service user. In the case of VL, the panel attempts to explore whether she had been physically coerced by Mr D., but on the whole very little attention is given to the risks – of any kind - to which social workers might be subject themselves. For example, in the case of BA, it is reported that the GSCC considered that his alcohol dependence might pose a risk for service users who might travel in his car; whereas his mental health issues were not seen as a concern (not to service users anyway):

The potential for the applicant's depression to have a direct negative impact on service users is low as he internalises his distress until it has to be expressed in some manner resulting, in the worse circumstance, in self-harm (Care Standards Tribunal 2007a, paragraph 13).

Whereas risk constructs service users as vulnerable, it does not seem to be an issue in relation to other members of the public presumably because this falls outside the GSCC's remit. For example, VL's relatively recent caution for the offence of 'common assault following an altercation with a railway employee' (Care Standards Tribunal 2008b, paragraph 31) is not given any weight in the panel's decision. In *CG v. GSCC*, the social worker's registration had been suspended while three allegations of sexual and inappropriate conduct towards service users were investigated by his employers. Meanwhile, CG left his social work job and retrained as a plumber. He appealed against the suspension because, he said, he had no intention of returning to social care work. However, the Tribunal was concerned that CG might not be able to earn enough as a plumber and that – if not suspended – he might return to social work and thus pose a potential risk to service users:

... we are clear that the public should be protected from the Appellant and ... if he is not removed from the Register temporarily, then there is nothing to stop him applying for work as a registered social worker (Care Standards Tribunal 2008c, paragraph 19).

Potential risks, therefore, can only be considered in relation to service users, and not to plumbing customers or railway staff.

As discussed above, risk is also conceptualised in relation to the reputation of the profession. In the YD case, the Tribunal observes that if one social worker is 'allowed to get away with [misconduct] ... it calls into question the whole credibility of the system' (Care Standards Tribunal 2006a, paragraph 13).

One further case is of particular interest here. EMM had received a prison sentence for benefit fraud which she failed to disclose to her employers and the GSCC. She appealed against the decision to remove her name from the social care register, on the grounds that this was disproportionate. The Tribunal, which did not find in her favour,

rested its decision partly on precedents set by the Law Society<sup>4</sup>, another regulatory body:

[it was] submitted that the approach taken to the imposition of sanctions against solicitors found guilty of misconduct applied equally to social workers [as referred to in] *Bolton v. Law Society* [1994] 1 W.L.R. 512. ... In the course of his judgment, Sir Thomas Bingham MR, with whom the other members of the Court agreed, said "...It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness ... [this] approach to professional discipline is as apt for social workers as for solicitors. Clients, courts, benefit authorities and all those with whom social workers must deal are entitled to expect social workers to be entirely honest. Their code of conduct explicitly requires honesty and trustworthiness (*Care Standards Tribunal 2007c*, paragraphs 35-36).

The Tribunal then drew on the *Bolton v. Law Society*'s explanation that although sanctions might sometimes have a 'punitive element', there were also two other purposes: to deter others and to protect the reputation of the profession. It is emphasised that:

The second purpose is the most fundamental of all: to maintain the reputation of the ... profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.

... A profession's most valuable asset is its collective reputation and the confidence which that inspires.

... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price. (*Bolton v. Law Society* [1994] 1 W.L.R. 512 cited in *Care Standards Tribunal 2007c*, paragraph 35)

Despite the emphasis on professional reputation in the case of EMM, this approach is not followed with respect to VL, even though the panel refers to the same concepts:

... Public confidence in the social work profession must be maintained. The Applicant did bring her profession into disrepute in 1998-9. (*Care Standards Tribunal 2008b*, paragraph 62)

In this case, however, it was considered that VL's 'dedication and commitment and her high level of performance at all other times was just sufficient to counterbalance her serious but uncharacteristic misconduct' (*Care Standards Tribunal 2008b*, paragraph 62). This interpretation challenged the GSCC's argument that the Applicant's dishonesty in relation to her registration 'had the effect of undermining

---

<sup>4</sup> The regulation of solicitors in England and Wales is now undertaken by the Solicitors Regulation Authority (SRA)

the General Social Care Council's ability to carry out its function as a regulatory body.' (GSCC, cited in Care Standards Tribunal 2008b, paragraph 36). So risk can be applied to the reputation of the social work profession, and also to the credibility of the body that regulates the profession.

A number of different risks are considered in the CST reports, but all of them need to be balanced with the risks to an individual social worker's career and their privacy:

The General Social Care Council has been entrusted by parliament with responsibility to regulate the social care profession. Their primary duty is to the public to ensure that standards in the field are maintained and improved. Where they consider that any of the statutory requirements for Registration are not fulfilled they have a duty to act upon this rigorously ... Nonetheless their decisions have very serious consequences for Applicants they can at a stroke end a career and accordingly they ... must accord the Applicant a fair hearing in accordance with the Human Rights Act and must provide carefully argued reasons for their decisions. (Care Standards Tribunal 2005, paragraph 33)

### ***Expectations of a social worker***

In order to be registered, a social worker must provide information about:

- (i) good character, as it relates to the Applicant's fitness to practise the work expected of a social care worker ...
- (ii) good conduct;
- (iii) physical and mental fitness to practise in the field of social care work in which the Applicant wishes to work; and
- (iv) competence (General Social Care Council 2008b, page 10)

Only 'good character' and 'conduct' will be discussed here. Two themes are apparent in the CST reports: a consideration of what misconduct involves and the extent to which 'good character' is a static or flexible concept. In the case of CB, a fairly early report, it is established that committing a criminal offence is synonymous with misconduct (Care Standards Tribunal 2007b, paragraph 10). However, it is also suggested that '[criminal] offences vary in seriousness and some have less relevance to a person's suitability to practise as a social worker than others' (Care Standards Tribunal 2007b, paragraph 12). Not all misconduct will result in sanctions, therefore. An example is that in the case of BA, the Tribunal takes into account that the offences (which mainly consist of drink driving and criminal damage) took place some years ago. They also consider BA's explanation about the circumstances surrounding the offences, and conclude:

... [such] doubts that surface do not in our opinion amount to a lack of good character within the statutory requirements for registration. We find no basis to suggest that because of that his registration would place the public at risk [or] damage the reputation of the social work profession (Care Standards Tribunal 2007a, paragraph 31).

So while committing an offence does constitute misconduct, this is not necessarily the same thing as an absence of good character. Criminal offences are, of course, not the only kind of behaviour involved with misconduct. It has already been seen that in the

YD case, misconduct was defined in relation to three elements: integrity (or a lack of it); 'how an individual is perceived by others' (paragraph 13); and whether someone can be trusted.

In all the reports, integrity is considered to be a particularly important factor in deciding on someone's good character. Many of the decisions hinge on whether the appellant had knowingly concealed the information which potentially calls their suitability into question. CB's initial denial of having a relationship with a service user leads the panel to have 'considerable doubts as to his integrity and his preparedness to be open with his line managers when facing difficulties (Care Standards Tribunal 2007b, paragraph 18). On the other hand, VL and DSH were treated more sympathetically. VL's initial deception was seen as 'a serious matter' but

it did not, in the Tribunal's judgment, indicate a general propensity to deceive. The Applicant's desire to continue to earn her living by working with children and their families and her sincere and well-founded belief that she had much to offer drove her to hide the truth on this occasion but she has, on many other occasions, demonstrated an ability to be frank, open and honest (Care Standards Tribunal 2008b, paragraph 56).

Similarly, DSH was considered to have 'acted foolishly, crossed boundaries and had an inappropriate relationship with J', and yet:

However weak and foolish this may have been it was not done with ulterior or hidden motives. He had strong feelings for J, wanted to help her and was prepared to stand by her to the end. He has an exemplary work record, supportive references and this was an isolated incident (Care Standards Tribunal 2008a, paragraph 54).

The implication is that a social worker may be foolish or weak – and breach the code of practice – but she or he can also be redeemed by being honest about their mistake and having work references which indicate that their behaviour is atypical.

### **Discussion**

So, having considered a sample of reports – albeit that the analysis could be further developed - are there any conclusions that can be drawn? There are three areas which I think could be highlighted and further explored.

First of all, I return to the question of how the boundary between private and professional life is conceptualised. Although the CST reports show some variation in the extent to which private behaviour impacts on professional suitability, there is no doubt that regulation requires social workers' private lives to be available for scrutiny. Thus these two domains - private and professional - cannot really be separated. McLaughlin (2007a, p.1269) argues that this is a worrying development because it ... clearly extends the employer's control into areas hitherto considered outwith their remit. It also places the social worker under the scrutiny of colleagues, service users and members of the public, any of whom can report 'unsuitable' behaviour to the GSCC.

Clark (2006, p. 87) agrees that 'the new standards and processes of registration have ... sharpened the focus on character (as opposed to principle and duty) in ways that have perhaps not been fully recognized'. However, he welcomes the Codes of Practice and argues that a social worker's 'moral character' is just as important as technical skills and professional principles. He regards the implications for a social worker's private life as a positive move, although also acknowledges that the assessment of professional suitability could potentially open the door to prejudiced attitudes on the part of those who decide (2006, p.84).

The second point relates to an apparent tension underlying the variations between reports. Taking an overview of the twenty-one reports, two opposing discourses about professional suitability are evident. I have characterised these as 'second chance' and 'good name gone forever'. These are linked with the extent to which good character is seen as flexible rather than fixed. In the majority of cases (especially DSH, VL, BA and DH) there is the sense that a social worker need not be 'perfect' at all times; if he or she has made mistakes but shows insight and remorse, and is willing to seek help and learn, there can be a second chance. Other reports (EMM and YD) suggest a discourse which places considerably higher expectations on social workers. This second discourse holds that a social worker must not only act as a role model for service users, but must be the kind of person who is 'above reproach', 'whiter than white' and who can be 'trusted to the ends of the earth'. The social worker who fails to meet these requirements brings the profession into disrepute, and their own good name is gone forever. The tension between these two discourses makes for an interesting exercise in analysis, but it is likely to reflect wider social discourses which impact on the regulation of social workers.

This brings me to a third observation which concerns the place occupied by the CST in the discourse of social work regulation. There is no doubt that the discourse is a powerful one, not least because over 90,000 social workers have gone through the process of applying to join the social care register (General Social Care Council 2008a, p.6), each being required to complete a twenty-eight page form. And the CST is a powerful organisation vis a vis the GSCC because it can overturn its decisions. Foucault (2000) argues that discourses and power always contain the seeds of resistance because they are not static but fluid; this creates the space for meanings to change or be subverted. An examination of the reports overall suggests that the CST is sometimes able to take a different perspective from the GSCC, perhaps having more freedom to see things from the individual social worker's view, rather than from the standpoint of service users or the reputation of the profession (even though it also considers both 'public protection' and 'public interest'). Does this different perspective offer any space for resistance? Certainly the CST offers a reasonable chance for individual social workers to appeal against the GSCC's decisions. Yet in order to appeal it appears that they must submit themselves to further scrutiny, and can only be successful within the parameters of the regulatory discourse as a whole.

Reading the reports it is clear that there is an interplay between the two organisations in arriving at an acceptable regulatory approach. This is evident from the GSCC's recent report on its conduct processes:

In those cases that have been found in favour of the applicant, the GSCC has carefully considered what view the CST has taken and the impact it may have

on the GSCC's processes. It is often the case that the CST has had different evidence before them than was available to the GSCC ... The GSCC is therefore increasing its evidential base ...to ensure that as far as possible it is basing its decisions on the same information available to the CST (General Social Care Council 2008a, p. 21).

Perhaps, therefore, the CST is less a means of resistance than an example of how discourses evolve through continually intersecting with each other, thus remaining powerful.

### **Conclusion**

I hope that this 'work in progress' offers some suggestions for a discourse analytic approach to social work regulation. There is certainly room for further exploration of the CST reports to throw further light on this relatively new area of policy. One of the criticisms of discourse analysis is that it can appear to be merely 'playing with words'. However, as a social work educator with a particular responsibility for student conduct, I have found it productive to get a fresh perspective on the concept of professional suitability.

The bringing together of private and professional life also produces a number of implications for social work education. The concern to ensure that future social workers are suitable to be registered can sometimes conflict with the concept of widening participation in higher education. There are also implications for student's learning (when do they get a second chance and how soon do they have to be fully suitable) and for the development of a professional identity which matches the individual's personal one.

## References

- Carabine, J. (2001) 'Unmarried motherhood 1830 – 1990: A Genealogical Analysis' in M. Wetherell, S. Taylor, and S.J.Yates, (eds) *Discourse as Data: A Guide for Analysis*, London, Sage in association with The Open University
- Care Standards Tribunal (2005) DH v The General Social Care Council [accessed December 2008]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Care Standards Tribunal (2006a) YD v The General Social Care Council [accessed December 2008]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Care Standards Tribunal (2007a) Ben Neil De Almeida v The General Social Care Council [accessed December 2008]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Care Standards Tribunal (2007b) Christopher Bradford v The General Social Care Council [accessed December 2008]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Care Standards Tribunal (2007c) Evelyn Muthoni Mnene v The General Social Care Council [accessed December 2008]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Care Standards Tribunal (2008a) DSH v The General Social Care Council [accessed December 2008]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Care Standards Tribunal (2008b) VL v The General Social Care Council [accessed March 2009]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Care Standards Tribunal (2008c) CG v The General Social Care Council [accessed March 2009]. Available at [www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)
- Clark, C. (2006) 'Moral character in social work' in *British Journal of Social Work*, Vol. 36, No. 1, pp. 75 – 89.
- Foucault, M. (1967) *Madness and Civilisation: A History of Insanity in the Age of Reason*, London, Tavistock Publications Limited.
- Foucault, M. (2000) 'The subject and power' in *Power, London, Penguin*
- General Social Care Council (2002) *Codes of Practice for Social Care Workers and Employers*, London, General Social Care Council, [Online], Available: [http://www.gsc.org.uk/NR/rdonlyres/041E6261-6BB0-43A7-A9A4-80F658D2A0B4/0/Codes\\_of\\_Practice.pdf](http://www.gsc.org.uk/NR/rdonlyres/041E6261-6BB0-43A7-A9A4-80F658D2A0B4/0/Codes_of_Practice.pdf) [24 February 2008]
- General Social Care Council (2003): The General Social Care Council (Conduct) Rules 2003 and Explanatory Notes
- GSCC (2006) Media report dated 19/06/2006, <http://www.gsc.org.uk/News+and+events/Media+releases/2006+archive/Social+worker+suspended+from+register+after+misconduct+found.htm> [accessed 29/01/09]

General Social Care Council (2008a) *Raising standards: Social work conduct in England 2003-2008*, London, General Social Care Council, [Online], Available: <http://www.gsc.org.uk/Conduct/Publications+and+useful+documents> [July 2008]

General Social Care Council (2008b) *The General Social Care Council (Registration Rules)* London, General Social Care Council, [Online], Available: <http://www.gsc.org.uk/Conduct/Publications+and+useful+documents> [July 2008]

Langan, M. 'Social services: managing the third way' in J. Clarke, S. Gewirtz, and E. McLaughlin, (eds), *New Managerialism, New Welfare?*, London, Sage.

McLaughlin, K. (2007a) 'Regulation and Risk in Social Work: The General Social Care Council and the Social Care Register in Context', *British Journal of Social Work* Vol.37, pp., no.7, 1263–1277

McLaughlin, K. (2007b) 'Revisiting the public/private divide: Theoretical, political and personal implications of their unification', *Practice*, Vol.19, no.4, pp. 241 — 253  
Morgan, D. L. (1997) *Focus groups as qualitative research; second edition*, Sage, London.

Pearl, D. (2008) *Transforming tribunals: Implementing part 1 of the Tribunals, Courts and Enforcement Act 2000: Response by the members of the Care Standards Tribunal*, London, Ministry of Justice

Smith, M. J. (1998) *Social science in question*, London, Sage/ Open University.