APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 30 APRIL 2019

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2020 WAIRC 00119
CORAM	**:**	PUBLIC SERVICE APPEAL BOARD SENIOR COMMISSIONER S J KENNER- CHAIRMAN MR R WARBURTON- BOARD MEMBER MS BETHANY CONWAY- BOARD MEMBER
HEARD	**:**	WEDNESDAY, 13 NOVEMBER 2019, THURSDAY, 14 NOVEMBER 2019, FRIDAY, 15 NOVEMBER 2019, WRITTEN SUBMISSIONS 19 AND 25 NOVEMBER 2019
DELIVERED	**:**	WEDNESDAY, 26 FEBRUARY 2020
FILE NO.	**:**	PSAB 8 OF 2019
BETWEEN	**:**	JULIE ANDERSON Appellant AND MANAGING DIRECTOR, DEPARTMENT OF TRANSPORT Respondent

Catchwords	:	*Industrial Law - Appeal against the decision to terminate employment on 30 April 2019 - Whether the appellant's performance was substandard - Whether the appellant was afforded procedural and substantive fairness - Whether the penalty of dismissal was disproportionate or harsh and unfair - Principles applied - Appellant had reasonable opportunity to demonstrate improvement in performance - Appellant's error rate was high and performance was not attained or sustained at a reasonably expected level - Appeal Board should not interfere with respondent's decision - Appeal dismissed*
Legislation	:	*Industrial Relations Act 1979* (WA)
		Public Sector Management Act 1994 (WA) s 79
Result	:	Appeal dismissed. Order issued.

Representation:

Appellant	:	Mr M Amati
Respondent	:	Mr J Carroll of counsel

Appellant	:	The Civil Service Association of WA (Inc)
Respondent	:	State Solicitor’s Office

Case(s) referred to in reasons:

Harvey v Commissioner for Corrections, Department of Corrective Services [2017] WAIRC 00728; (2017) 97 WAIG 1525

Reasons for Decision

The appeal and brief background

1 These are the unanimous reasons of the Appeal Board.

2 The appellant was employed by the respondent, the Department of Transport, from 31 May 2005 as a Customer Service Officer (CSO) in the Midland Licensing Centre (MLC), and from 2012 in the Rockingham Licensing Centre (RLC). The appellant's role was a level 2 position covered by the *Public Service Award 1992* and the *Public Service and Government Officers CSA General Agreement 2017*, and its previous iterations. For about an 18-month period, immediately preceding the appellant's move to the RLC in 2012, the appellant worked as a CSO Supervisor at the MLC, which was a level 3 position. In April 2019 the appellant's employment was terminated by the respondent on the grounds that her performance was substandard, for the purposes of Division 2 of Part 5 of the *Public Sector Management Act 1994* (WA). The appellant now appeals against that decision.

3 The appellant contended that at no time was her performance substandard and that the Performance Improvement Action Plan (PIP) implemented by the respondent raises major procedural and substantive concerns, specifically that:

Procedurally -

(i) it falls short of wider public sector best practices as reviewed and articulated by the Public Sector Commission- *inter alia* e.g. failure to establish clear and achievable targets; disregard or give no sufficient consideration to either responses or improvements in performance attained; failure to provide a reasonable opportunity to respond to the adverse findings and foreshadowed penalty.

(ii) Erratic and arbitrary PIP process, including unreasonable and arbitrary targets.

(iii) Failure to act consistently with the terms of its own Departmental policy on substandard performance

Substantively –

(iv) No clear targets of performance.

(v) Failure to convey purpose of the PIP – whether my job was in jeopardy.

(vi) Having set unreasonable targets of job 'completion' with any consultation with me or my union as it is compelled to do in introducing new work practices.

(vii) Failed to take into account the specific vulnerable conditions affecting me [or my performance – possible but not conceded] when I returned to work following the end of rehabilitation by insisting on the necessity of attaining unduly rigid and

> arbitrary targets; even though, as I understand it, Ms Tindall has never performed the duties of a CSO.

4 The appellant also submitted that procedural fairness and natural justice had been denied, the investigation process was unduly secretive as the entire investigation report was not disclosed, and the penalty of dismissal was disproportionate or harsh and unfair in consideration of the appellant's unblemished employment record. The respondent submitted that the appellant had opportunities to respond during the investigation; that requirements of the appellant were clear and reasonable; that the appellant had access to the support required to overcome barriers to meeting expectations; that the appellant had a reasonable opportunity to demonstrate improvement; and that the process was conducted in a fair and unbiased manner.

5 The appellant seeks a declaration that the appellant's performance was consistent with expected standards of performance, that the respondent's adverse findings are set aside, and an order that the respondent reinstate the appellant with continuity of service and reimbursement of loss.

The evidence and issues

6 As a CSO, the appellant provided customer service, predominantly face to face, to a range of customers including the general public, interstate and overseas customers and other external stakeholders. The CSO Job Description Form that applied to the appellant's employment from 2014 was tendered as exhibit A3. The appellant was required to assist customers by answering queries, processing applications and performing other transactions, ensuring compliance with legislative requirements and the respondent's policies and procedures. The appellant undertook financial and non-financial transactions, verified documents and processed monies received into the licensing database. Some specific tasks that the appellant completed on a typical working day included issuing learner's permits, renewing or transferring driver's licenses, completing vehicle registrations and verifying the identification of a person. An important component of the appellant's role was to ensure the accuracy of the respondent's records by creating, updating and maintaining customer records in TRELIS, the respondent's licensing database, by entering information from customer applications or transactions.

The Rockingham Centre

7 At the RLC, on average, there were approximately seven CSOs working at any one time, one of which would be in the Concierge role. This number would

differ depending on factors such as leave bookings or customer demand. The Concierge worked on reception as the first point of contact for customers visiting the RLC, assisted customers with their preliminary questions and checked the customer had the correct documentation with them before allocating them a ticket. This ticket would then be called by a CSO, who would provide further assistance to the customer. Once a CSO had assisted a customer and completed the required work for that transaction, if any, the ticket would be closed, and recorded as completed by that CSO.

8 CSOs reported directly to Ms Anderton, the Team Leader at the RLC, who is responsible for the management of staff. Ms Anderton reported directly to the RLC Manager, Ms Tindall. The RLC had two Supervisors who were responsible for overseeing the customer service area, assisting CSOs with any queries or issues that arose during the working day, and auditing CSO work and transactions. The RLC used a rotation method, where in addition to the two substantive Supervisor positions, CSOs would rotate through and act as Supervisor. The appellant gave evidence that because of this, there were a total of six potential Supervisors that might audit CSO work.

Auditing process

9 The respondent uses an auditing process to maintain the accuracy of information and calculate error rates on completed transactions enabling corrective remedial action and employee training. When a CSO completes a transaction such as, for example, an application for a driver's licence, the completed paperwork is placed into that CSO's tray. The paperwork from that day is collected by a Supervisor or Acting Supervisor who conducts an audit on a percentage of each form type. For example, a DLA1 Form is a multipurpose form that must be completed for a variety of driver's licence applications including for an initial grant of a driver's licence, an extraordinary licence, a learner's permit or a lapsed licence. This form is 100 percent audited, meaning every form of this type completed by a CSO will be subject to audit. Other transactions such as a change of name or date of birth are audited 50 percent and driver's licence concessions are audited 25 percent. A document titled Business Rules, which sets out the audit process, including the percentage of each document type subject to audit, was tendered as exhibit A6.

10 Errors found in audited documents are categorised as recordable or non-recordable. A recordable error is logged against the name of the CSO who made that error, which ultimately forms part of the RLC's statistics and "error rate". A non-recordable error is not recorded, however the CSO may still be notified that the error occurred and be asked to remedy it. The respondent's Process Manual – Driver Vehicle Services Transaction Audit, which shows what a recordable and

non-recordable error is for each of 27 form types, was tendered as exhibit A7. For a DLA1 Form, for example, a recordable error can include omitting to fill in the health and medical conditions of the customer or failing to complete the customer and witness declarations. Non-recordable errors include omitting to complete or update personal details. Examples of other errors include missing information, omitting to tick a box or fill out a section on a form, entering an incorrect digit into a phone number or concession number, and omitting to sign or correctly witness a form. Other documents are non-auditable, meaning they are not audited for errors.

11 The appellant gave evidence that errors made by CSOs largely had no consequence or impact, as the document to which the error related would remain at the RLC for some time, during which the error could be corrected. The respondent submitted that it was not the case that errors had no consequence, and provided examples of when a customer had to be contacted, for example, to return to the RLC to pay the balance of an incorrect amount charged or to provide additional documentation. The respondent's position was that the appellant disagreed that errors should be marked against her and that this highlighted a critical issue, which was the respondent's concerns regarding the appellant's attitude towards her errors.

12 The appellant gave evidence that each Supervisor who conducts the auditing process can have a different opinion on what constitutes an error. According to the appellant, this is partly due to there being no formal training on how to identify an error and individual approaches taken to recording. The appellant recalled Supervisors asking her to correct an error, such as a missing signature, and not recording this as an error because the appellant was able to remedy it, whereas other Supervisors would record this as an error because the error had been made. The appellant gave evidence that she raised concerns of the inconsistency of Supervisors' approaches to auditing with Ms Tindall, who subsequently attempted to apply consistency without success. The respondent's argument was that most of the errors identified were not the type of errors for which reasonable minds could differ, for example omitting to fill in a section on a form, sign a document or filling in a number incorrectly.

Workers compensation leave

13 From 11 April 2016, the appellant took an extended period of leave covered by workers compensation, following a customer aggression incident in the RLC. The appellant gave evidence that this incident caused her to fear dealing with customers. From November 2016, the appellant commenced working at the respondent's head office in Osborne Park, dealing with customers on the telephone but not face to face. In around May or June 2017, the appellant

returned to the RLC on a part-time basis. The appellant was on a graduated Return to Work Program, initially working one day per week in the RLC and four at the head office call centre. This increased to three days per week at the RLC and on 18 December 2017, after clearance from her General Practitioner, the appellant recommenced full-time employment at the RLC.

Circumstances leading to the appellant's dismissal

14 The respondent submitted that after the appellant's return to the RLC in May 2017, the appellant's managers were aware that the appellant's error rates were above that of what was expected for the standard performance of an experienced CSO, however due to the appellant's recent return to work, no formal performance management process took place at this time.

15 In around late October 2017, Ms Tindall commenced informal meetings with the appellant on a regular basis to discuss the appellant's error rates and to inform her that the errors needed to be addressed. The appellant's Return to Work Program, dated 24 May 2017, was tendered as exhibit A4. This document stipulated the conditions of the appellant's return to work, which included that work completed by the appellant was to be 100 percent audited and where possible, all errors were to be shown to the appellant. The appellant could not perform the Concierge role and the respondent positioned another CSO and a Supervisor on desks close to the appellant, to provide support and facilitate the transition back to work.

16 The Return to Work Program document began recording errors from 23 October 2017. The respondent submitted that the same errors were often repeated. The respondent concluded that by February 2018, the appellant had not demonstrated a sustained improvement in reducing her error rates and consequently, at a scheduled six-month performance review meeting on 7 February 2018, an internal Action Plan was implemented. The AP was tendered as exhibit A5 and involved reviewing the appellant's work over a three-month period, which was later extended to four months due to the appellant taking leave, to determine whether further training was required. The AP set a target for the appellant to achieve 90 percent compliance of audited work and to be within 10 percent of the RLC's average for number of customers served per day. The appellant's "error rates" for 2017, in comparison to the RLC, were set out as follows:

2017

	Julie	**Centre**	**% of Centre**
June	8	40	20%

July	3	19	16%
Aug	10	22	45%
Sept	14	27	52%
Oct	15	30	50%
Nov	13	45	29%
Dec	11	26	42%

17 The AP stated that if the appellant's error rate did not improve within three months, a formal Performance Improvement Program would commence. As part of the AP, the appellant was required to meet with Ms Tindall or Ms Anderton weekly to receive feedback on her progress.

18 The respondent submitted that on 13, 15 and 16 March 2018, an acting Supervisor at the RLC, Ms Turner, sat with the appellant to provide on the job coaching. During this period, the appellant was able to observe Ms Turner and Ms Turner was able to observe the appellant, to see if any issues could be identified and coaching provided to minimise the appellant's error rates. The appellant gave evidence that this occurred for at most, one and a half days, as Ms Turner got bored of providing this support. Ms Turner gave evidence that this process lasted for at least three days and that she remained available and approachable after this, for whenever the appellant required assistance. Ms Turner said that the appellant was sometimes receptive of feedback and other times not, and that progress did occur but was not always sustained. The appellant did not consider that this process constituted training as her transactions were still being audited, with errors recorded, and she was performing the same tasks as she did any other day. Ms Tindall gave evidence that for the period that the appellant was working with Ms Turner, the appellant's errors were removed and did not form part of her error rate.

19 Ms Turner gave evidence that there was an issue with the appellant conducting eyesight tests that were required to assess individual eyesight acuity, required for all applications to grant a driver's licence, as the appellant did not agree with the reasoning behind this and therefore would not consistently perform this test as directed by Supervisors. The appellant gave evidence that due to the acuity test stating that an individual with one eye, without an eye or with one eye blind, could still be eligible for a driver's licence, the appellant did not see the reason for conducting individual eye-sight tests, and despite being required and instructed to conduct them, the appellant would not. The appellant would then fill out the form as though she had completed the test as directed. Ms Tindall

gave evidence that she had ongoing concerns with the appellant's lack of accountability and ownership for her errors.

Performance Improvement Action Plan

20 The respondent concluded that the appellant did not demonstrate sustained improvement during the AP and from February to June 2018, the appellant's percentage of reportable errors remained high, constituting 18-55 percent of the RLC's total error rate. Exhibit R17 sets out the appellant's errors during this time, which the respondent says include reoccurring types of errors. Following a meeting held on 16 July 2018, the appellant was placed on a PIP. The PIP included a schedule of review meeting dates and following each meeting, an email was sent to the appellant outlining the meeting outcome and strategies for improvement. These emails were tendered as exhibit R9. The appellant's recorded errors during the PIP were tendered as exhibit R11.

21 The appellant submitted that focusing on the "error rate" of the appellant was a vague and unreliable indicator of the appellant's overall performance. The target given was unclear and changed over time. For example, the appellant argued that in February 2018, she was told that she ought to aim at achieving 90 percent compliance, and that she was very close to achieving the expected number of customers served, which is around 40 tickets per day. The appellant calculated that spreading this rate across four weeks or 20 working days, the expectation equated to a CSO serving around 800 customers with a 90 percent "correct rate", equating to 80 as an admissible margin of substantive reportable errors over the four-week period, or four substantive errors per day. In contrast, the expectation in July 2018, when the PIP was implemented, changed to five substantive reportable errors for the four-week period, which the appellant calculated as a "correct rate" of 99.99375. The appellant submitted this expectation was impossible to achieve and maintain. Further, the fact that the appellant was being audited 100 percent, and could not complete the Concierge role which produces no auditable transactions, as other CSOs did, meant that the appellant's error rate would be higher than other CSOs.

22 On 25 October 2018, the Managing Director of the respondent advised the appellant by letter, that her performance issues had been referred to the Managing Director to commence action under s 79 of the *Public Sector Management Act 1994* (WA), as the improvements outlined in the PIP had not been met. The letter, formal parts omitted, read as follows:

> I refer to your Performance Improvement Plan (PIP), concluded on 20 September 2018 and discussions with your line manager. I understand that your PIP was primarily focused on improving your error rates and increasing the number of customers you served each day.

Ms Belinda Tindall, Centre Manager Rockingham, has provided me with a copy of the report on your performance in the role of Customer Service Officer. The report advises me that while you did improve in the initial period of the PIP, overall, you did not attain or sustain the required level of improvement. I attach a copy of this documentation for your reference.

Following due consideration of the documents outlined above, I am initiating action in accordance with section 79 'Substandard Performance' of the *Public Sector Management Act 1994* (the *Act).* Please find attached a copy of the section of the Act and the Performance Management Policy and Procedure for your reference.

I require information from you to determine what further action, if any, is to be taken. I am seeking your views on whether you agree or disagree with the following statements in relation to the PIP Process you have participated in. If you disagree with any of these statements, please be specific about why you disagree.

1. The requirements were clear and reasonable;
2. You had access to the support required to overcome any barriers to delivering on expectations;
3. You had reasonable opportunity to demonstrate improvement; and
4. The process was conducted in a fair and unbiased manner.

I require you to submit your response by close of business **Wednesday, 7 November 2018.** Please include in your response any other relevant information you feel should be taken into consideration.

Once I have received your written response, I will determine what further action will be taken. If you fail to respond by the date set out above or you deny that your performance is substandard, I may refer the matter for investigation as outlined in section 79(5) of the Act.

You should be aware that an outcome of the process may be that I impose a sanction, which may include one of the following:

(a) withhold for such period as the department thinks fit an increment of remuneration otherwise payable to you; or
(b) reduce your level of classification; or
(c) terminate your employment in the Public Sector.

I appreciate this may be a difficult time for you and advise that the department's Employee Assistance Program is available on 1300 66 77 00.

Should you require any clarification on this matter, please contact Mr Scott Barrett, Manager, Employee Relations on 6551 6052.

23 On 7 November 2018, the appellant's union wrote to the respondent denying that the appellant's performance was substandard. This letter was tendered as exhibit R2. On 28 November 2018, the respondent notified the appellant, by letter, tendered as exhibit R3, that in accordance with s 79(5) of the PSMA, an

independent investigator had been appointed to determine whether the appellant's performance was substandard. On 22 February 2019, the respondent informed the appellant that a conclusion, that the appellant's performance was substandard, had been reached and the proposed outcome was that the appellant's employment be terminated. This letter was tendered as exhibit R4. Relevantly, the letter read as follows:

> On 25 October 2018, Ms Nina Lyhne, Managing Director at the time, advised you that she was initiating action in accordance with section 79 'Substandard Performance' of the *Public Sector Management Act 1994.*
>
> Ms Lyhne provided you with an opportunity to submit a response to the allegations. In your response of 7 November 2018, you denied that your performance was substandard. After considering your response, I appointed Mr Keith Chilvers from The Futures Group to investigate the matter.
>
> Mr Chilvers has completed the investigation and provided me with a report. Having examined the report and associated evidence, I find that your performance is substandard. I have enclosed the investigation report for your information.
>
> The Act provides me with the following actions that I may apply in respect to this matter:
>
> (a) withholding of an increment of remuneration;
> (b) reduction in classification; or
> (c) termination of employment.
>
> I note that Mr Chilvers has found that:
>
> - The performance requirements for you to meet were both clear and reasonable.
> - That you had access to support, provision of assistance to overcome barriers and to deliver on.
> - You had reasonable opportunity to demonstrate improvement.
> - You were afforded reasonable opportunity to demonstrate improvement.
> - The process to assist you to address your errors and serve customer statistics was done in a fair and unbiased manner.
>
> In considering Mr Chilvers report I also note that:
>
> - You appear to be unwilling at times to follow instructions and procedures unless convinced that you should do so.
> - You do not appear to have responsibility for your poor performance.
>
> Therefore, I have decided to propose the termination of your employment.
>
> I have not made a final decision on this action. I am providing you until **8 March 2018** to provide a written submission to me on this proposed course of action. In the event that no submission is received by this date, I will take the above action and notify you accordingly.

24 On 21 March 2019, the appellant's union responded to this letter stating that termination of employment was unduly harsh and requested access to the full investigation report (exhibit R5). On 2 April 2019, the respondent wrote to the appellant and stated that the full investigation report, as requested, would not be provided and gave the appellant a further chance to respond. This letter was tendered as exhibit R6. The appellant's union responded to this letter on 11 April 2019 (exhibit R7). On 17 April 2019, the respondent advised that he did not consider that the appellant's response raised any significant issues to warrant reconsideration and he dismissed the appellant from her employment on the basis that the appellant's performance was substandard (exhibit R8).

Consideration

25 It is common ground that an appeal of the present kind is a de novo proceeding. Accordingly, any defects in the manner of the appellant's dismissal are able to be cured in the proceedings and in the disposition of the appeal by the Appeal Board: *Harvey v Commissioner for Corrections, Department of Corrective Services* [2017] WAIRC 00728; (2017) 97 WAIG 1525.

26 The nature of the CSO position occupied by the appellant and its overall responsibilities have been set out above. It goes without saying that given the nature of the work, attention to detail and accuracy are important. The fact that the respondent undertakes auditing processes affirms this. The appellant was an experienced CSO who had been performing this work for many years. Despite a period of absence on workers compensation, the respondent was entitled to regard the appellant, for the assessment of performance purposes, as a senior and experienced CSO, especially as she had previously worked as a supervisor for a substantial period. The appellant was far from being a novice.

27 It is also the case, that contrary to the appellant's assertions, reportable errors made by CSOs employed by the respondent have real consequences. For example, in cases where licences are involved, errors such as incorrect names etc, may lead to problems with proof of identity. Equally, and more concerningly, licences granted to persons who may not have been properly tested for eyesight, may involve significant community risk. As the respondent points out in its submissions, continued errors, many of which were repeated and of the same type, can lead to customer inconvenience and the levying of incorrect charges (e.g. stamp duty assessments). Also, there is the obvious risk to other road users when persons are driving in circumstances where they should not be in possession of a licence.

28 Whilst in the appellant's submissions, criticism was raised against the respondent's focus on the appellant's actual and absolute error rates, compared to the RLC average, it is important to note that in the PIP (see pp 79-85A TB) in July 2018, the appellant agreed to the goal of no more than five reportable errors per month. This was against the background of an average reportable error rate for CSOs at the RLC in the prior six months of no more than about three and a half per month. This target was the subject of discussion between the appellant and Ms Tindall. The appellant was made aware of her required level of performance compared to other CSOs in the RLC, including attending to 40 customers per day, and she received regular feedback on how she was performing, relative to those agreed standards and targets. On the evidence, the appellant had ample opportunity to consider the terms of the PIP and by her signature, must be taken to have accepted the work standards required and the means by which they would be measured. This included the timeframe over which an improvement was expected by the respondent.

29 I also do not accept the assertions made by the appellant that in some fashion the performance standards imposed by the respondent were vague and uncertain. The appellant had discussions with Ms Tindall at the conclusion of the AP and prior to the commencement of the PIP in July 2018. On the evidence of Ms Tindall, the appellant was given information as to the PIP Process and she was encouraged to speak to human resources representatives if she was not sure of any aspect of it. Specific and regular feedback was given to the appellant on a weekly basis during the PIP. Exhibit R11 (pp 202 – 204 TB) is the PIP results document. This shows results over the period from 2 July 2018 through to 21 September 2018, including the nature and number of errors identified and the actions arising as a result. This document identifies many of what can only be described as basic errors continuing to be made by the appellant.

30 Without descending to the detail of all of them, many fell into the category of simply incorrect entry of information into the respondent's TRELIS database or not entering information at all. These are rudimentary record keeping tasks that for someone with the appellant's level of experience, demonstrated either a lack of attention or a lack of interest, or both. Other types of errors made included incorrect licence classes issued; failing to record medical information; incorrect or not updating addresses on the system; not recording correct selling prices for vehicles for the purposes of stamp duty assessment and not licencing a vehicle in the correct name.

31 As identified by the respondent in its submissions, the error rate of the appellant in this formal performance process, was about five per week as opposed to the RLC average referred to above. This was a marked contrast. It was not merely a marginal difference. Whilst these actual reportable errors were substantial in

number, proportionately, the appellant's errors represented a significant proportion of the overall error rate for the RLC. In the period from January to August 2018, the appellant's proportion ranged from 13 to 55 percent of the overall RLC error rate (see exhibit R18 p 85A TB). In the period January to June 2018, prior to the commencement of the PIP, the appellant's reportable error rate per month was well in excess of the other CSOs, including in terms of total number of errors for the overall period (see p 84 TB).

32 However, what was revealed by the evidence of the appellant's performance against the agreed criteria was that this performance over the period of the PIP was not atypical. In the period prior to February 2018, from the commencement of the appellant's Return to Work Program (see exhibit R16 pp 132-147 TB) concerns were raised as to the level of the appellant's error rate and her contribution to the RLC's overall error rate. Ms Tindall's evidence was that she was not just developing concerns as to the actual rates of errors and the type, being repeated errors of similar kinds, but equally importantly, the appellant's apparent lack of accountability for them. The appellant's view seemed to be that the errors could be corrected by Supervisors and were not of any great consequence. The appellant was also reminded of the need to audit her own work which, as an experienced CSO, should have been second nature.

33 What is quite clear from the evidence, was that the type of errors made during and following the Return to Work Program, and prior to the AP commencing in February 2018, were similar in type and number to those made by the appellant in the PIP process from July to September 2018. These include recording errors and spelling mistakes; medical details not being properly recorded; the "office use" sections of forms not being completed; not recording eyesight test results; errors in stamp duty assessments etc. These are all set out with particularity in exhibit A4 (pp 115-118 TB) and I do not propose to traverse them in detail.

34 Regrettably, this trend continued in the subsequent AP from February 2018 to June 2018, as noted earlier in these reasons. Exhibit R17 (pp 125-128 TB) sets out in detail the appellant's results over this period. Significantly, over this time, weekly meetings were held with the appellant in order to discuss the prior week's work and the errors made. The appellant was receiving some support from Ms Turner during this period. The number of actual errors were substantial and in one week alone (14-17 May 2018) the appellant made some 14 errors. The nature of the errors made bore a striking resemblance to those made by the appellant prior to the AP and subsequent to it, in the PIP. Relative to other CSOs in the RLC, these could only be reasonably described as high rates of errors. Given the nature of them, again, from an experienced CSO, they can only be explainable as a result of a lack of attention to detail, a lack of interest or both. No other real explanation was proffered. There was some suggestion by the

appellant that some of the errors resulted from a difference of opinion between Supervisors as to matters of interpretation. However, the evidence reveals that the bulk of the errors made by the appellant in her CSO role, are not errors of the kind resulting from differences of opinion.

35 I do not propose to go through the appellant's cross-examination in any detail, where several of the transactions resulting in errors over the period January to October 2018 were put to the appellant. Suffice to say that the appellant did not dispute the fact of these errors, although she did seek to downplay the consequences of some of them. One of the transactions, a driver's licence application made on 18 July 2018, contained several errors of major significance. One, which reflected the appellant's attitude to this issue generally, was the eyesight test. Despite it being a requirement of the respondent for both eyes of a person seeking a driver's licence to be tested individually, which was emphasised as a requirement by Supervisors, the appellant did not test candidates' eyesight in each eye separately. Regardless, the relevant part of the application form records a "6" score for the applicant's left eye, right eye and for both eyes. As the individual eye testing was not performed by the appellant, this misrepresented the actual test administered by her. It was a false record. The appellant was somewhat argumentative on this issue when it was put to her in cross-examination.

36 Despite being told by Supervisors to perform the eyesight test properly, the appellant refused, as she did not consider it was necessary. However, the appellant also agreed that it was not her decision as to what types of eye tests were required to be performed in order to obtain a driver's licence. The appellant had to concede, somewhat grudgingly, that this particular applicant for a driver's licence (and no doubt others in respect of whom the appellant failed to administer eye tests properly), was issued with a driver's licence without having their eyesight tested fully as required (see bundle of audited transactions as exhibit R10, put to the appellant in cross-examination). That this is unacceptable and may pose a risk to community safety is to state the obvious in my view.

37 Whilst evidence was also led by the appellant from two former co-employees who had worked as CSOs at the same licencing centre for a period of time with the appellant, Ms Hosie and Ms Farthing, neither were able to give specific evidence as to the appellant's work performance. Ms Hosie had been at the RLC for some time between 2011 and 2017. Whilst Ms Hosie made some general observations about some transactions being complex and subject to Supervisor's differing views as to requirements, she did not work closely with the appellant in terms of commenting on her actual work performance, as assessed by the respondent. Similarly, whilst Ms Farthing had worked with the appellant at the MLC, including during their initial training together, her evidence did not touch

on the specifics of the appellant's performance. She certainly considered the appellant to be good with customers, as did Ms Hosie. Ms Farthing did agree that some errors, such as licencing a vehicle in the wrong name and issuing a person with the wrong licence (errors made by the appellant) were "big" and significant" errors. However, some of Ms Farthing's evidence, such as her view that the eyesight testing issue may not be that important, somewhat in sympathy with the appellant's view, led me to treat some of her evidence with a note of caution.

38 A contention put by the appellant was that she was not afforded appropriate support by the respondent in the course of the performance management process. This proposition must be rejected. Firstly, the appellant was not a new or inexperienced CSO. She had some 14 years in the role. Whilst the appellant may have been absent from the workplace for a period of time on workers compensation, and there may have been some changes to office procedures, the Return to Work program was put in place to enable her to gradually return to full CSO duties. Whilst it commenced in May 2017, the respondent did not record errors in the appellant's work until October 2017. From this time, in the informal process put in place by Ms Tindall, the appellant was given regular feedback and assistance. This included Ms Tindall providing another employee as a "neighbour" who could help the appellant if needed. Supervisors were also available to do the same.

39 In the AP the appellant had weekly meetings as shown on exhibit R17 and as dealt with by Ms Tindall in her testimony. This included the nature of the errors being made by the appellant and ways to correct them. It is to be noted that the AP was extended for a further three weeks beyond the original timeline, to enable the appellant a reasonable opportunity to demonstrate an improvement in her performance. Additionally, as a part of the AP, the appellant worked side by side with Ms Turner for several days to assist the appellant in processing transactions. No errors were recorded by the respondent over this time. The respondent also submitted, which was not contested by the appellant, that Ms Tindall informed the appellant that the respondent would provide other assistance to her that she considered she may need.

40 Given the entirety of the informal and formal processes put in place by the respondent from the Return to Work Program to the conclusion of the PIP were over a period from late 2017 to September 2018, it could not be concluded in my view, that the appellant did not have a reasonable opportunity to demonstrate an improvement in her level of overall performance. The appellant relied upon the fact that she was audited on 100 percent of her work and not strictly in accordance with the percentages identified in the respondent's "DVS Transaction Audit Process" document (Exhibit A6). It is to be accepted that this may have had some impact on the appellant's overall error rate. However, several of the

DVS processes performed by CSOs are audited on a 100 percent basis anyway (e.g. extraordinary driver's licences; driver's licence applications; photo card applications; driver's licence sanctions – see p 165 TB). As revealed in the PIP, the appellant's reportable error rate for these kinds of transactions (where all CSOs are audited) was very high at about 10 per month. Additionally, it was the sheer type and number of basic errors, committed over a sustained period, that was of legitimate concern to the respondent.

41 Having regard to the circumstances of this case, the appellant's performance was not attained or sustained at a reasonably expected level. I am not persuaded that the Appeal Board should interfere with the respondent's decision to terminate the appellant's employment on the grounds of substandard performance. Accordingly, the appeal must be dismissed.