

Counsellor, Mr A

**A Report by the
Deputy Health and Disability Commissioner**

(Case 19HDC01573)

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Executive summary

1. In 2018, a woman attended a counselling session with a counsellor. At that appointment, they discussed the woman's difficulty with finding housing, and the counsellor offered the woman a room to rent at his home on the premise that she could have no further counselling sessions with him if she accepted. The woman moved into the counsellor's residence and she received no further care from the counsellor or his employer, a support agency.
2. The counsellor did not inform the support agency of his living arrangement with the woman at that time, or seek supervision or guidance from a colleague about his professional obligations. Despite the counsellor's living arrangement with the woman, he documented in his case notes that the woman was moving away and no further counselling was required, and that her file would be closed.
3. The Deputy Commissioner's decision emphasises the importance of maintaining professional boundaries as an integral component of the provision of health services, and the significant harm that can be caused by the failure to do so.

Findings

4. The Deputy Commissioner considered that by failing to maintain appropriate professional boundaries and keep accurate records, and knowingly to record false information, the counsellor did not provide the woman with a safe and supportive service, and failed to comply with the relevant ethical and professional standards. Accordingly, the Deputy Commissioner found that the counsellor breached Right 4(2) of the Code.
5. The Deputy Commissioner also considered that the counsellor's offer of accommodation was inappropriate, and that he exploited the woman's vulnerabilities for his own financial gain. Accordingly, the Deputy Commissioner found that the counsellor breached Right 2 of the Code.
6. The Deputy Commissioner was critical that the support agency did not maintain adequate records to keep track of which employees were members of a professional body.

Recommendations

7. The Deputy Commissioner recommended that the counsellor undertake training on the DAPAANZ¹ Code of Ethics. In line with the Deputy Commissioner's provisional report, the counsellor provided a written apology to the woman for his breach of the Code.
8. The Deputy Commissioner recommended that the support agency conduct an audit of its staff registrations with professional bodies to confirm that its records are accurate and complete, and undertake any remedial actions required.

¹ Drug and Alcohol Practitioners' Association Aotearoa-New Zealand.

9. The Deputy Commissioner recommended that DAPAANZ conduct a review of the counsellor's competence.
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Complaint and investigation

10. The Health and Disability Commissioner (HDC) received a complaint from Ms B about the services provided by Mr A. The following issue was identified for investigation:
- *Whether Mr A provided Ms B with an appropriate standard of care during July to October 2018 (inclusive).*
11. This report is the opinion of Deputy Commissioner Kevin Allan, and is made in accordance with the power delegated to him by the Commissioner.
12. The parties directly involved in the investigation were:
- | | |
|------|---------------------|
| Mr A | Provider/counsellor |
| Ms B | Consumer |
13. Also mentioned in this report:
- | | |
|------|-----------------------------------|
| Ms C | National director, support agency |
|------|-----------------------------------|
14. Further information was received from Mr A's employer, a support agency.
15. Independent clinical advice was obtained from a counsellor, Ms Irene Paton (Appendix A).
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Information gathered during investigation

Introduction

16. This report concerns the care provided to Ms B (in her thirties at the time of events) by counsellor Mr A in 2018. During their clinical interactions, Ms B expressed concern at her living situation and said that she needed somewhere to live. Mr A offered her a room to rent at his place of residence. Ms B accepted the offer and agreed with Mr A that because of this agreement she could not have any further counselling sessions with Mr A. Ms B moved into Mr A's residence, and subsequently moved out "on a bad note" a few weeks later.
- Mr A*
17. Mr A had been employed as a counsellor since 26 March 2018. His job description at the time of these events stated the following purpose for this role:

“Provide clinical and therapeutic support to Māori, non-Māori and Pasifika individuals, families and affected others experiencing harm ... and related co-existing issues such as mental health, drug and alcohol use and family wellbeing.

Deliver public health education, advocacy and community engagement to raise awareness about factors contributing to ... harm and how to reduce harm for individuals, families and communities with a focus on Pasifika communities.”

18. The support agency stated that Mr A received a full orientation, regular clinical supervision with an external supervisor, and regular meetings with his line manager “where broader conversations were had around professional boundaries”. Mr A acknowledged that training and orientation to his role and the support agency’s policies, including the Code of Conduct (detailed below), took place early on in his employment. At the time of these events, Mr A had a Diploma in Mental Health and Addiction, and Te Tiwhikete Ngā Poutoko Whakarara Oranga Certificate in Social Services (Biculturalism in Practice) Level 4–5. Mr A stated that at the time of these events he was not a member of DAPAANZ because he could not afford the membership fee, but has since become a member.

The support agency’s Code of Conduct

19. At the time of events, the Code of Conduct at the support agency — to which Mr A was expected and required to adhere in the performance of his duties — stated:

“Employees have an obligation to [the support agency] to:

...

2. Maintain expected standards of performance. Employees should carry out their duties in an efficient and competent manner, and avoid behaviour which might impair their work performance or jeopardise the safety of clients ...

3. Respect the rights of others. In performing their duties, employees should respect the rights of their colleagues and the public. In meeting this obligation, employees are expected to:

- Avoid behaviour which might endanger or cause distress to other employees, clients or the public;
- Refrain from allowing workplace relationships to adversely affect the performance of official duties;

...

10. Not to demand, claim or accept any fee, gratuity, commission or benefit from any person or persons other than [the support agency] in payment for any matter or thing concerned with the employee’s duties and responsibilities, except with the prior written consent of [the support agency].

...

13. Not engage in or undertake any work or activity, nor accept appointment to any position, which might conflict with or be in competition with the business of [the support agency] or adversely affect the performance of the employee's duties without the prior written consent of [the support agency].

...

Is an Action 'Misconduct' or 'Serious Misconduct'

...

Conduct generally defined under misconduct may be regarded as serious misconduct if these actions are such that they could lead to substantial risks to clients or major damage or loss, whether of a physical or monetary nature, to [the support agency]. ... All cases of professional incompetence and/or misconduct must be reported to the Chief Executive who will investigate and contact the relevant registration authority, if necessary.

Misconduct

...

- Inappropriate counsellor/client relationships w[h]ere professionalism and the therapeutic nature of the relationship has been compromised. Please note that inappropriate Counsellor/client relationship may fall under Serious Misconduct depending on the nature and extent of the relationship.

...

Serious misconduct

...

- Unreasonable behaviour towards a client, visitor or employee of [the support agency]. This will include the use of abusive language or any other conduct which is likely to cause unreasonable distress or offence."

Consumer-provider interactions between Ms B and Mr A

20. On 10 July 2018, Ms B attended an office where the support agency gave a presentation on its services and the support it provides. Mr A was one of the presenters. Ms B told HDC that when she spoke with Mr A after the presentation, she alluded to her housing situation. She stated:

"At the end there was a conversation around wanting extra support etc, I have family with ... issues so I put my number down so that I may keep up to date with [the support agency] news and events."

21. Ms B further stated:

“I left my contact details with [Mr A] because I felt like he wanted to support what was stressing me out at the time. This was the inability to find housing and almost being homeless (I had a few days left to find somewhere).”

22. Regarding his interaction with Ms B after the presentation, Mr A told HDC:

“I explained to [Ms B] my role, [and] that I [also] cover ... Mental Health. [She] did not show or say she was stressing out. [She] did say she was a recovering ... addict and gave me verbal consent to phone her.”

23. Mr A recorded a case note the following day documenting that Ms B had “given the writer verbal consent to contact her”.

24. On 10 August 2018, Mr A contacted Ms B by telephone. Ms B told HDC that she agreed to meet Mr A for a counselling session for what she believed would be a counselling/support appointment. Mr A stated that Ms B was stressed when they spoke, but at that time he was “unaware what was going on for her”.

25. On the same day, Mr A documented the following case note for the telephone call, confirming that Ms B had agreed to meet him for an initial counselling session:

“I have consent from [Ms B] to contact her by text or phone. Next appointment on the Friday 17th August. Feeling stress in trying to find a home for her and her kids. ... Said she was please[d] to hear from me.”

26. In response to the provisional opinion, Ms B told HDC that Mr A had attempted to contact her on multiple occasions, prior to their telephone call on 10 August 2018.

27. HDC was provided with a number of text messages exchanged between Ms B and Mr A, the first of which was sent by Ms B on 15 August 2018.

28. On 17 August 2018, Ms B sent a text message saying that she had forgotten about the scheduled appointment, and on the same day Mr A recorded a case note noting that they had rescheduled for “Wednesday”, which would have been 22 August 2018.

Counselling session

29. On 22 August 2018, Ms B saw Mr A for her counselling session. Ms B told HDC: “At our initial meeting [at Mr A’s] place of work, he offered me a place to stay after asking if it was still stressing me out and me replying that it was.” Ms B further stated: “I was desperate for somewhere to rest my head and had no luck in any other [avenue].”

30. In relation to this appointment, Mr A told HDC:
- “[Ms B] presented as extremely anxious because she was facing homelessness and I took pity on her. [She] disclosed her [issues] and said she had been abstinent [for] 18 months ...”
31. However, Mr A did not document any of these details in Ms B’s case notes.
32. Mr A told HDC that in response to Ms B telling him that she was facing homelessness:
- “I said I knew of someone that had a room available during the session and was contemplating this in my thoughts (I thought she ticked the boxes being clean for over a year as I have had other members of the fellowship ... live with me.”
33. Mr A told HDC that he offered this support to members in a non-professional capacity.
34. Mr A stated that directly after the counselling session he explained to Ms B that he had a room that she could rent for a short time. Mr A reiterated that he “took pity” on Ms B by offering her a room, and said he explained to Ms B that he would have to discharge her as a client “because of the ethics surrounding [his] role” and because “this could get [him] into trouble with work”.
35. Ms B told HDC that Mr A never said that she would need to see another counsellor. She recalled that Mr A said that he would need to “burn [her] records because he could get into a lot of trouble for helping [her]”, and told her he was “struggling too” and “could not afford the rent at his house himself and he really needed someone”.
36. Mr A told HDC that at the time he was renting a three-bedroom house. He confirmed that part of the reason he offered a room to Ms B was because he could not afford the rent and “needed the money”. However, Mr A denied saying to Ms B that he was going to burn her records, “because everything was on the database”. He told HDC: “I simply said I would have to discharge her as my client.”
37. Mr A did not document any notes for the session on 22 August 2018. However, he did record on 23 August 2018: “[Ms B] stated she was mov[i]ng away and didn’t [need] any further counselling and happy for me to close her file.” No other details were recorded in the case note.
38. Ms B told HDC that the counselling session was “just an introduction to see if I wanted to sign up with [Mr A] ... and he took that opportunity away when he offered me housing during this meeting”.
39. Mr A and the support agency had no further involvement in Ms B’s care after 23 August 2018. Despite the support agency’s Code of Conduct stating that as an employee Mr A should have sought and obtained prior written consent from the support agency before engaging in an activity that might conflict with the support agency’s function or adversely

affect the performance of his duties, at this time Mr A did not inform the support agency of his decision to offer accommodation to Ms B.

Subsequent interactions between Ms B and Mr A

40. Ms B agreed to view Mr A's house, which occurred on or around 28 August 2018.²
41. Ms B moved into Mr A's house on 31 August 2018. There was no written contract in place for the renting agreement. However, there was a verbal agreement between Ms B and Mr A that she and her children could stay with Mr A for three months at an agreed cost. In addition, Ms B stated: "Part of the deal of living with [Mr A] was to attend [support] meetings together, which I agreed [to] and attended."
42. Less than a week after Ms B moved in, Mr A informed Ms B that she would have to find an alternative place to stay within a month. In relation to his reason for terminating the living arrangement with Ms B, Mr A told HDC:
- "I was offered another house to live in at a much cheaper rate and agreed to move into it. I was also becoming anxious about the circumstances of [Ms B] moving in with me in so much as my first contact with her was as a client and I was concerned with my breach of protocol."
43. On 5 September 2018, Mr A provided Ms B with a written reference in support of her securing alternative accommodation. Ms B told HDC that on 1 October 2018 she was accepted for MSD³ emergency accommodation. On the same day on which she moved out of Mr A's house, she sent him a text message in which she disputed how much rent she owed. A further text message from Ms B a few minutes later also stated: "I'm also not ashamed to approach management." Mr A responded to Ms B: "I don't care what you do just give back my key."
44. Mr A stated that Ms B "failed to pay her last week's rent", and he was concerned by her text about approaching management, as it "made [him] feel particularly vulnerable as [he] had when [Ms B] first moved in".
45. Mr A said that as soon as Ms B moved out, he spoke to and informed the support agency's National Director, Ms C, and his supervisor, about his arrangement with Ms B. However, there is no documented evidence that this occurred.
46. Contrary to Mr A's statement, the support agency told HDC that it became aware of Mr A's living arrangement with Ms B only on 7 November 2019, upon receipt of Ms B's complaint to HDC. The support agency completed an incident form on this date and commenced an internal review. The support agency stated that as part of its internal review, it contacted Mr A for his response, notified senior leadership staff of the complaint, and reviewed Ms B's file and Mr A's supervision notes, as well as the support agency's policies and procedures, including the Code of Conduct. Subsequently, following commencement of

² Inferred from text messages.

³ Ministry of Social Development.

HDC's investigation, the support agency also notified the Ministry of Health of these events.

Further information

The support agency

47. The support agency said that it wishes to express its apologies to Ms B for any distress she may have experienced.
48. The support agency stated that its expectations of its staff are aligned to the DAPAANZ Code of Ethics, and that it "expects its staff to have no private arrangements/contact/transactions of this nature with clients or former clients". It told HDC that because offering accommodation to a client/ex-client would be in breach of its policies and procedures, had it been made aware of these events at the time they occurred, the support agency "would have activated [its] HR⁴ procedures with [Mr A]". The support agency stated that as Mr A's employment had already ended⁵ by the time it became aware of the events, its ability to take further steps with Mr A was limited, but it did perform an internal review as outlined above.
49. In relation to Mr A's documentation of his contact with Ms B, the support agency's incident report stated:

"Client record for [Ms B] contains four entries (from July to August 2018), all entered by [Mr A]. No activity log created, no clinical reviews completed, no follow-up reminders, no documents on file (including client consent), no client history completed. ..."
50. The support agency told HDC that prior to these events it had not received any concerns/complaints about Mr A's conduct or performance relating to professional boundaries. The support agency further stated that Mr A's external clinical supervisor, with whom he met once a month, had not raised any concerns about him to the support agency.
51. While initially the support agency told HDC that it believed Mr A was registered with DAPAANZ at the time of these events, subsequently it clarified that Mr A was not registered with DAPAANZ or any other professional body at the time. The support agency said that it has also reviewed and enhanced its processes to record staff members' registrations. However, in the same submission where it advised HDC of those changes, the support agency once again reverted to its initial statement that Mr A was a registered member of DAPAANZ when he provided services to Ms B.
52. Ms C stated that the support agency has taken this complaint seriously and reviewed practices and policies around how its "staff interact with the people they had been supporting". She further stated that while the frequency of professional boundaries

⁴ Human Resources.

⁵ Mr A's employment at the support agency ended in July 2019.

discussions at team meetings and supervision remains unchanged, these discussions now include references to real events (with names removed to protect privacy).

Mr A

53. Mr A stated that he understands that he “crossed the line”, and sincerely regrets offering Ms B accommodation and admits that it was “not a wise decision”. He said that he apologises for any inconvenience he caused Ms B “for the brevity of her stay” and takes responsibility for “following [his] heart instead of [his] head with the bre[a]ch of ethics by offering her help in the first place”. He further stated:

“I have reflected long and hard on this situation and ... [i]t is an action I will never repeat. ... This event has certainly been a learning curve and I must reiterate there was never any malice involved.”

54. Mr A also submitted:

“[Ms B] was happy to move in until the circumstances had changed when I spoke to [Ms B] and told her that I was offered a small and affordable apartment. ... The only apology I would like to say is I am sorry for asking [Ms B] and her children and offering her a safe and warm home to live for that brief moment, a shorter time than I had initially indicated. I believe the person who was vulnerable was myself knowing I had broken the boundaries between client and counsellor and lived in that shame every moment of it even to this date.”

55. In relation to actions he has taken as a result of these events, and changes to his practice, Mr A told HDC:

“I have read and re-read the Code of Ethics and acknowledge my mistake and would welcome any further training deemed necessary. ... I have worked hard on my boundaries and haven’t offered anyone a room again and I would never do this ever again. The stress that I have caused myself by not leading with my wise self has been huge ... I understand DAPAANZ code of ethics and was given lengthy training at [DAPAANZ]. This lapse in breaking those ethics has embarrassed myself, partner, family, my workplace and tutors that have spent hours working on me.”

Ms B

56. Ms B told HDC that she made the complaint because she wanted Mr A to be made aware of how his actions have affected her, and “to ensure that this does not happen to other vulnerable people he works with”. She further stated: “It did take me a while for the fear to subside, then I began learning about how inappropriate [Mr A’s] behaviour was.” Ms B told HDC that she wishes she had “gone straight to MSD for emergency housing instead of taking up this room at [Mr A’s] house”, and said that she believes Mr A should not be working with vulnerable people.

Responses to provisional opinion

57. Ms B, Mr A, and the support agency were given the opportunity to respond to the relevant sections of the provisional opinion. Where appropriate, their comments have been incorporated into the report.
58. Ms B told HDC that Mr A's behaviour towards her changed quickly, and that she became distressed and relapsed. Ms B stated that Mr A showed no regard or respect for her during this time, and that these events have had a significant impact on her life.
59. Mr A stated:
- “I have accepted and with much regret acknowledge boundaries were crossed with [Ms B]. For that I am deeply sorry ... I hope that all my actions now are reflected with integrity and honesty.”
60. The support agency told HDC that it accepts that it did not maintain adequate records to keep track of which employees were and were not members of a professional body. The support agency said that it has reviewed its processes to ensure that it maintains accurate documentation of its employees' memberships of professional bodies.
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Opinion: Mr A — breach

Introduction

61. As Mr A's client, Ms B had the right to services that complied with legal, professional, ethical, and other relevant standards in accordance with Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code). Under Right 2 of the Code, Ms B also had the right to be free from discrimination, coercion, harassment, and exploitation.

Counselling in New Zealand

62. At present, the counselling profession in New Zealand is not regulated under the Health Practitioners Competence Assurance Act 2003, and there is no requirement for counsellors to register with any association for counsellors (eg, DAPAANZ). Although Mr A was not a current member of DAPAANZ or any other professional body throughout the time he provided services to Ms B, he should have been well aware of the standards he was required to meet when providing counselling services, given his orientation and training at the support agency, the support agency's Code of Conduct, and his counselling qualifications.

Care provided to Ms B

63. On 22 August 2018, Ms B attended a counselling session with Mr A, having spoken with him previously on two occasions in his capacity as a healthcare provider regarding issues of concern to her. At that appointment, they discussed Ms B's difficulty with finding housing, and Mr A offered Ms B a room to rent at his home, on the premise that she could have no

further counselling sessions with him if she accepted. On 31 August 2018, Ms B moved into Mr A's residence. She received no further care from Mr A or his employer.

64. Mr A did not inform the support agency of his living arrangement with Ms B at that time. This is despite the Code of Conduct stating that Mr A should have sought its written consent prior to acting in a way that might conflict with the support agency's services, or accepting benefit from any non-agency personnel for any matter concerned with/related to his duties and responsibilities. Having received full orientation to the support agency's Code of Conduct early in his employment, Mr A would have been well aware of these expectations, and I consider that they are applicable to this particular case.
65. Ms B agreed to see Mr A as a counsellor because of the stresses she was under at the time. She was vulnerable on account of the stress she was under at the time, which included having a few days to find somewhere to live. It is evident that Mr A was aware of her vulnerabilities and had received very personal information about Ms B in these interactions — such as her previous drug use and family concerns, as well as her living situation. Mr A had been entrusted to support Ms B insofar as their professional counsellor/client relationship and professional standards allowed.
66. Mr A has submitted that he “took pity” on Ms B and acted with the intention of helping her and her children. However, it is clear that he also acted in self-interest. Ms B stated that Mr A told her in the counselling session that he was “struggling too” and “could not afford the rent at his house himself”. Mr A confirmed that at the time he could not afford the rent and “needed the money”.
67. Mr A said that he explained to Ms B that he would have to discharge her as a client “because of the ethics surrounding [his] role” and because it “could get [him] into trouble with work”. Despite his awareness that his actions would be a breach of professional ethics, Mr A offered Ms B accommodation at his home, and lived with her for about five weeks. When Mr A was offered cheaper alternative accommodation, with the result that he no longer needed help to pay the rent, he told Ms B that she would have to move out and find another place to live. Mr A told HDC that, at that time, he had become anxious about the circumstances of Ms B living with him, and his breach of protocol.
68. My expert advisor, counsellor Ms Irene Paton, advised that it was inappropriate for Mr A to offer accommodation to a client and to allow Ms B to move in with him. Mr A clearly knew that it was inappropriate, given his understanding that it could “get [him] into trouble”.
69. Mr A's act of offering Ms B accommodation at his home also contravened the support agency's Code of Conduct, which states that an inappropriate counsellor/client relationship is a form of misconduct that may constitute serious misconduct, depending on the nature of the relationship. I am firmly of the view that Mr A's actions, while Ms B was still a client, were wholly inappropriate in the context of a counsellor/client relationship. At the very least, Mr A should have discussed his intentions and actions with the support agency, and sought guidance from a colleague or supervisor.

70. I am highly critical that Mr A offered Ms B accommodation when she was a client, and that subsequently he lived with her for a period of five weeks after ceasing to provide care. I remain of this view irrespective of whether Mr A primarily acted in his own interests or thought that he was acting in Ms B's best interests. Mr A stood to gain from having Ms B move in and help to pay the rent. He abused his position of trust, and took advantage of a client who was vulnerable in that moment. It was Mr A's responsibility as a healthcare provider to maintain appropriate boundaries in the counsellor–client relationship, and he failed to do so despite being aware of the expectations and standards required by his employer.

Documentation

71. Mr A recorded four case notes in relation to his interactions with Ms B in July and August 2018.
72. On 23 August 2018, the day after his appointment with Ms B, Mr A documented: “[Ms B] stated she was mov[i]ng away and didn't [need] any further counselling and happy for me to close her file.”
73. This case note was evidently false. Not only was Ms B not moving away, but Mr A had agreed that she could move in with him. Mr A has admitted that he knew at the time that his actions were a breach of ethics, and that he had not informed his employer about his agreement with Ms B at that time. Accordingly, I am very critical that Mr A knowingly documented a false reason as to why Ms B would not be attending further counselling. Clinical documentation must always be an accurate and reliable record of the care provided to a consumer, and it is clear that in this case Mr A's documentation failed in this regard.

Conclusion

74. Mr A failed to maintain professional boundaries with Ms B. He further failed to keep accurate records during this time and knowingly recorded false information to cover up his breach of ethical standards. As a result, Mr A did not provide Ms B with a safe and supportive service, and abused his position of trust. It follows that Mr A failed to comply with relevant ethical and professional standards, and breached Right 4(2) of the Code.⁶
75. In my view, Mr A also exploited Ms B's vulnerabilities relating to her housing situation, with his offer of accommodation appearing to be, at least in part, motivated by his need for help with paying the rent. Irrespective of what Mr A claims was his primary motivation, it is clear that he inappropriately exploited Ms B's vulnerabilities for his own financial gain, and to Ms B's detriment. Accordingly, I find that Mr A also breached Right 2 of the Code.⁷
76. In addition, I note the following comment from Ms Paton in relation to Mr A's response to this complaint:

⁶ Right 4(2) states: “Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.”

⁷ Right 2 states: “Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.”

“It would appear from [Mr A’s] responses that he has focussed more on the impact on him of this Complaint and there is a lack of evidence that he has been able to acknowledge the impact of his actions on [Ms B].”

77. I agree with Ms Paton’s comment. In my view, it appears that Mr A has failed to show adequate insight and genuine remorse for his breach of ethical and professional standards and the impact that it had on Ms B. Mr A should not have taken the actions he did, and he is solely at fault for their consequences. As such, he owes Ms B an unreserved apology, as I have recommended below.
78. With that said, I commend Mr A for becoming a member of DAPAANZ since these events to support his learning and provision of good care to consumers in the future.
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Opinion: Support agency — adverse comment

79. The support agency employed Mr A at the time of these events, and it had a responsibility for providing services in accordance with the Code.
80. As it appears that Mr A’s breach of the Code in this case was caused by his poor judgement, and not by the systems in place at the support agency at the time, I do not find the support agency responsible for the failings already discussed. Nevertheless, I am concerned about the support agency’s apparent confusion and uncertainty in relation to whether or not Mr A was a registered member of DAPAANZ at the time of these events, given the specific professional standards and obligations that employees are required to meet if they hold such a membership. As noted, the support agency first told HDC that Mr A was a registered DAPAANZ member at the time, then that he was not, and subsequently stated again that he was a DAPAANZ member. Mr A confirmed to HDC that he in fact did not have membership with DAPAANZ in 2018.
81. It is clear that the support agency did not maintain adequate records to keep track of which employees were and were not members of a professional body. That led to miscommunication and misunderstandings in this case regarding Mr A’s status. I expect the support agency to keep more accurate documentation about its employees’ memberships of professional bodies in the future.
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Recommendations

82. In accordance with the proposed recommendation in my provisional opinion, Mr A has provided a written apology to Ms B for his breach of the Code, and the apology has been forwarded to Ms B.
 83. I recommend that within three months of the date of this report, Mr A provide evidence of the training he has undertaken on the DAPAANZ Code of Ethics since these events.
 84. I recommend that within three months of the date of this report, the support agency conduct an audit of its staff registrations with professional bodies to confirm that its records in that regard are accurate and complete. If the audit identifies the need for any remedial actions, the support agency should report to HDC on the steps it has taken/will take to implement those actions.
 85. I recommend that DAPAANZ conduct a review of Mr A's competence.
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Follow-up actions

86. A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be sent to DAPAANZ, and it will be advised of Mr A's name.
87. A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be sent to the Deputy Director-General, Mental Health and Addiction, and the Director of Mental Health, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Appendix A: Independent clinical advice to the Commissioner

The following expert advice was obtained from counsellor Ms Irene Paton:

“Re: [Mr A] at [the support agency]
Reference: C19HDC01573

Thank you for the request to provide expert advice on this case, which I received on 20 December, 2019.

In particular your request to consider whether the care provided to [Ms B] by [Mr A] was reasonable in the circumstances, and why.

As indicated in previous communication, I do not have a personal or professional conflict in this case.

I am sorry for the delay in providing this report which is due to me finding [Mr A] on the DPANZ website as a Member and needing to clarify if a report was still required. Especially as I understand from [HDC] that he was not a Member at the time of the Complaint, even though [the Manager] indicated he was.

I have read the HDC’s Guidelines for Independent Advisors and the following documents:

1. Letter of complaint dated 26 August 2019
2. Letter from [Ms C] dated 9 December 2019, copies of case notes and text messages and a response from [Mr A].
3. [The support agency] Code of Ethics.

I have commented on two scenarios. Scenario (a) on the basis of the information provided by the client and scenario (b) on the response from [Mr A].

Scenario (a)

The complaint comes from [Ms B] who was in a community group supporting people with [addiction] issues. [Ms B] advises that [Mr A] called her a few times and she agreed to have a counselling session. At the session [Ms B] reports that [Mr A] said ‘*he was going to go off the books and wanted to offer me a room to live in*’ and he told her ‘*he was going to burn my records because he could get into a lot of trouble for helping me.*’ He offered her accommodation for 3 months which later changed and she moved out after 5 weeks.

In the DPANZ Code of Ethics the principles and/or core values that have the potential to be compromised in this case are:

1. Respect for human dignity

It is the responsibility of practitioners to avoid dual or multiple relationships and other conflicts of interest when appropriate and possible.

2. Beneficence (doing good) and non-maleficence (avoiding harm)

The practitioner should examine all possible avenues with the client for the minimisation of harm and the promotion of good consequences after intervention.

3. Trust

Practitioners should avoid (or, in the case of another provider, try to stop) any practices that may be seen as taking advantage of clients.

Refrain from abusing a position of trust to seek special benefits, financial or personal gain. It is the responsibility of practitioners to avoid dual or multiple relationships and other conflicts of interest when appropriate and possible.

4. Confidentiality and privacy

Confidentiality from first contact until after the professional relationship has ended. Information is retrievable as long as necessary for interests of client, or as required by law.

6. Honesty & Integrity

Integrity means that the practitioner's behaviour should be at all times sincere, honourable and reliable in their dealings with their clients.

9. Professional Conduct

Professional conduct implies that practitioners will act in a responsible, proficient and skilful manner when dealing with clients in pursuit of meeting the requirements of their registered profession by: Avoiding any acts that will damage the reputation of the profession.

The following comments are made in relation to the information provided by the client.

1. The appropriateness of [Mr A] offering accommodation to his client and allowing her to move in with him.

a. What is the standard of care/accepted practice? I believe that the process of the client coming to live with [Mr A] compromises the following principles: 1,2,3,6 and 9.

b. If there has been a departure from the standard of care or accepted practice, how significant a departure do you consider this to be? I believe this to be a significant departure from accepted practice.

c. How would it be viewed by your peers? Peers would view this as unwise and unethical.

d. Recommendations for improvement that may help to prevent a similar occurrence in future. More understanding about what his intentions were in doing this and the implications of his choice on the client. Greater understanding of what left him vulnerable to acting the way described by the client. More understanding about Power and control evident in the counselling relationship and the need for boundaries being monitored carefully.

2 (a) Other matters that amount to a departure from accepted standards of care.

The client indicated that [Mr A] said *'he was going to go off the books and wanted to offer me a room to live in'* and he told her *'he was going to burn my records because he could get into a lot of trouble for helping me.'*

a. What is the standard of care/accepted practice? I believe that the process of [Mr A] saying these things to the client potentially compromises the following principles: 6 and 9.

b. If there has been a departure from the standard of care or accepted practice, how significant a departure do you consider this to be? Not as serious as number 1 above, however still concerning.

c. How would it be viewed by your peers? I believe peers would see his behaviour as risky and compromising the integrity of the profession.

d. Recommendations for improvement that may help to prevent a similar occurrence in future. It would be advisable for [Mr A] to understand why he made this choice and the consequences of this for the work with the client and the Public view of the profession. Exploring his ability to self reflect and make ethical decisions.

2 (b) Other matters that amount to a departure from accepted standards of care.

a. What is the standard of care/accepted practice? I believe that the process of [Mr A] saying these things to the client compromises the following principle number 4.

b. If there has been a departure from the standard of care or accepted practice, how significant a departure do you consider this to be? Not as serious as number 1 above and more concerning than 2 (a).

c. How would it be viewed by your peers? I believe peers would see his behaviour as unprofessional and compromising the integrity of the profession.

d. Recommendations for improvement that may help to prevent a similar occurrence in future. Understanding why he made this choice, what needs of his were being met and the consequences of this for the work with the client and the Public view of the profession. Exploring his ability to self-reflect and make ethical decisions.

I have referred to the information provided by [Mr A] and [Ms C] as Scenario (b).

[Ms C] has advised that [Mr A] had four counselling sessions with the consumer and he has confirmed that the client lived with [Mr A] from the end of August 2018 until 30 September 2018.

[Ms C] indicated that [Mr A] had received a full orientation, regular clinical supervision with an external supervisor, and regular meetings and catch ups with his line manager where broader conversations were had around professional boundaries. [Mr A] had also signed their Code of Conduct which states that an employee must not breach professional standards and that misconduct in this regard would lead to disciplinary action.

[Ms C] states: 'Given that offering accommodation to an ex-client would be in breach of our policies and procedures, had we become aware of this arrangement at the time it occurred we would have activated our HR procedures with [Mr A].'

'We have taken this complaint seriously and have reviewed our practice around how our staff interact with the people they had been supporting. We are confident the policies are correct and are strengthening the advice about boundaries when clinical supervision is provided.'

According to [Ms C], [Mr A] was a Member of DPANZ, the Drug and Alcohol Practitioners Association of New Zealand at the time of the events and since [Mr A] is no longer employed by [the support agency], they were not sure of his membership status.

It would appear that [Mr A] has cooperated with the Agency by providing copies of the text messages between himself and the client. However he also indicates that:

1. Offering accommodation was not a wise decision and he expressed distress and regret, having let his heart rule his head. 'I took pity on her'.
2. 'At no time was there any "personal" interaction between us'.
3. He 'even went to some lengths to discourage her from trying to address her addiction issues with me "off the book", while staying at my home.'
4. The client had one session, when [Ms C], the manager indicates the client had four sessions.
5. This has 'certainly been a learning curve and I must reiterate there was never any malice involved.' He also indicates that he has reflected long and hard on this situation and that he will never repeat it again.

What is the standard of care/accepted practice? I believe [Mr A's] responses do not adequately address the concerns raised in the complaint e.g. no comment about 2(b) above or the client's comment '*he was going to burn my records because he could get into a lot of trouble for helping me.*' It is not clear what [Mr A] means in his response.

His comment about no 'Personal' interaction needs further exploration. This raises alarm bells about his understanding of boundaries.

There is no evidence of his understanding of the DPANZ Code of Ethics, consulting in supervision about the case or demonstrating an understanding of the potential damage his choices had for the client.

His memory of the number of sessions would also appear to be different from [Ms C] and what might that indicate? This is purely conjecture, was he trying to minimise the professional contact to make the offer of accommodation OK? Or something else?

If there has been a departure from the standard of care or accepted practice, how significant a departure do you consider this to be? I do not believe [Mr A] has adequately addressed the concerns raised by the client.

It would appear that [Mr A] knowingly offered her accommodation when he could 'get into trouble' for it.

How would it be viewed by your peers? I believe peers might think that he is feeling regret and the distress that this has caused him, rather than taking responsibility for his actions and the impact on the client.

Recommendations for improvement that may help to prevent a similar occurrence in future. As well as the suggestions made above in Scenario (a), I believe [Mr A] needs to have a more thorough understanding of the DPANZ Code of Ethics, consult in supervision about the case and demonstrate an understanding of the potential damage his choices had for the client.

Thank you for the opportunity to provide this feedback.

Yours sincerely

Irene E.M. Paton"

Further expert advice:

"Re: [Mr A] at [the support agency]
Reference: C19HDC01573

Thank you for the request to provide further expert advice on this case which I originally reported on in January, 2020. I understand you require me to '*review the attached information in view of your previous advice and consider amending your advice where relevant or appropriate*'.

As indicated in previous communication, I do not have a personal or professional conflict of interest in this case.

I have read the HDC's Guidelines for Independent Advisors and the following documents:

1. [Ms B's] Response
2. [Mr A's] response
3. Letter from [Ms C]
4. Texts
5. Drug and Alcohol Practitioners Association of New Zealand, Code of Ethics.

I will not repeat information from my previous report and only comment on the information provided above.

Specific examples from the information provided:

1. The information from [Ms C] clearly outlines the training given to [Mr A] and that there was a [support agency] Code of Conduct which [Ms C] indicates has clear information about the areas of concern raised in the original complaint. [Ms C] also indicates that both the internal and external supervisors of [Mr A] indicated that he had not raised the areas of concern in his supervision sessions with them.
2. [Ms B's] (comment after responding to the information provided by [Mr A]) about [Mr A] being 'manipulative and potentially dangerous to other vulnerable people'.
3. [Mr A's] comments:
 - (a) I took pity on her.
 - (b) I would have to discharge her as a client because of the ethics surrounding my role and this could get me into trouble with work.
 - (c) I was also becoming anxious about the circumstances of [Ms B] moving in with me in so much as my first contact with her was as a client and I was concerned with my breach of protocol.
 - (d) I asked a friend of ours at the [addiction support fellowship] if he knew or heard anything from her.
 - (e) I apologise for any inconvenience I caused [Ms B] for the brevity of her stay but take responsibility for following my heart instead of my head with the bre[a]ch of ethics by offering her help in the first place.
 - (f) I believe the person who was vulnerable was myself knowing I had broken the boundaries between client and counsellor and lived in that shame every moment of it even to this date.
 - (g) I have worked hard on my boundaries and haven't offered anyone a room again and I would never do this ever again. The stress that I have caused myself by not leading with my wise self has been huge and put enormous pressure on myself and subsequently my partner. I understand DAPAANZ code of ethics and was given lengthy training at the institution.

I have concerns that there is a discrepancy between [Mr A's] information and the Manager, [Ms C], who indicated that [Mr A] did not raise the situation with [Ms B] with his supervisors at the Agency where he was employed. In the information provided, [Mr A] states: *'Upon reflecting on this last year and today I have spoken to my supervisor and supervision **at the time this happened** and was given a deeper understanding about my boundaries'*.

I am curious about [Mr A] asking at the [addiction support] meeting about [Ms B] (d).

It would appear from [Mr A's] responses, that he has focussed more on the impact on him of this Complaint and there is a lack of evidence that he has been able to acknowledge the impact of his actions on [Ms B].

Some reflection on what happened for him (apart from ‘following my heart instead of my head’), that, despite the training and Guidelines of the Agency, he let his ‘pity’ and his personal situation influence him to make choices that could compromise his work as [a counsellor] and a member of DPANZ.

I understand [Mr A] is a member of DPANZ. I checked with [their Secretariat] and she informed me that members are expected to notify them of a complaint. I wonder if [Mr A] has done this? DPANZ are not able to release specific information unless a Complaint is sent to them.

Conclusion:

As a result of reading the material provided, I have more concerns than I raised in my first report. It is important that clinicians are able to demonstrate an understanding of the impact of their actions on their clients and also to be able to self-reflect thoroughly about what made them vulnerable to make the choices they did. I do not see sufficient evidence of this in [Mr A’s] response.

Yours sincerely



Irene E.M. Paton”