

**Healthcare Assistant, Mr C  
Rest Home**

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

**(Case 20HDC00906)**



Health and Disability Commissioner  
*Te Toihou Hauora, Hauātanga*



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## Executive summary

1. This report concerns the care provided to a woman with dementia, by a healthcare assistant at a rest home. The healthcare assistant took two photographs of the woman and shared these on his social media. The photographs show the healthcare assistant wearing his face mask incorrectly during the COVID-19 pandemic when New Zealand was at Alert Level Two.

## Findings

2. The Deputy Commissioner found that by taking non-consensual photographs of the woman and posting them on social media, the healthcare assistant failed to treat the woman with respect, and breached Right 1(1) of the Code. The Deputy Commissioner considered that the manner in which the services were provided to the woman did not respect her dignity, and therefore the healthcare assistant also breached Right 3 of the Code.
3. The Deputy Commissioner criticised the healthcare assistant's lack of compliance with his employer's rules for wearing face masks during the COVID-19 pandemic, as his actions put residents at risk, but acknowledged some mitigating circumstances in his potential misunderstanding of the exact requirements.
4. The Deputy Commissioner did not find the rest home owner in breach of the Code, but criticised the ambiguity in the guidance and the lack of evidence of training for the use of personal protective equipment during the COVID-19 pandemic. However, the Deputy Commissioner acknowledged that the unprecedented and evolving nature of the pandemic mitigated the rest home owner's deficiencies in training and guidance.

## Recommendations

5. The Deputy Commissioner recommended that the healthcare assistant provide HDC with his reflections and learning taken from this complaint, and provide a written letter of apology to the woman's family.

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## Complaint and investigation

6. The Health and Disability Commissioner (HDC) received a complaint from Mr B about the services provided to his mother, Mrs A, by Mr C and the rest home. The following issues were identified for investigation:
  - *Whether Mr C provided Mrs A with an appropriate standard of care, including whether he treated her with respect and dignity in May 2020.*
  - *Whether the rest home provided Mrs A with an appropriate standard of care, including whether the rest home treated her with respect and dignity in May 2020.*
7. This report is the opinion of Deputy Health and Disability Commissioner Rose Wall, and is made in accordance with the power delegated to her by the Commissioner.

8. The parties directly involved in the investigation were:
- |           |                            |
|-----------|----------------------------|
| Mr B      | Complainant/consumer's son |
| Mr C      | Healthcare assistant       |
| Rest home | Dementia care facility     |
9. Further information was received from the district health board.
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## Information gathered during investigation

10. This report concerns the care provided to Mrs A by healthcare assistant Mr C at the rest home. In particular, Mr C's sharing of photographs of Mrs A on his social media, and the adequacy of his use of personal protective equipment (PPE) when providing care to her in May 2020.

### Background

#### *Mrs A*

11. Mrs A was diagnosed with Alzheimer's dementia in 2014, and had been receiving dementia care from 2016. She was first admitted to the rest home in 2016.

#### *Mr C*

12. Mr C was employed as a casual healthcare assistant at the rest home from 2020.<sup>1</sup> He was a nursing student. He worked 1–3 days per week for eight-hour shifts. Mr C told HDC that he helped Mrs A with activities of daily living such as toileting, showering, skin-care routines, pressure-injury care, and infection-prevention care.

### Sharing of photographs on social media

13. Mr B told HDC that on 23 May 2020, Mr C shared "inappropriate, non-consensual photos of a degrading nature, on the Snapchat<sup>2</sup> social media platform. Photos were then made public on the Facebook social media platform and subsequently made public [in the media] ... [Mrs A] did not consent to any of these photos being taken or made public. I am sure that should [Mrs A] be of 'sound mind', she would most certainly not have agreed to these photos being taken."
14. HDC obtained three photographs, two of which were of Mrs A.<sup>3</sup> The faces of the persons in the photographs were pixelated. The photographs of Mrs A were as follows:

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<sup>1</sup> Mr C is no longer employed at the rest home.

<sup>2</sup> An image-sharing social media platform, in which users can send and receive ephemeral photographs, videos, and messages.

<sup>3</sup> The family of the second consumer was contacted by HDC, but they confirmed that they did not wish to make a complaint about the incident. Therefore, the focus of the investigation and this report is on the care provided to Mrs A.

- a) "First photograph of [Mrs A]": this shows Mrs A lying on her bed, with the caption: "I'm straight up not having a good time."
  - b) "Second photograph of [Mrs A]": this shows Mr C taking a selfie, with Mrs A appearing to rest her head on his shoulder, with the caption "[S]ugar mummy". Mr C's facemask is seen tucked under his chin, not covering his mouth or nose.
15. Mr C told HDC: "[W]ith great remorse and shame, I am responsible for taking the pictures with the resident." He said that he took the picture in "good faith and with no intent of harm." Mr C said:
- a) The purpose of taking the first photograph of Mrs A was to maintain his "Snapchat streak"<sup>4</sup> with his friends.
  - b) This photograph had no caption, and was sent to his friends on Snapchat. Mr C said that his Snapchat account was private, and that these were sent to individual friends on Snapchat, as opposed to Snapchat "stories", where all his contacts can see the photographs. The photographs were sent to his "close friends list", which was approximately 9–10 people.
  - c) Several friends then asked whether Mrs A was male or female, so he sent another photograph of her, full length and in the same position as the first photograph, with no caption ("third photograph of [Mrs A]"<sup>5</sup>) and a selfie of his face saying "she's obviously a woman".
  - d) He did not write the captions (as outlined in paragraph 14). His Snapchat friends had screenshotted the photographs, edited the photographs with the captions, and sent these back to him. He acknowledged that screenshotting is easy to do with photographs received on Snapchat, including that they can be "replayed".
16. Mr C saved the edited photographs and then sent these to his "last sent snapchat list", which he said were mostly his close friends, although there was another individual not on his close friends list. This person had recently sent him a Snapchat message, resulting in the person being included on the "last sent snapchat list", and therefore also receiving the edited photographs. Mr C said that this individual "misrepresented the situation" on Facebook, which was then shared more widely, including in the media.

### Subsequent events

17. The manager of the rest home told HDC that she became aware of the social media posting on 23 May 2020, having been advised by a member of the public. She said that she demanded that the postings be removed immediately, and Mr C was put on paid suspension that day, pending an investigation. She said that she was extremely distressed by Mr C's actions and the potential effect on residents and their families.

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<sup>4</sup> A "Snapchat streak" is when a person and a friend send photographs to each other on consecutive days. A photograph must be sent every 24 hours. The account will show a "streak" — the number of consecutive days a person and a friend have sent photographs to each other.

<sup>5</sup> HDC has been unable to obtain a copy of this photograph.

18. Mr C told HDC that he deleted all photographs on the day of the incident immediately after being asked to do so by management at the rest home. He advised that all of his friends who had received the photographs also deleted them.
19. The rest home manager said that the families of the two residents were advised of the incident, which was followed by emails about the incident to the families of all residents.

#### *Internal investigation*

20. The rest home manager performed an internal investigation. The internal investigation report (the report) documented that she became aware of the photographs at 1.34pm on 23 May 2020. As noted above, Mr C was advised to take them down immediately, and the manager also spoke to Mr C on the telephone and asked him to explain himself, and Mr C reportedly said that “it was just a joke”. The manager also contacted the police.
21. The report noted:

“[T]his conduct is a serious breach of resident privacy, is demeaning to the residents concerned and breaches our confidentiality policy. The photos also showed that [Mr C] was not using appropriate PPE which is compulsory during the Covid-19 situation.”
22. A meeting was scheduled for 11.30am on 26 May 2020 to discuss the report and for Mr C to respond. Mr C apologised for harm caused and said he realised that he should never have taken the photos. The report stated:

“It is a very sad situation and a very hard lesson for Mr C, however:

- He clearly knows how social media works and the potential for the end result.
- He admittedly breached the privacy policy by taking the photos and by putting them onto social media.
- He also showed disrespect and disregard for the residents.
- He breached the current PPE policy.
- The serious damage caused to [the rest home’s] reputation and business is clear from the media reports and reactions from the public.
- We need to consider the feelings of the residents and families of the residents.”

23. Mr C’s employment was terminated effective immediately on 26 May 2020.
24. Mr C provided a written apology to affected family members on 27 May 2020.

#### **Personal protective equipment during COVID-19 pandemic**

25. On 23 May 2020, New Zealand was at Alert Level 2 of the COVID-19 Alert System.
26. As noted above, one of the photographs shows Mr C wearing a face mask around his chin. The rest home’s internal investigation found that Mr C breached its current PPE policy, and Mr C was given an opportunity to respond to this during the meeting.



27. The rest home told HDC that masks were mandatory for staff under Alert Level 2. It told HDC that there were always staff notices and updates around COVID-19 in the staff room.
28. At the time of events, the rest home had in place the “Infection Control PPE” policy, “How to safely remove PPE” policy, and a “Pre-lockdown Plan” dated 21 March 2020. The rest home also provided a copy of a letter to staff dated 17 April 2020 (Alert Level 4 at that time), which was signed by Mr C, confirming that he had read and understood the contents of the letter. The letter outlined the guidelines for the impending change to Alert Level 3 and continuation of measures. These documents are outlined further below (see Rest home policies). The rest home did not provide evidence of training provided to Mr C relevant to the use of PPE.
29. Mr C told HDC that he was not aware of the “Infection Control PPE” and “How to safely remove PPE” policies, and did not receive training, but he was aware of the rest home’s action plan dated 21 March 2020.
30. Mr C acknowledged that he “should have been following PPE [policy] regardless of the rules set in place”. He said that he complied with the rules, and his understanding was that during Alert Level 2, when the photographs were taken, it was not mandatory to wear PPE, and it was meant to be used only for patients who showed signs of fever or cough. He stated that he always used basic hygiene measures. Mr C said that the reason why his mask was on his chin was that after wearing it for long periods of time it became very uncomfortable, especially after caring for clients in terms of changing them, making it difficult to breathe comfortably, and that sometimes they would try to resist and end up pulling on the mask.

### Further information

*Mr C*

31. Mr C told HDC:

“As a healthcare assistant at [the rest home] I have always aimed to provide culturally safe and appropriate care and support for the residents and regret the mistake I have made. I have always treated the residents with respect, maintained their independence whenever possible, maintained their dignity and have never intentionally acted in a manner to discriminate against the residents. I still curse the day I made this mistake as this has brought immense shame towards my family and myself. I sincerely apologise for my actions and have given a hand written apology letter to [Mrs A’s] family.”
32. Mr C told HDC that he understands that “these pictures should not have been taken in the first place and understand the consequences I faced”.
33. Mr C stated that this was his first job as a caregiver/healthcare assistant. He believed that a healthcare assistant was a “non-health-professional” role, working as support in a collaborative manner with nurses and management to meet the standard and deliver appropriate levels of care. He said that after this incident he has realised the significance of consent and privacy, which he was not aware of as a healthcare assistant.

34. Mr C acknowledged that his contract contained policies regarding privacy and professionalism.

35. Mr C said that he tried to learn and move on from this situation by deleting all forms of social media, and does not have any records of when the photographs were posted or taken down, as this has caused him great remorse and shame.

36. Mr C stated:

“I understand that what I have done is wrong ... I did not take these pictures with an intent of harm or mockery ... This was a genuine mistake and it isn’t a representation of who I am as a person ...

[A]fter this incident I have realised the significance of consent and privacy which I was not aware of as a healthcare assistant.”

37. Mr C said that in future he will familiarise himself with all codes and policies to which he is required to adhere, he will always refresh his learning, he will not keep his cell phone with him at any time for any other job, and he will ensure that he never repeats this mistake again.

*Relevant documentation*

38. The rest home’s job description for a healthcare assistant included in its key responsibilities, “to support and uphold all policies, mission statement and philosophies at all times”, and that “there is an obligation of all staff to observe privacy, dignity, comfort & confidentiality of residents” and “adhere to Health and Safety Policies. Report any hazards and incidents and accidents. Cooperate with any investigations. Attend relevant training.”

39. Mr C’s curriculum vitae notes that he had prior experience as a healthcare assistant/nursing student at another facility, and that he understands legislation, good practice, national care standards, and health and safety standards.

40. Mr C’s employment agreement signed on 28 January 2020 outlined the following:

“23 Health and safety

23.1 You shall take all proper precautions to ensure the health and safety of yourself, residents, all other employees, and of the public including complying with (and seeing to the compliance by others with) all requirements of the Health and Safety at Work Act 2015.

23.2 Appropriate forms of safety clothing and footwear must be worn and all appropriate safety equipment used in all circumstances where it is desirable or you are required to do so. You should not engage in any form of activity or use or deal in any way with any materials or equipment without ascertaining beforehand the appropriate form of safety equipment and clothing/footwear and the manner of use and shall comply with all relevant guidelines and requirements.

## 24 Email, intranet, and internet policy

24.1 Failure to comply with the provisions of this clause may be treated as serious misconduct.

24.2 You will comply with all systems established by us with regard to IT, IS, email, intranet, and internet use and as may be amended from time to time.

24.3 Our computers, laptops, mobile storage devices, internet, email or any other communications systems or devices are only for business use only. Personal use of email, intranet and the internet use is prohibited unless prior consent has been given.

24.4 Where you use computers, laptops, mobile storage devices in the course of employment, whether or not provided by us, you must not connect those devices to the internet, email, networks or exchange data with any other device, other than our network, without our prior written approval ...

## 28 Uniform, appearance, cellphones ...

28.3 Cellphones are not to be used or carried by you during working hours ...

## 30 Confidentiality

30.1 In the course of your employment you will be in possession of, receive or have access to or otherwise be privy to confidential information. Confidential Information includes (but is not limited to) information relating to our business, residents, their families, management or staff (Confidential Information) ...

30.2 You will preserve the confidentiality of our Confidential Information absolutely. You will not disclose any Confidential Information to any person in any circumstances other than for the purposes of the proper performance of your duties. You will not use the Confidential Information for your own benefit or for the benefit of any other person except the company.

30.3 You must ensure secure custody of any Confidential Information in your possession or control and use your best endeavours to prevent the use or disclosure of Confidential Information by third parties.

30.4 You must not release any Confidential Information to the public or to the media in any manner whatsoever (including indirectly) except with our express prior written approval.”

41. Under the employment agreement, serious misconduct included unauthorised disclosure of confidential information regarding residents, breach of any term of the agreement relating to the use of confidential information, an actual or threatened breach of confidentiality of the Confidential Information, and serious breach of health and safety obligations.

### *Rest home*

42. As outlined above (under Subsequent events), the rest home took various actions upon becoming aware of the incident. As a result of the incident, it also developed a “Media and Reputation Policy”.

43. The rest home manager advised that there had been no previous concerns about Mr C, and that Mr C had adhered to PPE instructions, and she did not witness or receive any feedback regarding otherwise.

#### Training provided to Mr C

44. Mr C received a three-day orientation, which included training on basic healthcare assistant skills, and working through fire and safety procedures. The rest home told HDC that Mr C was not able to attend medication and dental training in January and February respectively, due to his student hours. From March 2020, the rest home had internal workshops due to COVID-19. The rest home stated that there were always staff notices and updates concerning COVID-19 in the staff room, and recordings of temperatures and handwashing were documented in the daily diary.

#### Rest home policies

45. The rest home's "Infection Control Personal Protective Equipment (PPE)" November 2019 policy outlined:

"Masks: The purpose of a mask is to act as a filter to protect both the health care worker and the resident from droplet infection. The mask [is] to be put on before the gown and before hand washing.

- Avoid handling the mask before putting it over your face.
- Place the mask on the nose and the mouth.
- Tie top strings so they pass over the top of your ears. Tie bottom strings at the neck line.
- Never let a mask dangle around your neck (during use the mask traps bacteria and becomes grossly contaminated).
- When removing mask, handle it by the strings and discard it into a designated container.

#### Masks

Masks can be worn to prevent the transmission of airborne pathogens to or from a resident or to protect from the aerosolisation or splattering of blood or body substances.

Masks must be worn:

- For the protection of the health care worker against airborne organisms.
- When aerosolisation or splattering of blood or body fluids is anticipated.
- When attending severely immunocompromised residents and there is a risk of transmission of airborne organisms.
- When dressing extensive wounds or burns.

Masks must:

- Not be touched by hand while being worn.
- Be worn according to manufacturers' instructions.
- Be removed as soon as practicable after becoming moist.
- Not be worn loosely around the neck but removed using strings or loops only and discarded as soon as practicable after use ..."

46. The rest home provided a copy of its "Pre-Lockdown Plan", which it advised was current as at 23 May 2020. This outlined the following:

"On the 21<sup>st</sup> March (sun) we decided to lock down [the rest home] ...

Staff **wash** their hands before entering the building.

They put their **masks** on.

Have their **temperature** taken and record the results ...

21<sup>st</sup> March

Maintenance during COVID 19 guidelines.

- Keep recording a daily diary.
- Wash hands, temps, mask ..."

47. The rest home also provided a copy of a notice to staff on how to put on and safely remove PPE (including face masks), and advised that this was in the staff room in March 2020.

48. The 17 April 2020 letter to staff, signed by Mr C, outlined the following:

"Thank you everyone for your support, work ethics and adhering to the lock down policies and the daily precaution routines at [the rest home] ...

**GUIDELINES:**

When NZ goes into level 3, [the rest home] will carry on as level 4 for another 7 days.

After the 7 days we will look at the stats from MOH then decide where to from there.

Deciding to ease back on COVID 19 will take discussion, thought and processes ...

In the interim we carry on as usual with all disciplines that have been established.

- Handwashing
- Masks
- Temps

... This update will go into your personal file."

### Responses to provisional opinion

#### *Mr B*

49. Mr B was given an opportunity to respond to the “information gathered” section of my provisional opinion, and he expressed disappointment that Mr C did not receive further consequences for his actions.

#### *Mr C*

50. Mr C was given an opportunity to comment on my provisional opinion, and advised that he had no further comment to make.

#### *The rest home*

51. The rest home was given an opportunity to comment on my provisional opinion, and advised that it is very satisfied with the report and has no further comment to make.
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### Relevant standards

52. The New Zealand Health and Disability Services (Core) Standards (NZS8134.1:2008) state:

“INDEPENDENCE, PERSONAL PRIVACY, DIGNITY, AND RESPECT  
RANGATIRATANGA, WHAIARO, TŪMATAITI, MANA, ME TE MANAAKI

Standard 1.3 Consumers are treated with respect and receive services in a manner that has regard for their dignity, privacy, and independence.”

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### Opinion: Mr C

#### Sharing of photographs on social media — breach

53. As a healthcare assistant, Mr C was required to provide services in accordance with the Code of Health and Disability Services Consumers’ Rights (the Code). In particular, he was required to treat consumers with respect, and to provide services in a manner that respected the dignity of the consumer.
54. On 23 May 2020, Mr C took photographs of two consumers, one being Mrs A, and shared these with approximately 9–10 friends on social media. He then shared edited versions of these photographs with captions on social media, with the same friends as well as another individual (who was on his recently sent list).
55. Mr C acknowledged the ease with which such photographs could be screenshotted, edited, and shared. He was aware that his contract outlined the policies on privacy and professionalism, and of relevant standards through his nursing studies.

56. Mr C took at least two non-consensual photographs for an unnecessary and personal purpose. The act of taking these photographs, and sending the photographs to even one other person, was deeply inappropriate. It was also short-sighted not to consider the possible wider consequences, given the ease with which information can be shared online.
57. While Mr C did not create the edited and captioned versions of the photographs, he shared these with his Snapchat friends, which was a disrespectful act that was clearly done without regard to Mrs A's dignity. I note that Mr C acknowledged that he should never have taken these photographs in the first place.
58. Mr C submitted that he had a lack of understanding of what was required of him with respect to consent and privacy, and he believed that the healthcare assistant role was a "non-health-professional" role.
59. As noted above, healthcare assistants are required to comply with the Code. In my view, Mr C's statements demonstrate a concerning lack of understanding of the fundamentals of providing safe care, in particular to a vulnerable consumer like Mrs A. It is disappointing that he did not seemingly have a greater appreciation of these basic principles, and his status as a healthcare assistant offered neither an explanation nor an excuse for his actions.
60. In addition, confusion as to what his role entailed did not preclude him from knowing right from wrong. He should have known regardless that taking such photographs, and then sharing edited photographs with friends, was wrong.
61. Mr C's actions in circulating photographs of Mrs A meant that not only did he have no regard for her privacy in the most vulnerable of circumstances, but he did so too in a demeaning way which was for no other purpose than for personal gratification and entertainment.
62. Mr C has shown remorse for his actions and has learned a difficult lesson. Nevertheless, he must be held to account for these actions, which caused distress to the families, his employer, and himself.
63. By taking non-consensual photographs of Mrs A and posting them on social media, I consider that Mr C failed to treat Mrs A with respect, and breached Right 1(1) of the Code. In addition, I consider that the services provided were not performed in a manner that respected the dignity of Mrs A, and therefore Mr C also breached Right 3 of the Code.

#### **Personal protective equipment during COVID-19 pandemic — adverse comment**

64. In the photographs taken by Mr C, it is evident that he was wearing a face mask incorrectly when caring for Mrs A.
65. The rest home advised that wearing face masks was mandatory during Alert Level 2, and that Mr C's actions on 23 May 2020 contravened its PPE policy at the time.
66. Mr C submitted that his understanding was that masks were not compulsory during Alert Level 2, and he did not receive training and was not aware of the PPE policy. However, he

was aware of the “Pre-lockdown Plan” and stated that he should have complied with PPE “regardless of the rules set in place”.

67. I consider that there is some evidence that Mr C was aware of the requirements to wear a mask while he was caring for Mrs A on 23 May 2020, and do not fully accept his submission that he believed it was not compulsory at the time. While not wearing it correctly, he was wearing a face mask in the photograph with Mrs A. I note the notices that the rest home provided to HDC outlining the need to wear a mask, one of which was signed by Mr C. I note also that he did not dispute the allegation that he breached the rest home’s PPE policy at the internal investigation meeting. His submission that he was not wearing the mask correctly because it was uncomfortable is not satisfactory.
68. However, by the same token, Mr C’s statements demonstrate confusion as to what was expected of him at the time, contrary to the rest home’s stated expectations, and also indicate a possible lack of training with respect to how to wear a mask (although I note that at the time of events, New Zealand would have been approximately two months into its COVID-19 response, and Mr C was employed at the rest home throughout that time). I note that the rest home did not provide evidence of any relevant training provided, and there is some ambiguity in the wording of expectations of staff in relevant notices and guidance.
69. I am concerned that Mr C did not comply with his employer’s rules for wearing face masks during the COVID-19 pandemic, as his actions put the residents he was caring for at risk. However, I acknowledge the mitigating circumstances as to his potential misunderstanding of the exact requirements.

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## **Opinion: Rest home owner**

### **Sharing of photographs on social media — no breach**

70. As a healthcare provider, the rest home owner (as owner and operator of the rest home) is responsible for providing services in accordance with the Code. At the time of events, the rest home had policies and resources in place available to staff, and expectations of staff behaviour were evident in various documents provided. I do not have concerns about broader systems or organisational issues at the rest home, and therefore I do not consider that the rest home breached the Code directly.
71. In addition to any direct liability for a breach of the Code, under section 72(2) of the Health and Disability Commissioner Act 1994 (the Act), an employing authority is vicariously liable for any acts or omissions of its employees. A defence is available to the employing authority of an employee under section 72(5) of the Act if it can prove that it had taken such steps as were reasonably practicable to prevent the acts or omissions.
72. In May 2020, Mr C was an employee of the rest home, and therefore the rest home is an employing authority for the purposes of the Act. As set out above, I have found that Mr C breached Rights 1(1) and 3 of the Code.



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73. As noted above, the rest home had policies in place to guide staff, and its expectations of staff behaviour were clear with respect to the issue of photographs, as evident in the information gathered through this investigation. The rest home noted that there were no previous incidents with respect to Mr C until 23 May 2020. In my opinion, the mistakes Mr C made were his own and demonstrated individual failures in judgement, rather than deficient guidance or training.
74. I am satisfied that the rest home had taken such steps as were reasonably practicable to prevent this act or omission occurring. Accordingly, I do not find the rest home vicariously liable for Mr C's breaches of the Code.

**Personal protective equipment during COVID-19 pandemic — adverse comment**

75. As noted above, in the photographs taken by Mr C, it is evident that he was wearing a face mask incorrectly when caring for Mrs A, and I am concerned that Mr C did not comply with his employer's rules for wearing face masks during the COVID-19 pandemic, as his actions put the residents he was caring for at risk.
76. The rest home advised that wearing face masks was mandatory during Alert Level 2, and that Mr C's actions on 23 May 2020 contravened its PPE policy at the time. It also provided notices outlining the need to wear a mask, one of which was signed by Mr C. There is some evidence that Mr C was aware of the rest home's requirement to wear a mask, but it is not immediately apparent to me how this requirement was intended to be implemented, including whether there were any exceptions to wearing masks in Level 2. I note that the rest home did not provide evidence of any relevant training provided to Mr C, and there is some ambiguity in the wording of notices and plans provided by the rest home.
77. I do consider that there is an element of individual responsibility; however, Mr C's statements have demonstrated confusion and a lack of awareness as to what was expected of him. I am concerned about the ambiguity in the guidance provided by the rest home, and the lack of evidence of training. In light of Mr C's position as a healthcare assistant, further clarity in guidance and training was needed, compared to qualified staff, to ensure understanding and avoid misinterpretation.
78. Having stated this, I acknowledge that the COVID-19 pandemic was, and is, an unprecedented and evolving situation. I consider that the rest home's deficiencies in training and guidance are mitigated in this regard and do not amount to a breach of the Code.
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## Recommendations

79. I recommend that Mr C:
- a) Provide a written letter of apology to the family, for his breaches of the Code. The apology should be sent to HDC within three weeks of the date of this report, for forwarding.
  - b) Provide HDC with his reflections and learning taken from this complaint, within six weeks of the date of this report.
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## Follow-up actions

80. Mr C will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.
81. A copy of this report with details identifying the parties removed will be sent to the Ministry of Health, the New Zealand Aged Care Association, the Nursing Council of New Zealand and the New Zealand Nurses Organisation, and placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.