Healthcare of New Zealand Limited

A Report by the

Deputy Health and Disability Commissioner

(Case 13HDC00164)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

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Executive summary

1. Ms A is paralysed from the chest down. She lives alone and receives home and community support from Healthcare of New Zealand Limited (HCNZ), on contract to the Accident Compensation Corporation (ACC).

2. For the period 27 November 2012 to 27 November 2013, Ms A was assessed by ACC as requiring approximately eight and a half hours of in-home care per day, and seven eight-hour sleepover shifts per week.

3. On 18 June 2012, Ms A's usual weekday support worker advised HCNZ that she would be taking annual leave between 29 December 2012 and 6 January 2013. According to its "Assignment of Support Worker to Client" Policy (the Policy), HCNZ will inform clients about planned leave in advance and discuss and agree on arrangements in sufficient time for alternatives to be considered. The Policy states that arrangements will be timely and appropriate to meet the level of support required.

4. HCNZ did not arrange alternative support for Ms A for the period 29 December 2012 to 6 January 2013, when her usual weekday support worker was on leave. It also was not able to arrange alternative care for Ms A following the resignation of one of her evening support workers in November 2012 and following an injury sustained by her weekend day support worker in December 2012 that left that worker unable to care for Ms A.

5. As a result, Ms A did not receive her scheduled support services during the day on 22 or 23 December 2012, or the evening of 23 December 2012. In addition, she did not receive her usual day cares on 29, 30 or 31 December 2012, or 1, 2, 3, 4, 5, or 6 January 2013. Neither did Ms A receive her evening cares on 30 or 31 December 2012, or 4 or 6 January 2013.[1]

6. The lack of care provided to Ms A over that time period had a significant effect on her emotional and physical well-being. Ms A emailed HCNZ several times over that period outlining the impact the lack of care was having on her, but she received no responses to those issues from HCNZ.

7. The Deputy Commissioner found that, by failing to arrange appropriate care for Ms A in December 2012 and January 2013, HCNZ failed to provide services to Ms A consistent with her needs and breached Right 4(3) of the Code of Health and Disability Services Consumers' Rights 1996 (the Code).[2]

8. The Deputy Commissioner also found that HCNZ's failure to respond to Ms A over the period from 29 December 2012 to 6 January 2013 placed Ms A at increased risk of harm and, in that respect, HCNZ breached Right 4(4) of the Code.[3]

[1] Records indicate that Ms A received evening cares on 22 and 29 December 2012 and 1, 2, 3 and 5 January 2013.

[2] Right 4(3) of the Code states: "Every consumer has the right to have services provided in a manner consistent with his or her needs."

[3] Right 4(4) of the Code states: "Every consumer has the right to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer."

9. Furthermore, HCNZ's poor communication with Ms A, including its failure to respond to her emails between 29 December 2012 and 6 January 2013, showed a complete lack of empathy or regard for her situation. In that respect, HCNZ failed to treat Ms A with respect, and breached Right 1(1) of the Code.[4]

10. HCNZ will be referred to the Director of Proceedings to decide whether any proceedings should be taken.

Complaint and investigation

11. The Commissioner received a complaint from Ms A about the services provided by Healthcare of New Zealand Limited. The following issue was identified for investigation:

- *Whether Healthcare of New Zealand Limited provided Ms A with an appropriate standard of care between June 2012 and January 2013.*

12. An investigation was commenced on 28 June 2013.

13. This report is the opinion of Ms Rose Wall, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

14. The parties directly involved in the investigation were:

Ms A	Consumer/complainant
Healthcare of New Zealand Limited	Provider

Also mentioned in this report:
Support Worker B
Support Worker C
Support Worker D
Support Worker E
Senior Coordinator RN F
Service Coordinator RN G
Branch Manager Ms H

15. Information was also reviewed from ACC and general practitioner Dr I.

[4] Right 1(1) of the Code states: "Every consumer has the right to be treated with respect."

Information gathered during investigation

Background

16. Ms A is paralysed from the chest down. Ms A advised HDC that the only parts of her body that she has full use of are her right arm and shoulder.

17. Ms A lives alone in her home and has no family nearby. She receives home and community support funded by the Accident Compensation Corporation (ACC). Ms A's care is provided by Healthcare of New Zealand Limited (HCNZ), on contract to ACC. HCNZ has been providing services to Ms A for 12 years.

Healthcare of New Zealand Limited

18. HCNZ advised HDC that it is "the largest provider of disability and home-based support services in New Zealand" and has been providing services for over 25 years.

19. HCNZ stated that it has a "very comprehensive" recruitment, orientation and induction programme, to enable it to recruit and select appropriate employees. New support workers are enrolled to complete the National Certificate in Health Disability and Aged Support Community Care Foundation skills NZQA Level 2 as soon as practicable, and employees are also encouraged to complete NZQA Level 3 Core Competencies.

20. HCNZ further stated that support workers supporting clients with specific clinical needs are also trained by a registered nurse (RN), one on one for each individual client. Clinical competencies include medication management, manual transferring, percutaneous endoscopic gastrostomy (PEG) feeding,[5] and bowel and catheter care. Clinical competencies require annual review with sign-off by a registered nurse.

21. HCNZ advised that it assigns to Ms A only support workers who have been trained in the clinical skills required to support her adequately. It advised, "This of course limits the available pool of support workers that we can draw on to provide her support either on a long standing arrangement or to fill in at short notice to cover for unexpected leave such as illness."

22. HCNZ advised HDC that Ms A has two main support workers, both of whom have been with her for some years. Support Worker B is Ms A's usual weekday support worker, and works 29 hours per week exclusively with Ms A. Support Worker C provides six hours of personal cares and three sleepover shifts of eight hours per week. In the period leading up to December 2012, Ms A also routinely received support services from Support Workers D (evening support) and E (weekend day shifts).

[5] Percutaneous endoscopic gastrostomy is a procedure that allows nutritional support for patients who cannot take food orally. It involves the placement of a tube through the abdominal wall and into the stomach, through which nutritional liquids can be infused. It is used in patients who will be unable to take in food by mouth for a prolonged period of time.

Care arrangements for the 2012/2013 Christmas and New Year period

23. For the period 27 November 2012 to 27 November 2013, Ms A was assessed by ACC as requiring approximately eight and a half hours of in-home care per day, and seven eight-hour sleepover shifts per week. However, Ms A elected to have only three sleepover shifts per week. Ms A stated that this was because she was concerned about the experience and appropriateness of a number of the support workers who had been assigned to her in the past. In response to my provisional opinion, HCNZ stated that their client notes show that Ms A made this decision because "she did not want people in her house all the time (she wanted time on her own)".

24. On 18 June 2012, Support Worker B advised HCNZ that she would be taking annual leave between 29 December 2012 and 6 January 2013. Her leave request was approved by HCNZ on 19 June 2012.

25. In addition, in November 2012 Support Worker D resigned from HCNZ, and in December 2012 Support Worker E sustained an injury that left her unable to provide support services to Ms A.

26. HCNZ provided HDC with a copy of its November 2011 "Assignment of Support Worker to Client" policy. Under the heading "Continuity of service", the policy states:

> "Clients are told about planned leave in advance. Arrangements are discussed and agreed in sufficient time for alternatives to be considered. The replacement support worker is confirmed with the client before change occurs. Arrangements are timely and appropriate to meet the level of support required."

27. HCNZ advised HDC that existing support workers were unavailable to assist with providing support services to Ms A during the period of Support Worker B's leave. It stated:

> "In the time leading up to 28 December the coordinator made every effort to find replacement support workers … [and] the RN coordinator contacted [Ms A] with possible relief support workers on an almost daily basis leading up to 28 December 2013 …"

28. HCNZ provided HDC with copies of its "Client Details" (the notes) for Ms A from 10 October 2011 to 7 January 2013, and copies of emails between Ms A and Senior Coordinator RN F from 20 June 2012 to 31 January 2013.

29. The following emails were exchanged between Ms A and RN F from 24 September 2012 to 28 November 2012, regarding care arrangements for Ms A:

- On 24 September 2012, RN F emailed Ms A and stated, "I am looking for the right person to introduce to you as we are needing another Support person in the team."

- On 30 September 2012, Ms A emailed RN F with a plan for her support hours, covered by her then existing support workers, B, C and D. Ms A noted that, if her plan was accepted, "the need to find a back-up person won't be so urgent".

- RN F emailed Ms A on 1 October 2012 advising that she would be in touch with Ms A when the plan was finalised.

- On 2 October 2012 Ms A emailed RN F with further suggestions regarding her support worker cover. In her email, Ms A stated:

> "… ACC said today that you had plenty of staff who have level 3 [qualification] and I only need level 2, but all must have police check and first aid if they don't have level 3. They seemed to think that all this should be in place when Healthcare took contract. If we train new person they will need to do two days with [Support Worker B] to cover her more frequent absences — next at New Year, I think. And they need two spells at night with [Support Workers E or D] … They need to be very clean — colostomy and indwelling catheter, safe around controlled drugs, and well adjusted without drug or spiritual healing links — hard to find in [the town]. Younger girls no good as social lives intervene with work … mature — 40–60 ladies best.
>
> Hope this helps as the day to day instability of care is a bit wearing. I got [Support Worker B] by advertising in the paper even though she already worked for Healthcare — we had not been allocated each other … An on-call worker, with level three qualifications would assist Healthcare and clients when staff were off unexpectedly. Anyway I'm trying to do your job which is silly."

- On 3 October, RN F emailed Ms A stating, "Thanks [Ms A] I am working my way through with contacting [support workers] so will have it organized this week." No further emails were provided regarding support worker arrangements at that time.

- On 6 November 2012, Ms A emailed RN F and stated, "As you know there are changes coming up in my carers and I will insist that only those who comply with the ACC tender are allowed on my premises."

- RN F emailed Ms A on 15 November setting out HCNZ's training requirements, and advising, "As you know [Support Worker D] is resigning so I am looking into her replacement at present so will be in touch."

- The next email regarding support worker arrangements provided to HDC is dated 28 November 2012. Ms A emailed RN F regarding her preferred support worker hours and allocations, including back-up support. In her email, she stated, "This is not urgent but as we are introducing new carers with [Support Worker D] going I thought it best to do it all at once."

30. None of the above emails provided to HDC specifically refers to cover for Ms A during Support Worker B's annual leave from 29 December 2012 to 6 January 2013. In its response to my provisional opinion, HCNZ stated that, although the above emails do not specifically refer to this issue, "this does not necessarily mean that [RN F] was not working on it and planning at that time".

31. The first entry in Ms A's notes concerning care for Ms A from the period 29 December 2012 to 6 January 2013, to cover Support Worker B's leave, is dated 10

December 2012. On that day, the notes record that HCNZ had identified three support workers who were possibly suitable to provide services to Ms A during the period of Support Worker B's leave. HCNZ stated that the service coordinator attempted to arrange a meeting with Ms A and the three available support workers. However, it advised that Ms A was unable to attend a meeting because of the state of her health. In its response to my provisional opinion, HCNZ stated: "[RN F] has assured us that she was having discussions and planning much before 10 December 2012."

32. On 10 December Ms A emailed RN F and advised that "Wednesday (in the weeks leading up to [Christmas])" did not suit her for an appointment, that she needed at least one week's notice, and that she had tried to phone RN F "several times" with no success.

33. On 11 December RN F emailed Ms A and stated:

> "I would like to know how the meeting went with [a proposed new support worker] on Friday and if you would like to start her on site training with [Support Worker B] as to your routines as staffing is very limited. I have [two] other support workers who may be possibilities and you have historically wished to meet them before any training takes place. I am happy for this to continue but I do need to move on this if you could consider times it is suitable for them to come and meet you."

34. Ms A emailed RN F on 11 December and advised that she would be "okay" with the proposed new support worker starting evening shifts, and she would let RN F know if, after two weeks, she felt safe with the worker so as to extend the new worker's hours. Ms A also stated:

> "The other two carers can come to meet me and work with [Support Worker B] as soon as you can arrange it. 10am–12 noon is the best time for them to see catheters, bags, get run down on dysreflexia, pressure areas, and stoma gear etc. It would be preferable for them to come one at a time. No need for them to meet me first as we desperately need someone to do the mornings this weekend."

35. HCNZ told HDC that it suggested, as an alternative to Ms A meeting with the proposed new support workers, that the proposed new support workers meet with Support Worker B to gain insight into the skills required to care for Ms A, prior to their training commencing. HCNZ advised HDC that that option was not accepted by Ms A. It stated that "by the time [Ms A committed to times to meet the proposed new support workers] these support workers had been given other work and were no longer available." In a further response to HDC, it stated that by 13 December only one of the proposed support workers was available.

36. An appointment was made for the proposed new support worker to attend an evening shift with a current support worker on the evening of 12 December.[6] On 17 December, Ms A emailed RN F setting out her concerns about the training

[6] That new support worker continued to work with Ms A for one hour between 9pm and 10pm twice weekly (except 31 December 2012).

requirements of her carers, according to ACC, and stated, "If [the proposed new support worker] does not meet above requirements she should not be sent to me, nor should anyone else in the same situation." Ms A also stated in her email, "The anxiety over [Support Worker B]'s week off added to the uncertainty over weekend care is taking a pretty heavy toll on me mentally and physically. If you don't have the staff please say so."

37. At 12.57pm on 19 December Ms A emailed RN F, and stated:

> "If you cannot provide care for weekends, Friday night, new year cover for [Support Worker B] please say so now … Please give me straight answer with no ifs or maybes because I can't plan a thing without knowing. I need an answer by 3pm so I can ask for assistance to arrange alternative care or go to relatives if there is no option. This involves travel and I will need to get on to it. I have coped with minimum care for last month since [carers] resigned from Healthcare or went off sick. We have had over a month to sort it and I let the agency know in November I would be requiring help over this period. [Support Worker B] gave months notice that she was taking time off. [Support Worker D] gave a months notice of her resignation from the agency … I must know today."

38. RN F replied to Ms A at 1.26pm on 19 December, and stated, "[I'm] afraid I have drawn blanks everywhere and will have to tell you I am unable to fill these gaps. I am happy to keep looking at all options and will keep in touch with any positives and I am sure there will be some." The notes record, on 19 December 2012, "Unable to introduce any relief support workers who meet client's requests and times as per many emails on file."

39. Ms A emailed RN F on Thursday 20 December and stated:

> "I have not had an email covering tomorrow nights care or lack of, nor for the weekend … I have no care all day Sat, [Support Worker C] Sat night, nobody Sunday day or evening. I will be tired Sat so do not mind someone coming at 11 or 12. On Sunday a late start would be ok too. We still have the first week of the year to cover, so if we can get past that [Support Worker B] will be back but night and weekends will need to be covered or I will be in a big mess. Can you subcontract suitable people. It is too late for friends and family to change plans to accommodate me."

40. RN F replied to Ms A on 21 December, and stated, "I am sorry but I have [had] no luck with any support workers for these gaps. I have spoken to [ACC case worker] and tried to subcontract but they also cannot offer any assistance … Once again I have not stopped looking but have not had any luck."

41. HCNZ stated that on 20 December 2012 it approached its sister company but it did not have any appropriately trained support workers available.

42. HCNZ further advised:

> "The RN coordinator also had a conversation with [an ACC Case Manager] where it was explained that all options had been explored and that we could not provide morning support for [Ms A] over this period when [Support Worker B] was on leave. Our understanding is that ACC offered to pay for someone to assist [Ms A] if she could find someone suitable and also suggested [Ms A] go to another provider."

43. Ms A stated that, on 21 December 2012, HCNZ informed her that it was unable to find a replacement carer to cover the annual leave hours of Support Worker B. Ms A said that she informed ACC of the situation on 21 December, and was advised that HCNZ might be able to sub-contract carers.

44. Ms A told HDC that she was also advised that weekend days and night care (other than Saturday sleepover care) was also unavailable, despite one carer having given notice in October that she was retiring at the end of November (Support Worker D), and the other one having taken leave due to an injury in mid December (Support Worker E).

45. Ms A did not receive her scheduled support services during the day on 22 or 23 December, or in the evening on 23 December.[7]

46. At 8.12pm on Sunday 23 December Ms A emailed RN F as follows:

> "No care Sat morning saw me with one wet cushion from Friday, an upset tummy until 11am resulted in lying in bed with five colostomy bags and a filthy body, dirty sheet and bedspread. By two I had managed to transfer with difficulty to the shower chair, hurt toe and foot as leg fell off bed … unable to have shower after bowel and bladder accidents … Washed as best I could tried to dress the lower part of my body after transferring back onto bed. Night catheter bag too long for me to clean … I'm exhausted, in tears of frustration and have nobody coming to tidy up or help me get something tonight … ACC [took] on an obligation to provide care … and relies on its agencies to provide it. I will have a repeat of this weekend but worse next weekend … So if you can't sub-contract carers in the next few days I will have not only next weekend with just [Support Worker C] on Saturday night, but no day care either for the whole new year week while [Support Worker B] is on leave … If you leave me without day care for that time I will be in a filthy inhuman state by the time she returns. If you and ACC can't help it effectively means the system has broken down for seriously disabled without family carers in [the town] … it would be best if you could outline your plan of action to cover the above. I can't believe that someone who can function reasonably well once up and clean in chair may have to stay in bed for days because Healthcare does not have staff or contingency plans for ill or retiring carers."

47. RN F emailed Ms A on 24 December and stated:

[7] As stated, records indicate that Ms A received evening cares on 22 December 2012.

> "I am still looking for staff and have not walked away from this but resources for all agencies are stretched and sub contracting appears to not be an option either unless ACC can suggest anything different. I am unable to supply any Support workers on Friday and Sunday nights for 1 hour or Saturday and Sunday mornings on a regular basis. I am unable to replace [Support Worker B] for her weeks leave. I can only apologise for this and assure you I have done all I can and will continue to work on this."

48. Ms A did not receive several of her allocated hours between 29 December 2012 and 6 January 2013. In particular, she did not receive her day cares on 29, 30, or 31 December 2012, or 1, 2, 3, 4, 5 or 6 January 2013. Neither did Ms A receive her evening cares on 30 or 31 December 2012, or 4 or 6 January 2013.[8]

49. At 9.13am on Monday 31 December, HCNZ Service Coordinator RN G emailed Ms A to advise that her support worker allocated for that evening was unwell and unavailable to attend to Ms A that evening.

50. At 12.06pm on 31 December Ms A emailed RN G and stated:

> "I have had no carers since Sat night and the next one is not due until tomorrow night. It is not possible for me to manage. I had bladder accident last night, which I managed, but had another one during the night. I have just struggled out of bed onto wheelchair that has not been charged due to Healthcares inability to find replacement for day carer this week despite over a months warning to cover the period.
>
> I am unable to make my bed … I have attempted to call on friends but they are away. I have no family in [the area]. Can you please make every effort to find somebody to fill day vacancies until Monday next week and nights Wed, Friday, weekend day care which has also fallen through due to injury, even if it is only for an hour each day. I will not make it through the next nine days if you, as ACC's contracted [undecipherable] do not help me. I am paralysed from chest down and can only do so much. Meals, washing and body care are essential basics I cannot do without. Please send me phone numbers of other services I can call on if you are unable to help at all."

51. Ms A emailed RN G again at 4.50pm on 31 December, setting out similar concerns about her care arrangements, the risks to her health, and the pain from attempting cares for herself. Ms A copied the email to the Branch Manager, Ms H, and requested a meeting with Ms H the following week.

52. Ms A emailed RN G again at 7.45pm on 31 December advising that it was her understanding that a replacement was being sought for her cares that evening, but she had not heard from HCNZ. She stated, "Healthcare really is a very disorganised business here in [the area] and does more to harm clients through ongoing stress and

[8] As stated, records indicate that Ms A received evening cares on 29 December 2012 and 1, 2, 3 and 5 January 2013.

anxiety as to availability of appropriate care … A little transpar[e]ncy and reliability would go a long way."

53. HCNZ did not provide HDC with any evidence that it responded to Ms A's emails to RN G on 31 December. Ms A's HCNZ "Client Details" notes record that, on 31 December 2012, it was contacted by someone concerned that Ms A "had had no care". The notes record "no further action at this time".

54. In its response to my provisional opinion, HCNZ explained:

> "The communication [Ms A] had with HCNZ on 31 December 2012 was via our National On-call Coordinator who was not based in the [local] office. She rang [RN F] that day to find out more about the details and was told about the efforts that had been made to find replacement staff and that the client was aware of this — that is why she noted 'no further action at this time' (because she was told by [RN F] that there was nothing further that could be done at that time as all options to find support had already been explored)."

55. Ms H replied to Ms A on Thursday 3 January advising of her availability for a meeting. Ms H's email makes no reference to Ms A's condition or her concern about the lack of care she was receiving.

56. Ms A also emailed Ms H and her ACC Case Manager at 1.38pm on Thursday 3 January 2013. She noted that she was "progressively weaker", had not had the energy to get any food to eat since Tuesday night, that she was exhausted, and that she needed assistance during the day for Friday, Saturday and Sunday, "because I don't think I can cope much longer". Ms H forwarded the email to RN G at 2.24pm that day, stating only "FYI".

57. In its response to my provisional opinion, HCNZ explained:

> "[T]his email was sent following a detailed face to face conversation between [Ms H] and [RN G] — that is why it only stated FYI (because they had discussed everything already). In their conversation, they discussed the planned next steps and how to address [Ms A's] email."

58. HCNZ did not provide HDC with any evidence of steps taken in response to Ms A's email of 3 January. The only email provided was sent by Ms H to Ms A on Friday 4 January, and it simply stated, "Hello [Ms A]. Attached is the roster for [Support Worker B] who is due back at work on Monday 7 January. Regards." Ms A responded to Ms H's email on Saturday 5 January, and stated, "Without a day carer I am completely isolated," and that the situation she had been put in was "inhumane". Again, there is no evidence of a response from HCNZ to Ms A's email of 5 January.

59. Ms A advised that she suffered considerable distress, pain and discomfort as a result of the missed hours of care in December 2012 and January 2013. In particular, she had to take care of soiled sheets, attempt to manoeuvre herself from her wheelchair to her bed, and try to keep herself clean. She also advised that the strain on her body from those activities caused her additional injuries.

60. On Monday 7 January Ms A sent an email to Ms H and her ACC Case Manager, stating, "Am relaxing at last after weeks of anxiety before and during care shortfall."

Effect on Ms A's subsequent health

61. Ms A's general practitioner, Dr I, confirmed that Ms A consulted him on 16 and 18 January 2013, and 12 February 2013, and that, at those appointments, she expressed her concern and distress about the limited care she was provided with over the 2012/2013 Christmas and New Year period. Dr I explained that Ms A became "really very anxious and quite depressed and found it very difficult to cope after for really quite some time". Dr I also noted that Ms A developed left-sided mid, upper and lower back pain radiating to her groin and to her knee, which appeared to be strain injuries sustained by shifting herself on and off the bed to her wheelchair.

62. Dr I's notes of his consultation with Ms A on 16 January note that Ms A struggled "badly" over the period in question, and that she "took hours to manage stoma and changing, dressing etc. [H]urt mid/upper back and [left] knee trying to reach her feet to put trousers on, still getting pain …"

Subsequent actions

63. On 16 January, ACC emailed RN G and asked her to confirm that HCNZ is able to ensure that Ms A will have a caregiver available for all the hours ACC funds, "and a back up plan should a caregiver not be available". RN G responded to ACC that day, stating, "Yes, Healthcare NZ can confirm that we will be able to ensure all rostered shifts will be covered."

Response from HCNZ

64. HCNZ advised HDC that it investigated the complaint that it was unable to find a replacement for Support Worker B when she was on leave. HCNZ advised that it "found the root cause of this event in two key areas", which were "the difficulty in recruiting suitably trained [support workers] in rural areas and establishing a suitable match with [Ms A]". It further stated, "Efforts to arrange suitable replacement cover were hampered by [Ms A's] reluctance to meet and approve suitable applicants."

65. HCNZ advised HDC, "The service delivery failure described by [Ms A] is extremely regrettable and is viewed very seriously by [HCNZ]. [Ms A's] distress is completely understandable …" HCNZ met with Ms A on 9 January 2013 to clarify her support worker expectations and to agree on a plan for future support. It said that it also provided her with a written apology in a letter dated 24 January 2013. It also stated:

> "HCNZ takes our contractual responsibility to provide services very seriously. We do take full responsibility for our inability to provide support workers, and we do acknowledge our failure in this instance to meet [Ms A's] expectations."

66. HCNZ stated:

> "Our efforts to supply suitably trained and experienced support workers have been frustrated over the years by [Ms A's] personal choice. This is further complicated by [Ms A] living alone in a small rural town … we have a limited pool of support

> workers who are appropriately trained and who live nearby who can support [Ms A] at short notice.
>
> We have trained support workers who have declined to work with [Ms A] or who [Ms A] says are not suitable. Finding a suitable match between client and support worker can be difficult as it comes down to personality and 'fit'. The coordinators try very hard to accommodate the specific needs of our clients and usually a match can be found and everyone is happy."

67. HCNZ stated:

> "HCNZ is very sorry for the distress and discomfort that [Ms A] experienced through our inability to find suitable support workers for her. We believe we did all we could in the circumstances to work with her, keep her fully informed and provide her with viable options to ensure she would have been adequately supported."

68. Ms A advised HDC that since these events, her support workers have advised her that HCNZ supervisors had informed them that she was difficult to work with, but that the support workers did not find her difficult. Ms A advised HDC, "I do have difficulty with the supervisors to organise ongoing care for me, but 99% of the time I do not have problems with carers." She further advised, "I have had carers for 365 days a year for 12 years and to my knowledge only two have said they do not wish to work with me."

69. HCNZ also noted, "This incident has emphasised the need for forward planning and effective communication, so that gaps to the roster can be identified and addressed to achieve continuity of services …"

70. HCNZ advised that it has discussed issues of recruitment and retention of support worker staff at its national meetings, and it has resolved to establish a Recruitment Working Group to focus on and progress strategies to address recruitment and retention issues.

71. HCNZ also advised that the branch has now changed its approach to recruiting support workers. In particular, for high need clients requiring daily support, a team of support workers is recruited and trained to the specific needs of the client, which means that there is "always backup available should one call in with unplanned leave and that for planned leave, the rosters can be adjusted within the team to cover all the allocated hours".

72. In response to my provisional opinion, HCNZ stated:

> "Healthcare of New Zealand Limited accepts the Health and Disability Commissioner's findings in this case. We are deeply sorry that this lack of care has occurred and greatly regret the distress experienced by our client. The safety and wellbeing of the people we support is critical and in this circumstance we did not deliver the standard of support the client should expect.

Healthcare of New Zealand is committed to providing quality services to people in our community. We believe we have in place a robust policy and procedure framework to ensure that people at all levels of the organisation understand what is expected of them. It is very disappointing when we do not deliver against those standards. When this does happen, we try to put right the wrong if we can and then learn from it so as to continually improve.

Following this complaint process, we have carefully reviewed our systems and procedures, and have identified some key learnings and action items to ensure this situation does not happen again to any of our clients. At the same time, we have recently commissioned an independent review of our internal management controls and processes which we hope will result in further robust mechanisms to ensure that client safety and respect is paramount.

In this case, the Branch Manager has accepted that she could have communicated better with the client and she regrets not apologising sooner. She has learned a great deal from this experience and has been supported by senior management in respect of developing her skills in client communication and managing staff shortages.

We accept the findings regarding the contributing factors — namely, rural area recruitment constraints and difficulties finding staff that the client found suitable. However, we do wish to note that, although these are certainly not excuses for poor service delivery, they contribute to a sector-wide workforce issue that all service providers grapple with on a daily basis. It is our hope that cases such as this one will reflect and highlight this issue and all stakeholders can continue to work together to find solutions to address the problem.

Ultimately, we would like to record here our admiration for our client at the centre of this process. We respect her courage and determination in living her life independently despite the many challenges she faces daily as a result of her accident many years ago. She has shared her journey with us for over 8 years, and we are grateful that she has chosen to stay with us despite having experienced this poor service. We can only promise now that we have learned from this case, and we will do our utmost to ensure it never happens again — to her or any of our clients."

Opinion: Healthcare of New Zealand Limited — Breach

Introduction

73. HCNZ, as a provider of disability support services, is responsible for providing services to its clients in accordance with the Code.

74. Ms A is paralysed from the chest down. At the time of the events giving rise to this complaint, she had been assessed by ACC as requiring eight and a half hours of in-home care per day, and seven eight-hour sleepover shifts per week. HCNZ undertook

to provide home support services to Ms A in accordance with her assessed requirements by ACC. As such, Ms A was a client of HCNZ.

75. In a previous opinion, this Office noted that "a provider who accepts the responsibility for a [consumer] with known risk factors … has always been required to take reasonable steps to minimise the risk".[9] I consider that there are several areas where the care that HCNZ provided to Ms A fell below an acceptable standard, and that its actions placed her at an unacceptable risk of harm. HCNZ is responsible for those failures and, as such, breached Ms A's rights under the Code, as set out below.

Care and treatment

76. In June 2012 HCNZ was put on notice that Ms A's usual day carer, Support Worker B, would be on leave from 29 December 2012 to 6 January 2013, and that alternative support arrangements would need to be made for Ms A during that period.

77. HCNZ's November 2011 "Assignment of Support Worker to Client" policy states:

> "Clients are told about planned leave in advance. Arrangements are discussed and agreed in sufficient time for alternatives to be considered. The replacement support worker is confirmed with the client before change occurs. Arrangements are timely and appropriate to meet the level of support required."

78. HCNZ advised HDC that, "[i]n the time leading up to 28 December the coordinator made every effort to find replacement support workers" for Ms A. However, the evidence that has been provided to HDC fails to demonstrate that. HDC has not been provided with evidence that HCNZ took sufficient steps to make arrangements for Ms A's care during Support Worker B's leave, despite it being aware of the need to do so from June 2012.

79. In particular, the first mention in Ms A's "Client Details" notes concerning care for Ms A to cover Support Worker B's leave is dated 10 December 2012, less than three weeks before Support Worker B was due to go on leave.

80. The notes for that entry state that an attempt had been made to arrange a meeting with Ms A and three available support workers, but that Ms A was unable to attend the meeting. HCNZ stated that it suggested, as an alternative to Ms A meeting with the proposed new support workers, that the proposed new support workers meet with Support Worker B to gain insight into the skills required to care for Ms A, prior to their training commencing. HCNZ advised HDC that that option was not accepted by Ms A. It stated that "by the time [Ms A committed to times to meet the proposed new support workers] these support workers had been given other work and were no longer available". In a further response to HDC, it stated that by 13 December only one of the proposed support workers was available.

81. HCNZ's 10 December 2012 entry in Ms A's notes, and its response to HDC, do not accord with the emails between Ms A and RN F, which have been supplied to HDC. In particular:

[9] See Opinion 10HDC00356 (published on 25 June 2012).

- It appears that Ms A was given only two days' notice to meet with the proposed new support workers, as referred to in her 10 December "Client Details" notes. On 10 December Ms A emailed RN F advising that "Wednesday (in the weeks leading up to [Christmas])" did not suit her for an appointment, that she needed at least one week's notice, and that she had tried to phone RN F "several times" with no success. Her request for advance notice in respect of such meetings appears reasonable.

- RN F's email to Ms A on 11 December indicates that Ms A had actually met a proposed new support worker on 7 December, and that RN F had two more proposed new support workers for Ms A to meet (not three as suggested in the 10 December entry in Ms A's "Client Details" notes). In her email, RN F asked Ms A to consider times that would be suitable for the two proposed new support workers to come to meet her.

- Ms A replied to RN F by email that day (11 December). Ms A advised RN F that she would be happy for the support worker whom she met on 7 December to commence evening shifts. Ms A stated that she would be happy for the other two proposed support workers "to meet [her] and work with [Support Worker B] as soon as you can arrange it". Ms A advised RN F that the best time of day is 10am–12 noon. Ms A indicated in her email that she was aware of the time pressures in finding care cover, and stated that there was therefore no need for the proposed new support workers to meet her first. It does not appear that HCNZ took any steps between then and 13 December (when the proposed new support workers were noted to be no longer available) to arrange a meeting with the two proposed new support workers despite receiving Ms A's email that day.

82. An appointment was made for the proposed new support worker whom Ms A had met on 7 December to attend an evening shift with a current support worker on 12 December. On 17 December, Ms A emailed RN F setting out her concerns about the training requirements of her carers, according to ACC, and stated, "If [the proposed new support worker] does not meet above requirements she should not be sent to me, nor should anyone else in the same situation." In my view, it was entirely reasonable for Ms A to have requested that the support workers provided by HCNZ met ACC's requirements in respect of their training and suitability to care for her. I again note that HCNZ was given six months' notice to arrange a suitably trained carer to provide home support services to Ms A over the period of Support Worker B's December 2012/January 2013 leave.

83. In her email to RN F on 17 December, Ms A stated, "The anxiety over [Support Worker B]'s week off added to the uncertainty over weekend care is taking a pretty heavy toll on me mentally and physically. If you don't have the staff please say so." Ms A does not appear to have received a definitive response to that email, because on 19 December she again emailed RN F and stated, "If you cannot provide care for weekends, Friday night, new year cover for [Support Worker B] please say so now … Please give me straight answer with no ifs or maybes because I can't plan a thing without knowing." Ms A reasonably asked for a clear answer that day, so she could make alternative care arrangements, or go to stay with relatives, if no care options

were available. RN F's response to that email (sent on 21 December 2012) is the only record that HCNZ advised Ms A that it was unable to fill the gaps in her care provision.

84. On 20 December Ms A emailed RN F to advise that she was unable to make alternative arrangements with friends or family, given the short notice, and she asked if there was a possibility that HCNZ could subcontract suitable carers. HCNZ stated that on 20 December 2012 it approached its sister company but it did not have any appropriately trained support workers available. I am concerned that HCNZ was not more proactive in contacting its sister company or exploring other care options prior to 20 December 2012, and that these things appear to have occurred only following the suggestion by Ms A.

85. HCNZ advised that, following a conversation with ACC, ACC offered to pay for someone to assist Ms A if she could find someone suitable, and also suggested Ms A go to another provider. Again, I am concerned that these options were not considered until December, the month Support Worker B commenced her period of leave, and I further consider it unreasonable that HCNZ, the contracted provider, attempted to pass responsibility for finding care support on to Ms A at that late stage.

86. In all respects, HCNZ's response to arranging care support cover for the period of Support Worker B's leave fell short of its November 2011 "Assignment of Support Worker to Client" policy, and fell short of accepted standards. Despite having six months' notice, it did not discuss arrangements and agree on alternatives in sufficient time for them to be considered, nor did it make timely and appropriate arrangements to meet the level of support required.

87. As a result of its failure to arrange care support cover for Ms A, Ms A was not provided with many of her allocated hours between 29 December 2012 and 6 January 2013. In particular, she did not receive her day cares on 29, 30, or 31 December 2012, or 1, 2, 3, 4, 5 or 6 January 2013. Neither did Ms A receive her evening cares on 30 or 31 December 2012, or 4 or 6 January 2013.[10] The significant impact this had on Ms A's emotional and physical well-being is clearly set out in her emails to HCNZ, as detailed in the Information Gathered section of my report.

88. HCNZ advised HDC that it investigated the complaint and "found the root cause of this event in two key areas", which were "the difficulty in recruiting suitably trained [support workers] in rural areas and establishing a suitable match with [Ms A]". It further stated, "Efforts to arrange suitable replacement cover were hampered by [Ms A's] reluctance to meet and approve suitable applicants."

89. I do not accept that a root cause of this event was Ms A showing reluctance to meet and approve suitable applicants. Her email to RN F on 11 December clearly shows her willingness to meet new support workers. Furthermore, as noted above, it was entirely reasonable for Ms A to request that her support workers be adequately trained. I also note that it appears that Ms A has retained staff for extended periods during the 12 years in which she has received services from HCNZ.

[10] As stated, Ms A received evening cares on 22 and 29 December 2012 and 1, 2, 3 and 5 January 2013.

90. I also do not accept that a root cause of this event was a difficulty in recruiting suitably trained staff in rural areas. HCNZ stated, "[W]e have a limited pool of support workers who are appropriately trained and who live nearby who can support [Ms A] at short notice." While I accept that in small rural towns there is a limited pool of support workers available and it can be difficult to recruit appropriate carers, this was not a case of needing to find a carer "at short notice". HCNZ had six months' notice to find a support worker to cover Support Worker B's leave. Given HCNZ's knowledge of the difficulties it can experience finding staff, including its stated difficulty in finding carers for Ms A, it is not clear why it left making arrangements to cover Support Worker B's leave until December 2012, when it had been on notice of the need to do so since June 2012. It is also not clear why it did not engage with Ms A about her care options earlier, as a partner in her own care. Had it done so, Ms A may have been able to assist in making alternative arrangements — by mid-December 2012 it was far too late to expect her to do so, and any opportunity for her to do so, or for alternative care to be arranged, had been missed.

91. In my view, the factors that led to this serious lapse in care were not recruitment or retention issues. I consider that the key failing by HCNZ in this case, as it later recognised in its response to HDC, was its failure to forward plan and communicate effectively with Ms A, to ensure the continuity of services to her.

92. HCNZ did not just fail to meet Ms A's "expectations", as stated in its response to HDC; it failed to meet her needs, its contractual obligations, and her rights under the Code. It concerns me that HCNZ does not appear to be aware of the extent to which it failed Ms A and compromised her safety, and the severe impact its failures had on Ms A's emotional and physical well-being. It stated that, although it is sorry for her distress and discomfort, it believes that it did all it could in the circumstances to work with her and keep her informed. For the reasons set out above, I do not consider that this was the case.

93. By failing to arrange appropriate care for Ms A in December 2012 and January 2013, in accordance with ACC's assessment of her needs, HCNZ failed to provide services to Ms A consistent with her needs, and breached Right 4(3) of the Code.

Response to Ms A's concerns

94. Ms A advised HDC that she suffered considerable distress, pain and discomfort as a result of the missed hours of care. In particular, she had to take care of soiled sheets, attempt to manoeuvre herself from her wheelchair to her bed, and try to keep herself clean. She also advised that the strain on her body from those activities caused her additional injuries.

95. Ms A emailed HCNZ staff on several occasions from 31 December 2012 to 6 January 2013 regarding her condition as a result of the lack of support services she was receiving, the risks to her health, and the pain and distress she was experiencing from attempting cares for herself. Ms A copied HCNZ Branch Manager Ms H in on some of those emails, and requested a meeting.

96. I am very concerned at the lack of response Ms A received from HCNZ to those emails.

97. Ms A's HCNZ "Client Details" notes record that, on 31 December 2012, it was contacted by someone concerned that Ms A "had had no care." The notes record "no further action at this time." I note HCNZ's explanation that the National On-call Coordinator had been advised by RN F that "there was nothing further that could be done at that time as all options to find support had already been explored." It remains unclear to me the basis upon which it was determined that no response was required from HCNZ, in light of the emails Ms A sent that day.

98. HCNZ did not provide HDC with evidence indicating that it took any steps in response to Ms A's emails to its staff from 31 December to 3 January, setting out her concerns and condition.

99. Ms H replied to Ms A on Thursday 3 January advising of her availability for a meeting. Ms H's email makes no reference to Ms A's condition or the care that Ms A had received over the preceding days.

100. On 3 January Ms A emailed Ms H noting that she was "progressively weaker", had not had the energy to get any food to eat since Tuesday night, that she was exhausted, and that she needed assistance during the day for Friday, Saturday and Sunday, "because I don't think I can cope much longer." Ms H forwarded the email to RN G at 2.24pm that day, stating only "FYI."[11] On 4 January Ms H emailed Ms A a copy of the roster for Support Worker B for the following week. Again, there was no acknowledgement or reference in Ms H's email to Ms A of her condition or state of cares.

101. Ms A responded to Ms H's email on Saturday 5 January, and stated, "Without a day carer I am completely isolated," and that the situation she had been put in was "inhumane." There is no evidence of any action taken by HCNZ in response to that email.

102. HCNZ was aware of risks to Ms A over that period. As this Office has previously stated, "An organisation aware of risks to its clients must respond promptly and decisively to minimise those risks, to protect its clients."[12] In my view, Ms A's endeavours to live independently within the community are commendable. Her efforts to maintain her independence are reliant on robust and reliable support systems being in place. Ms A was a longstanding client of HCNZ, and HCNZ was well aware of her care requirements.

103. HCNZ's failure to respond appropriately to Ms A between 29 December 2012 and 6 January 2013, and its failure to address or acknowledge her concerns, placed Ms A at increased risk of harm. HCNZ failed to take prompt and decisive steps to minimise that risk. Accordingly, in my view, HCNZ failed to provide services to Ms A in a manner that minimised the potential harm to her, and it therefore breached Right 4(4) of the Code.

[11] As noted, HCNZ explained that Ms H and RN G had "discussed everything already".
[12] See Opinion 11HDC00384 (published on 24 June 2013).

104. HCNZ's communications with Ms A, including its failure to communicate appropriately with her in response to her emails between 29 December 2012 and 6 January 2013, showed a total lack of empathy and regard for her situation. As stated in a previous opinion, this Office's vision is a consumer-centred system.[13] In my view, HCNZ's response to Ms A was not consumer-centred. HCNZ failed to treat Ms A with respect, and it breached Right 1(1) of the Code.

Recommendations

105. In my provisional opinion, I recommended that HCNZ apologise to Ms A for its breaches of the Code. In its response to that opinion, HCNZ provided HDC with a written apology for forwarding to Ms A.

106. HCNZ has agreed to:

- Review its policies and procedures for arranging cover for clients when support workers take leave, and provide HDC with a copy of those policies and procedures within one month from the date of this report.

- Provide education to its coordinators and senior staff on how to communicate effectively and respectfully with clients, and how to engage consumers as active participants in their care, and provide evidence of the arrangements made for such training within one month from the date of this report.

Follow-up actions

107.
- HCNZ 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.
- A copy of this report with details identifying the parties removed, except HCNZ, will be sent to the District Health Board, the Ministry of Health, and ACC.
- A copy of this report with details identifying the parties removed, except HCNZ, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

[13] See Opinion 11HDC00877 (published on 21 June 2013).

Addendum

108. The Director of Proceedings filed a claim at the Human Rights Review Tribunal which proceeded by agreement. The Human Rights Review Tribunal made a declaration that HCNZ breached Rights 1(1), 4(3) and 4(4) of the Code.