

**Support Worker, Mr B
Community Support Service**

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

(Case 19HDC00756)

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Executive summary

1. This report concerns a sexual relationship between a woman and a community support worker in 2018 and 2019.
2. The support worker resigned from his position during the community support service's investigation into the relationship. The relationship ended some two months after his resignation. The support worker advised that he has retired.

Findings

3. The Deputy Commissioner found that by having a sexual relationship with the woman concurrently with a professional relationship, the support worker failed to comply with ethical standards and the standards required by his employer, and accordingly breached Right 4(2) of the Code. The Deputy Commissioner also found that he took advantage of the woman's vulnerability, and his conduct was sexually exploitative, and accordingly he also breached Right 2 of the Code.
4. The Deputy Commissioner did not find the support service in breach of the Code.

Recommendations

5. The Deputy Commissioner recommended that the support service use this case for the wider education of its support workers, in a way that maintains the anonymity of the parties involved, and provide evidence of that training to HDC.
6. The Deputy Commissioner also recommended that should the support worker return to practice, he undertake thorough training in professional boundaries.

Complaint and investigation

7. The Health and Disability Commissioner (HDC) received a complaint from a social worker about the services provided by a support worker and a community support service (the support service). The following issues were identified for investigation:
 - *Whether Mr B provided Mrs A with an appropriate standard of care in 2018 and 2019.*
 - *Whether the support service provided Mrs A with an appropriate standard of care in 2018 and 2019.*
8. 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.

9. The parties directly involved in the investigation were:

Mrs A	Consumer
Complainant	Social worker
Mr B	Provider/community support worker
Support service	Provider/community support services

10. Also mentioned in this report:

Mr C	Service Manager
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Information gathered during investigation

Background

11. This report concerns a sexual relationship between a community support worker, Mr B, and Mrs A, while Mr B was providing Mrs A with support services.
12. Mrs A (aged in her sixties over the course of these events) has a history of mental illness.¹ She began receiving community support services from the support service in 2015, having been referred by the Needs Assessment and Service Coordination (NASC) for assistance to maintain her weekly routine, including shopping, meal preparation, collecting of medications, and engaging with community groups and families. She received a total of four hours of support per week.
13. Mr B was employed by the support service as a support worker for several years.

Support services provided by Mr B to Mrs A

14. Mr B was involved in Mrs A's care for 18 months. The support service told HDC that he undertook 179 scheduled supports for her during this period.
15. Mr B told HDC that the support services he provided to Mrs A included prompting and assisting with cooking meals twice weekly, shopping for groceries, attendance at various appointments, and attendance at Day Programmes. He noted that in addition, there were supports for car repairs, dental appointments, and clothes shopping.

¹ Mrs A's "Comprehensive Assessment" by the Mental Health and Addictions Service dated 2018 indicates that she has received care from Mental Health Services since 2008. The assessment identifies her current mental health diagnosis as "Generalised Anxiety Disorder", with historical issues around Post Traumatic Stress Disorder. She is prescribed long-term antidepressant medication. Her notes reference anxiety and fear of being alone as a recurring feature in her presentation, and her risk of social isolation and of self-neglect when unwell, dependent personality traits and threats of self-harm/suicidal ideation when her mood is low, and paranoid thoughts that she or others are in danger, which can interfere with her eating and activities.

16. Mr B stated that he was aware that Mrs A was depressed and suffered from anxiety and occasional paranoid ideation. He said that physically, he knew that she had a prolapsed womb, and is anorexic when not supported to eat and maintain a healthy weight.
17. Mr B's awareness of Mrs A's mental health history and concerns are evidenced by his notes in Mrs A's records (both prior to and during the relationship), which make reference to her anxiety, paranoid thoughts, loneliness, and family issues.
18. It is also evident from the records that Mr B attended Mrs A's appointments and reviews by the Mental Health Service, NASC, and her psychiatrist. He also performed several welfare checks and visits outside of the usual hours.

Personal relationship between Mr B and Mrs A

19. Mr B told HDC that he and Mrs A established a mutual friendship during the time he was providing support services to her.
20. Mr B stated that their friendship continued until 2018, when an intimate relationship began. Mrs A confirmed this, and said that it was mutual and continued for approximately eight months. Mr B continued to provide support services to Mrs A during the relationship.
21. Mr B stated that he would visit Mrs A at her home almost daily, although he did not stay overnight. He said that they planned for an overnight stay at some time in the future, but this did not eventuate. Mrs A told HDC that their relationship was conducted outside Mr B's support work hours.

Disclosure of relationship and actions taken by the support service

22. A mental health support worker for the support service told HDC that she provided support services to Mrs A in early 2019. The support worker said that prior to attending, she had been informed that Mrs A had telephoned the support service office numerous times, stating that she was feeling unwell and having suicidal thoughts. The support worker stated:

“[Mrs A] ... was very agitated and stated to me that she had suicidal thoughts. I asked [Mrs A] if there was anything causing these thoughts, she did not reply. Then [Mrs A] asked me if I knew [Mr B] (a CSW [community support worker] for the support service), I said yes. [Mrs A] went on to tell me that she and [Mr B] are in love, and that they have been sleeping together since [2018] ...”

23. A community support worker told HDC that Mrs A telephoned her the following day and disclosed that she and Mr B were in a sexual relationship (and shared explicit details), and that Mr B was going to leave his partner to be with her. The support worker noted that Mrs A appeared emotional when she was sharing the information, and stated that she wanted to die, repeatedly.
24. Mr C, manager for the support service, told HDC that the community support workers disclosed to him that Mrs A had alleged that she had been having a romantic relationship

with Mr B. Immediate actions were taken to arrange a meeting with Mrs A and to inform the Community Mental Health Service, [mental health service], and NASC. Mr B was stood down from his shift that day and directed to leave the premises until an investigation had been completed.

25. Mr C told HDC that as far as he is aware, no member of their staff was aware of this development between Mrs A and Mr B before that time.
26. Mr C said that he received an email from Mr B denying the allegation and asking to speak as soon as possible. They agreed to meet.

Support service interviews

27. The support service provided a file note of the interviews that Mr C conducted with Mr B and Mrs A separately. The notes from Mrs A's interview document that she was very emotional and worried about Mr B's welfare. She confirmed that the relationship was romantic. She relayed that if anything happened to him, she would "kill herself", and that Mr B had told her that he would deny all allegations and "sort this out". The minutes documented:

"[Mrs A] relayed that [Mr B] said that they cannot stay together. [Mrs A] said that [Mr B] may lose his job on account of all this ... [Mr B] has given her personal gifts, including [gift cards]. That she wanted to punish him for not wanting to be with her and that now she regrets it."

28. The file note documents that Mr B declined an interview and handed in his letter of resignation effective immediately, as he admitted to breaching boundaries with the client by forming a friendship, but denied any allegations of a sexual relationship.
29. Mr B confirmed to HDC that he only disclosed to his employer that he and Mrs A had formed a close friendship, and that he handed over his resignation as he had admitted that his relationship with Mrs A was in contravention of expected professional boundaries and because he had lost the trust of his colleagues and the organisation. However, he said that Mr C did not ask if the relationship was intimate, and therefore he did not disclose that the relationship was intimate.

End of relationship

30. Mr B said that he and Mrs A continued their relationship beyond his resignation, and they were both committed to the relationship and to developing it further.
31. Mr B stated that during the following months, it became clear that Mrs A was receiving considerable pressure from her family and her support team to end their relationship, and to believe that he was motivated only by wanting her money. He said that this caused her a great deal of distress, and that eventually she came to believe that his motives were to obtain her money. He stated that at this point he ended the relationship, out of concern for her mental well-being. Mrs A confirmed that Mr B ended the relationship.

Further information — Mr B

32. Mr B said that he was aware that he had a responsibility to maintain clear professional boundaries in his support of clients. He stated that he had been orientated to his role some years ago and was aware of the existence of the policies regarding this matter, and knew that the policies were accessible through the company intranet.
33. Mr B said that he did not make other staff aware of the relationship. He said that he had not given consideration to transferring Mrs A's care to anyone else.
34. Mr B told HDC that while he worked for the support service he reported to Mr C, and the level of oversight was minimal, and mostly consisted of attendance at group supervision from time to time. Mr B said that there was no one-to-one supervision.
35. Mr B stated that he did not place any blame on Mrs A, and does not to this day. He said that he has taken full responsibility for it and said as much to Mrs A.
36. Mr B told HDC:

"I have decided to retire from the workforce and will not be seeking any position where I am involved with vulnerable people in the future. I am aware that I have demonstrated my inability to keep either [Mrs A] or myself safe and I no longer have confidence in my ability to practise safely in the future. I agree wholeheartedly that the above situation was not [Mrs A's] fault, if only because I failed to observe proper professional boundaries."

"... I regret that [Mrs A] has suffered for my lack of professionalism and also regret the passing of our relationship, which was genuine on both our behalves and not motivated by any ill-intent."

Further information — the support service

37. The support service advised that it met with Mrs A and confirmed that she wished to continue receiving support from the support service. It reported that Mrs A declined an independent advocate, declined consent for the relationship to be discussed with her family, and declined to make a complaint to HDC (at that time). Her support services were increased to seven hours per week due to the emotional turmoil she was experiencing after having relayed her relationship with Mr B.
38. The support service told HDC that during his employment, Mr B reported to Mr C. Mr C said that there were daily team briefing meetings and regular team meetings/group supervisions, and Mr B received weekly, fortnightly, and ad hoc informal meetings with Mr C, where they discussed staff issues, other client issues, and challenges in the role.
39. The support service told HDC that all employees of the support service participate in professional boundaries training as part of their core training. In addition to this, staff are bound by the support service's Code of Conduct, which covers professional boundaries

expectations. It advised that Mr B was provided training as a support worker, including professional boundaries training, and provided evidence of this.

40. The support service advised that it planned to deliver an additional professional boundaries training session to team members in the service. It stated that given the nature of the work that they do, boundaries and ethics are discussed on a regular basis, both in one-to-one and team meetings. It provided minutes from team briefing meetings, which included discussions and reminders of conduct and safety issues, to raise any relevant concerns, and to make reference to the support service's Code of Conduct.

The support service's Code of Conduct

41. The Code of Conduct in place at the time of events outlined examples of misconduct and serious misconduct, which included:

“Not maintaining professional boundaries with a client (e.g. forming a friendship, entering a relationship or engaging in a sexual conversation with a client).

...

Failure to disclose a personal, financial or professional relationship with a client that could lead to a conflict of interest, and failure to act on instructions relating to a conflict of interest.”

Responses to provisional decision

Mrs A

42. Mrs A was given an opportunity to comment on the “information gathered” section of the provisional report, but did not provide a response.

Mr B

43. Mr B was given an opportunity to comment on the provisional report, and advised that he did not wish to provide any further comment.

Support service

44. The support service was given an opportunity to comment on the provisional report, and advised that it accepted the report and had no comment to make.

Relevant standards

45. The Health and Disability Services (Core) Standards (NZS 8134.1:2008) state:

“Standard 1.7 Consumers are free from any discrimination, coercion, harassment, sexual, financial, or other exploitation.

Criteria The criteria required to achieve this outcome shall include the organisation ensuring:

1.7.1 Services have policies and procedures to ensure consumers are not subjected to discrimination, coercion, harassment, and sexual or other exploitation.

...

1.7.3 Service providers maintain professional boundaries and refrain from acts or behaviours which could benefit the provider at the expense or well-being of the consumer.”

Opinion: Mr B — breach

46. Under Right 2 of the Code of Health and Disability Services Consumers’ Rights (the Code), Mrs A had the right to be free from discrimination, coercion, harassment, and sexual, financial, or other exploitation. Under Right 4(2) of the Code, she had the right to have services provided that complied with ethical and other relevant standards.
47. Mr B began providing support services to Mrs A in 2017. In 2018, their sexual relationship began. This has been confirmed by both Mr B and Mrs A.
48. Mr B continued to provide support services to Mrs A, concurrently with the sexual relationship, until 2019, when their relationship was disclosed to the support service and he resigned. The sexual relationship ended two months later.
49. At the time of these events, Mrs A was vulnerable, due to her mental health issues. It is clear that Mr B was aware of this vulnerability — he has acknowledged as much to HDC, and it is evident in his notes for the support services he provided over a significant period of time. I note that he also attended mental health related appointments with Mrs A, and had intimate knowledge of her health.
50. Mr B told HDC that he was aware that he had a responsibility to maintain clear professional boundaries in his support of clients, and acknowledged that he failed to do so with respect to Mrs A. He also confirmed that he was orientated to, and aware of, the support service’s expectations of him.
51. This Office has previously found that any relationship between a service user and a healthcare provider, whether or not the healthcare provider is registered, is likely to involve a power imbalance and a degree of vulnerability on the part of the service user, and the trust that this vulnerability will not be abused. It is important that healthcare providers have an understanding of this reliance and vulnerability.²
52. When a healthcare provider engages in a sexual or intimate relationship with a client, fundamental ethical standards are breached. I do not consider that such a relationship being consensual alters this fact. It was Mr B’s responsibility to maintain appropriate

² See Opinion 16HDC00439.

boundaries in the support worker–consumer relationship, and he failed to do so, despite being aware of the expectations and standards required by his employer.

53. By having a sexual relationship with Mrs A concurrently with a professional relationship, Mr B failed to comply with ethical standards and the standards required by his employer, and accordingly breached Right 4(2) of the Code. In my view, Mr B took advantage of Mrs A’s vulnerability, and his conduct was sexually exploitative, and accordingly he also breached Right 2 of the Code.
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Opinion: Support service — no breach

54. As a healthcare provider, the support service is responsible for providing services in accordance with the Code.
55. The support service had a Code of Conduct in place, which explicitly outlined that misconduct included not maintaining professional boundaries with a client, such as forming a relationship. Mr B advised that he was aware of the support service’s policies and had access to them. The support service also provided evidence that staff are regularly reminded of safe practice and to reference the Code of Conduct.
56. The support service provided training on professional boundaries to Mr B as part of his core induction training. It provided further support worker training over the course of his employment. Mr B said that he did not receive one-to-one supervision, while the support service advised that he received weekly, fortnightly, and ad hoc informal meetings with Mr C. Despite this discrepancy, there is evidence that Mr B attended team meetings and was reminded of safe practice and the Code of Conduct.
57. The support service was not aware of the relationship’s existence until 2019. Once Mrs A disclosed the relationship to two support workers, they appropriately escalated matters, and the support service took immediate action to stand down Mr B pending an investigation.
58. For these reasons, I therefore do not consider that the relationship that developed between Mr B and Mrs A indicates broader systems or organisational issues at the support service, and consider that the support service did not breach the Code directly.
59. 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 took such steps as were reasonably practicable to prevent the acts or omissions.

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60. Mr B was an employee of the support service at the time of events. Accordingly, the support service is an employing authority for the purposes of the Act. As set out above, I have found that Mr B breached Rights 2 and 4(2) of the Code.
61. I note the information I have outlined above — namely that the support service provided Mr B with training, had an explicit Code of Conduct which Mr B was aware of and had access to, and that staff were reminded of safe practice. I note also the appropriate actions the support service took upon discovery of the sexual relationship between Mr B and Mrs A. For these reasons, I am satisfied that the support service took such steps as were reasonably practicable to prevent this act or omission occurring. Accordingly, I do not find the support service vicariously liable for Mr B's breaches of the Code.
62. I note the support service's statement that it would be providing further professional boundaries training to staff. It is positive that it is proactively taking action, and I trust that the support service will continue to remind its staff of their requirements to maintain professional boundaries.
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Recommendations

63. I recommend that the support service use this case for the wider education of its support workers, in a way that maintains the anonymity of the parties involved, and provide evidence of that training to HDC within three months of the date of this report.
64. I also recommend that should Mr B return to practice, he undertake thorough training in professional boundaries.
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Follow-up actions

65. Mr B 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.
66. A copy of this report with details identifying the parties removed will be sent to the Director of Mental Health and the Director-General of Health, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
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Addendum

67. The Director of Proceedings decided not to issue proceedings.