Caregiver, Mr B

A Disability Service Provider

A Report by the

Deputy Health and Disability Commissioner

(Case 07HDC10991)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Consumer
Mr B	Provider/caregiver
Ms C	Complainant/Ms A's housemate
Mr D	Ms A's father
Ms E	Care coordinator, disability service provider
Ms F	Manager, disability service provider
Mr G	Caregiver
Ms H	Service Manager, disability service provider
Ms I	Manager, disability service provider
Ms J	Manager, disability service provider
Disability service provider	Disability service provider/Provider
Support Service 2	Another disability service provider/Provider

Complaint

On 26 April 2007, the Commissioner received a complaint from Ms C, via the Nationwide Health and Disability Advocacy Service, about the appropriateness of the relationship between caregiver Mr B and his client, Ms A. The following issues were identified for investigation:

- *The appropriateness of services provided to Ms A by a disability service provider.*
- *The appropriateness of services provided to Ms A by Support Service 2.*
- *The appropriateness of the relationship between Mr B and Ms A.*

An investigation was commenced on 21 June 2007.

Information reviewed

Information from:

- Ms A
- Mr B
- Ms C
- Mr D
- Ms E

- Mr G, caregiver, the disability service provider[1]
- Ms A's neighbour
- Ms H, Service Manager, the disability service provider
- The disability service provider
- Support Service 2

Information gathered during investigation

Chronology

In 2005, Mr B lived with a disabled relative and his partner, whom he assisted with personal and housekeeping care. Ms A was a neighbour, and she and Mr B became friends.

On 12 September 2005, a disability service provider began providing home-based support services for Ms A. The disability service provider describes the home help services it provides:

> "Home help services support people where disability, health issues or rehabilitation from an accident make it difficult for clients to maintain their personal hygiene, or organise or control their household. The services are delivered in the client's home to enable them to continue living in their community.
>
> Home support services include household management, personal care, and advanced personal care services. In addition we offer overnight care which provides an in-home household management and personal care service overnight.
>
> …
>
> Home based support for household management, personal care, advanced personal care and overnight care is assessed through a Needs Assessment Service Coordination Agency (NASC). You can ask your NASC to refer you to [us] to provide your support."

Ms A suffers from a disorder that affects the peripheral nerves,[2] and requires some assistance with her personal care, but mostly requires help with general household management. The disability service provider's "Basic Needs Service Plan" of 12 September 2005 states that "[Ms A] is wheelchair dependent, for personal cares she can shower, dress herself except in washing and drying her hair." A caregiver was to

[1] During the period being investigated, Mr G was a care coordinator for the disability service provider.

[2] Charcot Marie Tooth Disease.

attend for three mornings a week (Monday, Wednesday and Friday) and every evening, with the main duties being to assist with household management.

Ms A's father, Mr D, advised that he had met Mr B on a number of occasions prior to Mr B becoming his daughter's carer, and both Mr B and his daughter had told him that they were "boyfriend and girlfriend". Mr D added that Mr B said that "he was in love with her and would be good to her". However, Mr D advised that the relationship lasted only six weeks. Mr B stated that he and Ms A had had sexual intercourse after they had drunk too much alcohol, but this was prior to him becoming her carer.

On 26 September 2005, Mr B was employed as a caregiver by the disability service provider, to work exclusively as Ms A's caregiver, at her request.

Ms A's care coordinator was Ms E. She stated that her role was "to coordinate between the support workers and the client", and that her job was to meet the needs of the client. Ms E said that Mr B was a "nominated carer", having been chosen by Ms A. In relation to nominated carers, Ms E advised:

> "[W]e may feel that she or he is not the right person for the clients and if the clients insisted on using that [person] as the carer … then we have no choice but … to use that person nominated. Yeah, it's [the client's] preference …"

Ms E interviewed Mr B, and her understanding at the time he was appointed was that he was "a very good friend" of Ms A. Ms E stated that she did not discuss in more detail the relationship between Ms A and Mr B. Ms E stated:

> "I didn't think … I have the right to ask about the relationship. I didn't think it was my role …"

There is an induction training for all new employees of the disability service provider. Mr B's induction was performed by Mr G, a care coordinator who worked with (and sat next to) Ms E. Mr G does not specifically recall Mr B's induction training, but stated that normal practice would be to work through the disability service provider booklet given to all staff. Mr G added that, specifically in relation to professional boundaries, he would explain that there was a need for some distance to be maintained between the carer and the client.

The disability service provider provided a copy of Mr B's "Orientation Content Checklist" (signed by Mr B on 26 September, and Mr G on 27 September 2005). The checklist includes a section on "Professional Conduct", and the relevant section of the disability service provider booklet states:

> "Boundaries — Care/service plans must be followed. Client/provider relationships must be maintained at a professional level. Where boundaries are difficult to establish or maintain, you must report this to the Co-ordinator.
>
> … Clients are only to be visited in accordance with your rostered work times."

New employees are also provided with a copy of the disability service provider Code of Conduct; section 1.5 refers to the consumption of alcohol and prohibited drugs:

> "Occasionally residents of our homes consume alcohol socially, and on these occasions employees may sometimes consume alcohol with them. However this may occur only with the approval of the Manager. Outside such approval, no alcohol is to be consumed in clients' houses or on Company premises. No prohibited drugs are to be brought into, or consumed on Company premises or in clients' houses."

On 27 February 2006, a neighbour of Ms A telephoned Ms E, and complained that there "may be an improper relationship [between] client and carer". As a result of this complaint, Ms E stated that a female carer was employed to provide personal care in the mornings.

Ms E claimed that she told her manager at the time, Ms I, about the complaint that had been made about the appropriateness of the relationship between Ms A and Mr B. However, the disability service provider stated that there is no record of Ms E having informed anyone in the organisation of concerns about Mr B's relationship with Ms A. (Ms I no longer works for the company, and cannot be contacted.)

Mr G said that, although he had not been able to recall Mr B's orientation, he did recall Mr B, and added:[3]

> "I understood that there was a personal involvement between [Mr B] and [Ms A] and [Ms E] was aware of it … I remember saying [to Ms E] that I thought there was an ethical issue … my understanding from [Ms E] was that there was a romantic involvement."

In August 2006, Ms A complained to her carer that Mr B had been using her EFTPOS card, drinking alcohol at work, had been accessing internet pornography on her computer, and had been involved in a fight at Ms A's house. Ms E completed a complaint form on 25 August 2006, and wrote a note on this form dated 28 August that "[Ms A's] grandmother rang wanting to know if [the disability service provider] can stop [Mr B] from working for [Ms A]". Ms E recommended that Mr B's employment be terminated as soon as possible, and Mr B advised that Ms E had told him that his employment was terminated.

On 28 August 2006, Ms A's father, grandmother and aunt sent a letter by facsimile to four addressees, including Ms E and Ms A's NASC. The letter stated:

[3] Mr G was contacted to discuss the details of Mr B's orientation. Mr G volunteered his knowledge of Mr B's relationship with Ms A, and Ms E's knowledge, without any prompting from the Investigator or mention of the issue being investigated.

> "As the family of [Ms A] we would like to bring to your attention our concerns about her in regard to her health and safety, while living alone …
>
> [Ms A] was recently admitted to hospital with pneumonia … During the time she spent in hospital her home situation was examined a bit closer by us and she gave us some information that was quite frightening.
>
> She let us know about situations that occur in her home and she reports many alcohol and drug taking (mainly marijuana) sessions that happen when she is visited regularly by her 'friends'. [Ms A] does admit to participating in some of these occasions and we feel that her current caregiver '[Mr B]' also is party to these episodes.
>
> …
>
> [Ms A] thinks [Mr B] is great, but as a family we have serious concerns about his intentions. And from an ethical aspect how can you be paid to look after someone and take such advantage of them?"

Ms E claimed that she told her manager, Ms J, about this letter. The disability service provider advised that there is no record of Ms E informing anyone of this letter, and that Ms J had finished working for the disability service provider on 16 June 2006.

Mr D said that he was "100% certain" that he told Ms E in August or September 2006 that Mr B and his daughter had been in an intimate relationship, and added that "there is no way [he] would have missed that out".

On 11 September 2006, a meeting took place involving Ms E, Mr B, a social worker and the disability service provider's General Manager for the area, Ms F. The disability service provider's file note of the investigation of the complaint before this meeting states:

> "[Ms A] explained that [Mr B] had arrived drunk a few weeks ago but that he brought a friend to cook for [Ms A]. … She reported that there had been no drinking on shift but they sometimes drank after [Mr B's] shift. She stated that this was always at her invitation."

As a result of this meeting, and at Ms A's request, Mr B was reinstated as Ms A's carer. The outcome of the meeting was documented, and stated that there was no need for Ms A to give Mr B access to her EFTPOS; that he was not to use her computer for internet access; and that he could only drink alcohol with Ms A outside work hours. Ms E was interviewed during the HDC investigation, and she was accompanied by Ms H, the disability service provider's Service Manager:

> "Interviewer: I'm reading from the [minutes of the meeting on] 11th of September, [and] [Mr B] wasn't going to be allowed access to [Ms A's] EFTPOS card and he wasn't allowed … to have

computer access. And the third thing says: 'alcohol outside of work'. I'm just wondering if you can expand on what that meant.

[Ms E]: What they do after the hours they're supposed to be there is their own.

Interviewer: Is that your view or is that [the disability service provider's]?

[Ms E]: That's what I was told.

Interviewer: Told by?

[Ms E]: By the person in the offices.

Interviewer: Who was?

[Ms E]: That was [Ms I] at the time, yeah.

[Ms H]: I would say though, that going back to professional boundaries, that [the disability service provider's] view is that we don't encourage people to socialise with clients outside of work hours.

Interviewer: Okay, because I was going to ask with the … booklet … that staff get given which has a section on professional conduct. And it says 'clients are only to be visited in accordance with the rostered work times' and … [there] seems to be [a] conflict [in] allowing someone to have a drink after work hours and saying you mustn't go there after work hours. Am I right in seeing that there's a conflict there?

[Ms H]: I would say yes."

On 29 December 2006, Ms C moved in with Ms A. Ms C stated that Mr B would visit most evenings with alcohol ("bourbon and cola"), and recalled that on one occasion she witnessed Ms A and Mr B in a passionate kiss ("a full-on pash", as Ms C described it). Ms C stated that she never saw Ms A and Mr B use drugs, but they would go into Ms A's room, close the door, "and come out half an hour later wasted". Ms C stated that Mr B would open an alcoholic drink on his arrival, and would not wait until he had finished work. She added that Ms A complained to her that Mr B borrowed money from her to buy alcohol and would not pay it back.

The disability service provider advised that Mr B's employment ended on 31 December 2006.

On 15 January 2007, Ms A changed her provider from the disability service provider to Support Service 2.

Other matters

Support Service 2
Support Service 2 is an organisation that, like the disability service provider, provides home-based support services. Mr B worked as a caregiver for Support Service 2 from January 2005 to 20 April 2007; however, he was never contracted to provide care for Ms A.

Mr B
Mr B admitted that he assisted Ms A with smoking cannabis but he did not buy it for her, bring it with him, or smoke it himself. However, he agreed that he would be affected by the marijuana while assisting Ms A.

In a telephone conversation on 25 June 2007 with the HDC Office, Mr B stated that he and Ms A had had sexual intercourse only once, and it was prior to him becoming her caregiver.

On 6 July 2007, Mr B spoke to a manager of the disability service provider. She recorded:

> "[Mr B] admitted that he has had sexual intercourse with [Ms A] but that this was after he had ceased caring for [her]."

The contradictory accounts were put to Mr B during an interview on 16 August 2007. He stated:

> "Yeah well, I'm pretty vague about it to be honest. Being that it's been a while. We've been intoxicated and recently we have mucked around and been silly. Not while I was caring for her. Yeah it is possible so I probably would have just said yes."

Mr B has maintained throughout this investigation that he did not have sexual intercourse with Ms A while he was a carer:

> "No definitely not. Being that everyone was sort of in my face already, I was quite strict and … adamant on how I conducted my professionalism with my work … I'd known [Ms A] for some years, and I knew that it would just make her feel like there was more than what there was between us, especially while working with her. Which in saying that, I did stay longer when I would care for, whether it would be take her down the shop or something. Or watch a video with her, just because she wanted someone to you know, be there, because she was lonely or whatever. Have a smoke with her. Have a drink with her."

During an interview, Mr B described his relationship with Ms A:

"Interviewer: So … your relationship with [Ms A] at that time, she thought a lot of you?

[Mr B]: Yeah and she still does. She still rings me up and asks me, 'can you do this, can you do that?' And at the moment I'm saying, 'no I can't sorry, because of this'. I still go and see her. I don't want her to feel bad and I don't want her to be upset and feel like she's done something.

Interviewer: At the time you were her caregiver, did you find it awkward that she felt that way towards you?

[Mr B]: Yeah, over time it was becoming very awkward.

Interviewer: Did you do anything about it? Mention it to your bosses or anything, or feel that you should?

[Mr B]: I attempted to mention it to [Ms E] and I explained how things were.

Interviewer: Can you tell us a bit more about what you told [Ms E]?

[Mr B]: Just that we were very close, we had been close for quite some time prior to me taking her care on. I actually told her that upon taking on the position.

Interviewer: Can you remember what detail you told [Ms E]? Because there's a difference between 'just friends' and 'more than friends'.

[Mr B]: Well there's never been 'more than friends'. We've been close. I mean with these people you do become very personally close, because they're sharing part of them all the time, they're everyday life. And being seven days a week, you know. And normal things happen as well you know.

Interviewer: So were there any subsequent conversations with [Ms E]? You say when you started you told [Ms E] that you and [Ms A] were close friends, good friends. Did you have any other conversations with [Ms E] or anyone else along that theme?

[Mr B]: Yes I had conversations along that theme with a lot of people over the past.

Interviewer: But with people in [the disability service provider]?

[Mr B]: [Mr G].

Interviewer: [Mr G] being? Who's [Mr G]?

[Mr B]: What's his last name? I forget his last name. He was maybe a manager at the time. I don't think he's there anymore, I'm not sure.

Interviewer: Okay and what did you say to [Mr G]?

[Mr B]: Just the same things. That you know, we do have a friendship outside of work and we do drink and blah blah blah."

Ms A
Ms A was contacted as part of the HDC investigation. She stated that Mr B had just been her carer, but that he did stay and have a few drinks of an evening. Ms A declined to answer any further questions.

The disability service provider
The disability service provider stated:

> "[The disability service provider] has no record of having received a formal complaint about the intimate relationship between [Ms A] and [Mr B]. However the relationship was discussed in the process of investigation [of] a complaint relating to [Mr B's] use of [Ms A's] EFTPOS card and use of alcohol and [Ms A's] computer.
>
> Since the receipt of the letter [of notification of the investigation] from the Commissioner, contact has been made with [Ms A] and [Mr B] … both feel that this complaint is the result of other people causing problems. [Ms A] does not wish to complain about [Mr B]."

On 27 July 2007, Ms F, General Manager, wrote to Mr D:

> "During a recent event it has come to my attention that in late August 2006 you and your family wrote a letter of complaint regarding the support worker [Ms A] was receiving from [the disability service provider]. This matter was not adequately investigated at the time, our company complaints process was not followed and we did not respond to you.
>
> At that time an investigation was carried out into some of but not all of the issues raised in your letter. The outcome was that [Ms A] wished [Mr B] to continue as her Support Worker however certain conditions under which [caring was] to occur were agreed between [Mr B] and [Ms A].
>
> I apologise on behalf of [the disability service provider] for your complaint not being dealt with according to our Complaints process. I have investigated how and why this occurred to find that it happened at a time when there were management

> vacancies and normally it is the Service Manager who would investigate your complaint.
>
> As a result of this incident [the disability service provider] wants to ensure that we improve our processes to prevent this occurring again. I have asked our national Quality Group to develop an organisation wide process that will ensure that we have a way of monitoring that all complaints received are fully investigated and the process completed."

As a result of this complaint, the disability service provider has advised that the current approach to training staff about professional boundaries is being reviewed, and that the processes for employing nominated carers are being reconsidered. Ms F commented for the disability service provider:

> "I am concerned that there is minimal documentation in client or staff records of the actions taken by [Ms E] that she discussed in the interview with [HDC]. This does not meet company policies, procedures or standards. I also note that she claims to have been given information by, or referred matters to former service managers who were not employed by us at the dates given in the interview. I will ensure that an investigation into these actions will be conducted [and] disciplinary action may result.
>
> I note that the issue of a client and staff member drinking alcohol outside of work time was discussed. I wish to clarify that this issue was discussed at the meeting I had with [Mr B] and [Ms A] on 11 September 2006. Whereas the company would not normally entertain the notion of staff and clients drinking alcohol together either during or outside of work hours, this situation is an anomaly. Given that [Ms A] and [Mr B] had a previous friendship prior to commencing service with us, hence him being her nominated support worker, it was necessary to put in place boundaries regarding appropriate behaviour and activity during work hours.
>
> The complaint regarding the relationship between [Mr B] and [Ms A] clearly highlights 2 risks which [the disability service provider] needs to address. The first relates to Professional Boundaries for staff. Since becoming aware of this the company is already taking action. We are currently writing an additional section to be included in our Orientation booklet for Support Workers. We have also published an item on this topic in the September issue of our national newsletter for support workers. We also have a 2 hour training package under development which will be compulsory for all new staff on commencement. This will also be provided for existing staff.
>
> The second risk relates to the employment of 'nominated carers'. This term refers to those people whom a client requests that we employ specifically to provide the client's support. In response to this complaint we need to review our employment practices related to this group in order to minimize risk for clients and the

company. I will undertake to discuss this with our HR team to ensure this review is scheduled."

Response to provisional opinion

The disability service provider

The disability service provider's Chief Operating Officer advised that the "overall [the disability service provider's] response is to accept the findings of the investigation". He added that the disability service provider would itself report the findings of the investigation to the Ministry of Health and to the New Zealand Home Health Association. He stated:

> "We sincerely regret the actions/decisions that led to [Mr B] being supported to behave in a way which is contrary to our accepted professional standards."

He also advised a number of changes to the disability service provider processes, and requested that these be included in the published version of the report, "to further assist other organisations' learning as well as demonstrating our desire to address the issues raised with the Commissioner and to meet our commitments to our clients and their safety". (See Appendix 1 for full response.)

Ms E

Ms E stated:

> I dispute the recollection by [Mr G]. I only became aware of the relationship being 'more than friends' later on, I believe this was when our office received the letter of complaint from [Mr D].
>
> In regards to referring this matter to [Ms J] … it is my personal working policy that I always refer matters of this nature to a senior supervisor whoever it may be.
>
> In reference to the letter from [Ms A's] father, I recall receiving it and then talking with [Mr D] afterwards. I believe I raised the complaint letter with the superior at the time and they contacted Human Resources Section at Head Office. I recall there was communication between our Office and HR who requested I fax a copy of [Mr B's] contract. I believe [Mr B's] contract was suspended or temporarily terminated but he was reassigned to [Ms A] after some discussions between our office and HR … This is also the time I refer to first becoming aware of any relationship being 'more than friends' …
>
> However I also acknowledge the following points:

My involvement and knowledge in this matter would have been a lot clearer with better documentation and record keeping of the events as they unfolded. I believe this is the main factor that has let me down.

Although I always apply a common sense approach to all the issues of matters I deal with I can still improve by being better or well versed in [the disability service provider's] company policies and procedures."

Mr B

Mr B did not respond to the provisional opinion.

Code of Health and Disability Services Consumers' Rights

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

Right 4
Right to Services of an Appropriate Standard

…

(2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.

…

(4) 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.

Right 10
Right to Complain

…

(3) Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.

Relevant standards

Disability service provider Booklet

2.4 Professional Conduct

"Boundaries — Care/service plans must be followed. Client/provider relationships must be maintained at a professional level. Where boundaries are difficult to establish or maintain, you must report this to the Co-ordinator.

… Clients are only to be visited in accordance with your rostered work times."

Misuse of Drugs Act 1975

Section 7 Possession and use of controlled drugs

(1) Except as provided in section 8 of this Act, or pursuant to a license under this Act, or as otherwise permitted by regulations made under this Act, no person shall —

(a) procure or have in his possession, or consume, smoke, or otherwise use, any controlled drug; or

(b) Supply or administer, or offer to supply or administer, any Class C controlled drug to any other person, or otherwise deal in any such controlled drug.

Opinion

This report is the opinion of Tania Thomas, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

Opinion: No further action — Support Service 2

Mr B was not contracted to provide care to Ms A while he was an employee of Support Service 2. I therefore do not intend to take any further action against Support Service 2.

Opinion: Breach — Mr B

Under Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), Ms A had the right to have services provided in accordance with the relevant legal, professional and ethical standards. Although Mr B, as a caregiver, does not belong to any professional organisation, he was bound by the standards set out by his employer, the disability service provider.

The disability service provider provided induction training for Mr B upon commencement of his employment, which included working through the disability service provider booklet given to all staff. The relevant section of the disability service provider booklet states that "Client/provider relationships must be maintained at a professional level".

New employees are also provided with a copy of the disability service provider Code of Conduct; section 1.5 refers to the consumption of alcohol and prohibited drugs:

> "Occasionally residents of our homes consume alcohol socially, and on these occasions employees may sometimes consume alcohol with them. However this may occur only with the approval of the Manager. Outside such approval, no alcohol is to be consumed in clients' houses or on Company premises. No prohibited drugs are to be brought into, or consumed on Company premises or in clients' houses."

Mr B has denied that any sexual relationship occurred while he was Ms A's carer, although he has admitted that there was intimacy both prior to, and after, this period. I note that Ms A has not supported the complaint, and stated that Mr B was only her carer, but agreed that he had sometimes stayed for a drink after his shift had ended.

Mr B provided three contradictory accounts of the extent of his intimate relationship with Ms A. He initially advised my Office that he had only had sexual intercourse with Ms A once, *before* he was her carer. However, he advised the disability service provider that it had been *after* he had been her carer. When this conflict was put to Mr B, he provided a third account, saying that they had had sexual intercourse once or twice before he became her carer, and "possibly" once afterwards. In my view, such variable accounts raise doubts about Mr B's credibility.

Mr G was clear, in his unprompted recall, that there was at least a suspicion of "a romantic involvement" between Mr B and Ms A. In addition, Ms C, who lived with Ms A for a short period, recalled on one occasion a passionate kiss between Ms A and Mr B, and that they would go into Ms A's room and close the door behind them. As Mr B was employed to provide housekeeping assistance, it is difficult to accept that this would have been work-related.

Mr B admitted that he assisted Ms A to smoke marijuana, although he denied that he provided the drug, or smoked with her. However, Ms C gives a graphic account of Mr B and Ms A going into the bedroom, closing the door, and both of them coming out half an hour later, "wasted". Although Mr B stated that he was "adamant on how I conducted my professionalism with my work", this is contradicted by his admission that he assisted Ms A to take marijuana. I note that section 7(1)(b) of the Misuse of Drugs Act 1975 provides that it is a criminal offence to supply or administer marijuana.

Mr B has agreed that he drank alcohol with Ms A, but denied that this was during work time — stating that this occurred outside work time, and was sanctioned by his employers. However, Ms C, who lived with Ms A for a short period of time at the end of 2006 and the beginning of 2007, was clear in her recollection that Mr B would open a bottle of alcohol soon after his arrival. However, by the time Ms C had moved to live with Ms A, Mr B had been allowed permission by his managers to drink after work, and his employment with the disability service provider ended on 31 December 2006 — only two days after Ms C moved in. Accordingly, I do not believe that there is enough evidence to show that Mr B drank alcohol during his shift. However, I comment below on the consumption of alcohol after work, and the disability service provider's responsibilities.

Summary

Boundary issues, by their very nature, involve two people. However, the onus is on the caregiver to behave in a professional manner. There is no dispute that there was blurring of the client/carer boundaries, owing to Mr B and Ms A being (at least) friends before Mr B began providing services, and this friendship continuing throughout the period he provided her with services.

Having considered the evidence, I am satisfied on the balance of probabilities that an intimate relationship existed between Mr B and Ms A while he was her caregiver. In particular, I am persuaded by Mr B's lack of credibility as a result of providing three conflicting accounts, Ms C's recall of a passionate kiss, the prior sexual relationship,

Mr G's recall of knowledge of a romantic relationship, and the complaint in August 2006 about an "improper relationship".

Mr B also admitted that he assisted Ms A to smoke marijuana, which is a criminal offence.

I have received no response to my provisional opinion from Mr B. This concerns me, as he may continue to work as a caregiver without any insight into the actions that have led me to find him in breach of the Code. Mr B at best displayed poor judgement and a lack of responsibility. At worst, he acted selfishly to promote his own needs over those of the person he was meant to be caring for. This is evidenced by him (allegedly) borrowing money from Ms A and not repaying it; using her computer to access pornography; inviting his friends into Ms A's home; fighting in Ms A's home; and drinking alcohol at his place of work. Mr B behaved in this manner despite admitting that the closeness of his relationship was getting awkward for him, and that he knew that Ms A was lonely and felt that there was more to the relationship than there was. Despite knowing this, Mr B was witnessed passionately kissing Ms A.

Mr B's past behaviour does not bode well as an indicator of responsible behaviour to be expected in future similar circumstances where, according to Mr B, "with these people you do become very personally close …".

By having an inappropriate relationship with his client, Mr B failed to provide services that complied with ethical standards, and therefore breached Right 4(2) of the Code.

Opinion: Breach — The disability service provider

Boundaries

As a provider of disability services, the disability service provider had a responsibility to provide services in a manner that minimised the potential harm to, and optimised the quality of life of, Ms A. Inherent in this responsibility was the need to ensure that the staff employed to care for her were appropriately supported. Specific to this case, it was the disability service provider's responsibility to ensure that appropriate boundaries were maintained between Ms A and Mr B.

Registered health care providers have a Code of Conduct to guide them, and in most cases receive specific training both during and after their graduate courses to help manage professional boundaries. Mr B, however, was not such a provider and had received no professional training. Therefore, in my opinion, a greater responsibility for explaining and enforcing professional boundaries lay with his employer than it would with a registered provider. Although the disability service provider has policies that relate to professional boundaries, it is also important that these policies are

understandable and enforced, and that staff do not receive mixed messages about what is acceptable.

Employment
When Mr B commenced employment with the disability service provider as Ms A's nominated carer, it was known to the disability service provider that he was a very good friend of hers. However, Ms E stated that she did not investigate the relationship any further, as she believed that she did not have the right to do so. In my view, the disability service provider should have established the nature of the relationship between Mr B and Ms A before employing him to be her caregiver.

Complaints
The disability service provider has a duty to facilitate the fair, simple, speedy, and efficient resolution of complaints, in accordance with Right 10(3) of the Code. In my opinion, the disability service provider failed to react appropriately to complaints made about Mr B.

On 27 February 2006, only a month after he had commenced employment, a complaint was made to the disability service provider alleging an "improper relationship" between Mr B and Ms A. Ms E claimed that she passed this concern on to her manager, Ms I but, apart from Ms E's claim, there is no other evidence that she took this, or any other, action. There is no evidence that any investigation or action was taken in response to this complaint. In addition, Ms E's statement is contradicted by Mr G's evidence that she did know of such a relationship, and Ms A's father's statement that he was "100% certain" that he discussed it with Ms E.

For her part, Ms E stated that she did not know of an intimate relationship between Mr B and Ms A. As Ms E knew of the "very good" friendship that existed at the time of Mr B's employment, and that a complaint had been made about an improper relationship, to subsequently state that she did not know of an intimate relationship is somewhat evasive. In late August 2006, Ms A's family wrote to Ms E raising a number of serious complaints about Mr B, including the use of illegal drugs. Ms E stated that she passed on this complaint to another the disability service provider manager, Ms J. Again, Ms E did not document her actions, and there is no evidence of such a referral to her manager. Furthermore, the disability service provider advised that Ms J was not employed by the disability service provider at the time of the complaint.

In the course of this investigation, Ms E stated that she was not aware that there was, or had been, an intimate relationship between Ms A and Mr B. However, she did have knowledge of their close friendship upon Mr B's employment, and of the allegations about an "improper relationship" between Mr B and Ms A (in February and September 2006). Furthermore, her statement is contradicted by her colleague, Mr G, who said that Ms E told him that there was a "romantic involvement", and Mr D was "100% certain" that he had told Ms E that his daughter and Mr B had been in an intimate relationship. I therefore find Ms E's evidence on this point to be lacking in credibility.

Enforcement of standards
In September 2006, as a consequence of a complaint having been made about his behaviour (by Ms A through her other caregiver), Mr B was informed by a senior manager that it was acceptable for him to drink with Ms A after his shift had ended. This was contrary to disability service provider rules stating that "[c]lients are only to be visited in accordance with [the] rostered work times". Ms H, the disability service provider's Service Manager (who accompanied Ms E during her interview with my staff) agreed that there was a conflict between what Mr B was told he could do and what the disability service provider rules stated.

Summary
Although I am concerned that an individual member of staff appears to have failed to deal with concerns appropriately, as her employer, the disability service provider must accept responsibility for failing to ensure that there was a robust system for ensuring that concerns raised are dealt with in an appropriate manner.

Even though it was known that there was a "very good" friendship between Ms A and her caregiver, the disability service provider failed to examine the relationship before employing Mr B. This important information should have been gathered. Had he been employed after this examination, the disability service provider should then have been more specific about what was considered appropriate behaviour, and monitored the compliance. To compound this lapse, complaints subsequently made about Mr B's behaviour clearly indicated the need for the disability service provider to investigate further, but no such investigation took place.

Bearing in mind a number of factors, the decision to allow Mr B to drink out of hours with his client was contrary to the disability service provider's own rules, condoned unprofessional behaviour, and encouraged the blurring of boundaries. The disability service provider's failure to ensure that professional boundaries in the caregiver/consumer relationship were established and maintained exposed consumers to potential harm. Although I have not found that any exploitation occurred in this case, I am concerned that the inadequate supervision of a caregiver increased the probability of exploitation occurring.

Accordingly, the disability service provider breached Right 4(4) of the Code, as it failed to ensure that Ms A was provided with services that minimised the potential harm to, and optimised the quality of life of, Ms A. As the disability service provider failed to facilitate the fair, simple, speedy, and efficient resolution of complaints made about Mr B, it also breached Right 10(3) of the Code.

Other matters

Ms E
I am concerned about the evidence from Ms E. Although she has stated in response to the provisional opinion that she passed on concerns to a senior member of staff, there is no evidence, apart from her own statement, to support this view.

Ms E also stated that she passed on to a senior member of staff the complaint letter from Ms A's father, and that Mr B was subsequently dismissed. I note, however, that in the documentation of the disciplinary proceedings of the time, there is no reference to Mr D's complaint, his allegation that illegal drugs were taken, or mention of any previous complaint about an "improper relationship".

Although I am concerned that an individual member of staff appears to have failed to deal with concerns appropriately, as her employer, the disability service provider must accept responsibility for failing to ensure that there was a robust system for ensuring that concerns raised are dealt with in an appropriate manner. To the disability service provider's credit, I note that Ms F has recently apologised in writing to Ms A's father for failing to deal with the family's letter of complaint, and a review of the disability service provider's employment processes is currently being performed.

Subsequent actions by the disability service provider
The disability service provider has stated that it regrets "the actions/decisions that led to Mr B being supported to behave in a way that is contrary to our accepted standards". The disability service provider has also set out in detail the actions that it intends to take as a result of this case (see Appendix 1). Although I am critical of the manner in which, at the time, the disability service provider dealt with the concerns raised, I am satisfied that it has reacted appropriately to this case, and is in the process of strengthening systems to prevent a similar event occurring.

Action taken

The disability service provider has stated that it regrets "the actions/decisions that led to Mr B being supported to behave in a way that is contrary to our accepted standards". The disability service provider has also set out in detail the actions that it intends to take as a result of this case (see Appendix 1). Although I have been critical of the manner in which the disability service provider, at the time, dealt with the concerns raised, I am satisfied that it has reacted appropriately to this case, and is in the process of strengthening systems to prevent a similar event occurring.

Ms F has apologised in writing to Ms A's father for failing to deal with the family's letter of complaint, and a review of employment processes is currently being

performed. Ms F has also provided details of the actions to be taken by the disability service provider as a result of this case:

"1. I am concerned that there is minimal documentation in client or staff records of the actions taken by [Ms E] that she discussed in the interview with yourself. This does not meet company policies, procedures or standards. I also note that she claims to have been given information by, or referred matters to former service managers who were not employed by us at the dates given in the interview. I will ensure that an investigation into these actions will be conducted of which disciplinary action may result.

2. I note that the issue of a client and staff member drinking alcohol outside of work time was discussed. I wish to clarify that this issue was discussed at the meeting I had with [Mr B] and [Ms A] on 11 September 2006. Whereas the company would not normally entertain the notion of staff and clients drinking alcohol together either during or outside of work hours, this situation is an anomaly. Given that [Ms A] and [Mr B] had a previous friendship prior to commencing service with us, hence him being her nominated support worker, it was necessary to put in place boundaries regarding appropriate behaviour and activity during work hours.

The complaint regarding the relationship between [Mr B] and [Ms A] clearly highlights 2 risks which the disability service provider needs to address. The first relates to Professional Boundaries for staff. Since becoming aware of this the company is already taking action. We are currently writing an additional section to be included in our Orientation booklet for Support Workers. We have also published an item on this topic in the September issue of our national newsletter for support workers. We also have a 2 hour training package under development which will be compulsory for all new staff on commencement. This will also be provided for existing staff.

The second risk relates to the employment of 'nominated carers'. This term refers to those people whom a client requests that we employ specifically to provide the client's support. In response to this complaint we need to review our employment practices related to this group in order to minimize risk for clients and the company. I will undertake to discuss this with our HR team to ensure this review is scheduled."

Recommendations

I recommend that the disability service provider:

- provide details of the further training on boundaries by **31 January 2008**
- provide a copy of the disability service provider Quality Group review of the complaints process, by **31 January 2008**.

Follow-up actions

- I will refer Mr B 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 will be sent to the Ministry of Health.
- A copy of this report with details identifying the parties removed, except the name of the disability service provider, will be sent to the New Zealand Home Health Association, and will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Addendum

The Director of Proceedings considered the matter and decided not to issue any proceedings, taking into account the consumer's wish that proceedings not be brought.

Appendix 1

30 October 2007

REPORT PREPARED FOR HEALTH & DISABILITY COMMISSION COMPLAINT:

Ms . (Client)
Mr . (Client's father & Complainant)

HDC ref: 07/10991

The background and detail of this complaint and the responses to it by staff of are contained in the letter and enclosed information from Tania Thomas, Deputy Health & Disability Commissioner, dated 23 October 2007. I will not include these again here, and nor will I comment on the action being reported by the National Manager Human Resources in an accompanying report.

In responding to this complaint in a letter dated 27 July 2007, , then General Manager – stated:

.....

"As a result of this incident wants to ensure that we improve our processes to prevent this occurring again. I have asked our national Quality Group to develop an organisation wide process that will ensure that we have a way of monitoring that all complaints received are fully investigated and the process completed."

.....

As the company's Quality Manager I am responsible for co-ordinating the Quality Leadership Group. At our meeting on 27th July 2007 we discussed an agenda item added by in relation to complaints which progress to the Health & Disability Commission and whether our current complaints processes enable us to adequately and promptly manage complaints and those which progress to the Commission.

As background to the excerpt from the Meeting's minutes (below) the Quality Leadership Group is currently working on developing a process for the whole company which will capture all 'Reportable Events' – complaints, incidents, accidents, service delivery failures, etc, and that this process will link to the Serious and Sentinel Events process which is being developed under the leadership of the Director of Nursing.

Quality Group actions
The Quality Leadership Group is made up of representatives from across the company. The current membership includes the following representatives of each Division:

QM

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name.

30 October 2007

Chair: Chief Operating Officer
Facilitator: , Quality Manager
Members / Business Unit Representatives:
Finance and Administration
Director of Nursing
, National Services Auditor
National Manager – Human Resources
Learning & Development Manager
General Manager –
Operations Manager – Mental Health & Addictions Service
Area Manager – Community Services
– Community Services

At the meeting on 27th July 2007, the following minutes were recorded in relation to the agenda item – "Complaints brought to the attention of the Health & Disability Commisioner".

" alked about the Health and Disability Commissioner's complaints for which she was asked to collate information / copies of reviews to send through to the H&DC Investigator.

The complaints were eight in total, but four of these related to one issue and were 'related' as they involved the same people showed that we have no process for –

- *advising a central person (Audit Manager) when H&DC receive complaints*
- *being able to Review/Monitor/Analyse all complaints – by Region/Area/issue etc and that these issues need to be resolved.*

In each case the local Area Manager or General Manager was not aware of the complaint before it went to the H & D Commissioner. It was also apparent that the complainant took the case to the H &DC because they did not believe / feel that their compliant was being acknowledged sufficiently by the local Branch / office.

During discussion at the meeting commented that we had not previously had complaints with the H&D Commissioner, but group members commented that they had received and managed these themselves in the past. There is currently no process or instruction which requires that any manager report a H&DC Complaint to anyone at Head Office, ie: the National HR Manager, Managing Director, Chief Operating Officer, Quality Manager.

In the Policy and Procedure Manual the requirement in the Complaints Policy and Procedure has Level 2 Complaints (serious complaints, defined in the policy) being reported only up to the Area Manager. However, on the Complaint Form, the action taken after a complaint is lodged includes at step H – "Copy of Complaint sent to National Quality Group via Community Services Division representative and Area Manager". To date this has not occurred but as there is no centralised system for

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recording Complaints it is unclear whether this is because there have been no complaints which require such reporting.

Clearly the company's documented systems require a step whereby Complaints which have been made to the H&D Commissioner must be reported to a central point and with the Quality Manager position now in place suggested that this is where these complaints need to be reported to. With the development of the Reportable Events Policy and Procedure this is the opportunity to include oversight of such complaints at Head Office. (See also item 6 – QLG Projects.)

A Policy on Professional Boundaries for Support Workers is also needed, and inclusion of this into Induction and Orientation. A number of the complaints had a component of breaching professional boundaries in them that contributed to the event / incident about with the complaint arose."

While the Group agreed during this meeting that the draft Reportable Events policy was acceptable and provided overall guidance about the reporting and recording of all 'events' and moving over time to an electronic reporting and monitoring system, decision-trees needed to be developed to guide staff in implementing the policy and in effectively recording / reporting / investigating / analyzing and making decisions.

H&DC Complaint: 07/10991

This complaint and associated information was not available to the Quality Leadership at the July meeting. The discussion and way forward focused on including in the development of a generic process of capturing all 'exceptions' was to include the issue of complaints which have been taken to the Health & Disability Commissioner being raised to the attention of Head Office positions.

While I believe this course is still necessary and appropriate, reviewing this particular complaint has raised several additional points which need additional action on behalf of the Quality Leadership Group and the organization.

1. In this instance it seems that the Complaints **process was not followed** by the Co-ordinator.
2. The complaint made by father – - was **not recorded or reported formally as a complaint** and so timeframes in handling it appropriately were not met and in fact significantly exceeded.
3. Adequate **records of discussions were not kept** which further complicates our ability to adequately investigate the complaint and to take appropriate action for our staff but most importantly the client we were supporting.
4. **Managers did not take appropriate action** – assuming they had been advised as is alleged by the Co-ordinator.

QM -

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30 October 2007

Each of these issues needs to be addressed through further action, as detailed here:

Point 1: All Staff are to be advised that any complaint, concern or issue is to be reported and recorded as currently detailed in the Complaints Process.
This will occur through:

- monthly email newsletter sent to all office based staff;
- printed bi-monthly newsletter sent to all staff but specifically aimed at Support Workers
- a memo sent to all Managers to be read at staff meetings by the end of November reminding and requiring staff to follow the Complaints process

Point 2: Reporting and recording complaints to be included in the Professional Boundaries training and development tool being developed to address the issues raised through this specific complaint and other recent complaints which have been reported to the H&D Commissioner.

Point 3: As with Point 1, all staff will be reminded and required to make records of all conversations with clients, family / whanau, staff and other relevant sources of information. Staff will advised through the same mechanisms as detailed for Point 1, and additional information for staff to assist them in making adequate records will be developed.

Point 4: A training and development initiative will be developed for Managers which will cover: the importance of record-keeping; recording and reporting complaints: meeting the timeframes and requirements of the Code of Health & Disability Consumer Rights; and lessons learnt by the organization from these recent complaints to the H&D Commissioner and the findings.
This initiative can then be used by Managers with their office-based staff.

Monitoring actions
All activities to address these issues will be monitored through the company's performance appraisal and management processes, and through the Internal Audits which occur from November 2007 – June 2008.

An analysis of compliance against the Complaints process and / or the new Reportable Events process when it is implemented, will also be completed at the end of that time and reported to the General Managers and Area Managers of the Community Services Division, and Quality Leadership Group.

Any other action which may be considered necessary in the implementation of these initiatives will also be included in the corrective actions to address both this specific complaint and the systems issues which have contributed to it.

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Proposed follow-up actions by Deputy Health & Disability Commissioner
The Deputy Health and Disability Commissioner has proposed the following actions:

- Referring the Support Worker to the Director of Proceedings
- Sending a copy of the final report to the Ministry of Health
- Sending a copy of the final report to the NZ Home Health Association
- Placing a copy of the final report on their own website for educational purposes

While we may choose to argue extenuating circumstances because the Support Worker was a 'nominated carer' I have to agree that we have failed to *"..ensure Ms. was provided with services that minimized the potential harm to (her)…"* and to *"…facilitate the fair, simple, speedy and efficient resolution of the complaints made…."*

In terms of the appropriate action to be taken

- it is our responsibility under the terms of our Contract to advise the Ministry of Health of this complaint and findings, and
- we would do well to also notify the NZ Home Health Associated of which we are members in order to maintain our good relationship with that body and our standing in the community of our peers

– in addition to the notification to these organizations by the Health & Disability Commission investigator. These actions would be another signal that we are taking responsibility for the failures which have occurred in relation to the support and services provided to Ms

Quality Manager

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