Social Worker, Ms B

A Report by the
Deputy Health and Disability Commissioner

(Case 21HDC00623)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Contents

Executive summary

1. This opinion relates to a social worker's failure to maintain professional boundaries with her client.

2. The social worker was contracted to provide therapy services to ACC's Sensitive Claims Clients. The social worker saw the woman 34 times for scheduled appointments. They began a personal relationship approximately three months after the year-long therapeutic relationship ended.

Findings

3. The Deputy Commissioner considered that it was not appropriate for the social worker to have entered into a relationship with the woman, particularly as there was a clear power imbalance given the circumstances in which the therapeutic relationship started and ended, and that there was clear evidence of the woman's vulnerabilities during their professional relationship.

4. The Deputy Commissioner found that the social worker acted unprofessionally and contrary to the Social Workers Registration Board (SWRB) Code of Conduct by failing to maintain appropriate boundaries and engaging in a personal relationship. Accordingly, the Deputy Commissioner found that the social worker breached Right 4(2) of the Code for failing to comply with professional standards. The Deputy Commissioner also made adverse comment about the social worker's conduct during the therapeutic relationship.

Recommendations

5. The Deputy Commissioner recommended that the social worker provide a written apology to the woman for the breach of the Code identified in this report. The Deputy Commissioner also recommended that the social worker undertake further training on maintaining professional boundaries with clients, and provide HDC with detailed written evidence of anonymised discussion, case reviews, and reflections on boundary issues with clients covered in supervision. The Deputy Commissioner also recommended that the SWRB consider whether a review of the social worker's competence and/or conduct is warranted, and report the result back to HDC.

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

Complaint and investigation

6. The Health and Disability Commissioner (HDC) received a complaint[1] from Ms A about the services provided by social worker Ms B. The following issue was identified for investigation:

- *Whether Ms B provided Ms A with an appropriate standard of care, including maintaining professional boundaries from 2017 onwards.*

7. This report is the opinion of Dr Vanessa Caldwell, and is made in accordance with the power delegated to her by the Commissioner.

8. The parties directly involved in the investigation were:

Ms A	Consumer/complainant
Ms B	Social worker/provider

9. Further information was received from the Social Workers Registration Board (the provider's registration body).

Information gathered during investigation

Introduction

10. This report concerns the development of a personal and intimate relationship between a social worker, Ms B, and her former client, Ms A. Ms B and Ms A began a personal relationship approximately three months after the year-long therapeutic relationship ended. The personal relationship ended some time in 2020, although they had some contact in 2021.

Background

Ms B

11. When Ms A first started seeing Ms B in March 2017, Ms B was working as a consultant, and contracted her therapy services as a social worker to ACC's Sensitive Claims clients. In November 2017, Ms B changed suppliers because the consultancy service closed. Ms B continued to provide therapy services to Ms A as an independent contractor, and was engaged to provide services to ACC's Sensitive Claims clients. Ms B is a registered social worker with the Social Workers Registration Board (SWRB) and a member of the New Zealand Association of Social Workers, and is a student member of the New Zealand Psychotherapy Association.

[1] By way of a referral from the Social Workers Registration Board pursuant to section 61 of the Social Workers Registration Act 2003. The Social Workers Registration Board received the complaint from Ms A.

Therapeutic relationship with Ms B, March 2017 to February 2018

12. Ms A and Ms B first met in March 2017 after Ms A had self-referred to ACC.[2] Ms B told HDC:

> "[D]uring our initial meetings it became apparent that [Ms A's] key reasons for seeking therapy was because of trauma and grief due to [recent bereavements]."

13. According to the therapy records provided by Ms B, she saw Ms A 34 times for scheduled appointments between 2 March 2017 and 18 February 2018. Ms B recorded that the treatment being sought was "individual therapy to address [various issues] and trauma of a recent bereavement". Ms B documented that during the sessions, she discussed a variety of issues with Ms A.

14. On 2 August 2017, Ms B documented that she gave Ms A "consent to text me after hours if needing additional support".

15. Ms A told HDC:

> "[T]owards the end of therapy I was going to sessions twice a week, for the coffee. We would lie on the couch together. I thought this was normal for therapy. [Ms B] would sit there and I would have my head in her lap. I am aware that at some attachment level this was what I was looking for/needed. I was not aware that this was not usual in therapy. [Ms B] would try to talk therapy stuff in these sessions even whilst lying on the couch she would try to engage me in therapy."

16. Ms B documented that she spent time during the sessions sitting close by Ms A, who was lying on the couch. On 6 November, Ms B documented:

> "[Ms A] asked for me to sit beside her on the couch for last 20 minutes of session and leaned into me. Stated 'this feels better than talking'. Has been thinking a lot about [her recent bereavement] and unsure why she recalls it so clearly when she has difficulty remembering her childhood. Discussed maturation process and effect of trauma on memory."

17. In response to the provisional report, Ms B accepted that there were two occasions where Ms A put her head on Ms B's shoulder, and two occasions where Ms A put her head on a cushion on Ms B's lap, but that these instances of physical contact "were at [Ms A's] request". Ms B denied lying on the couch with Ms A.

18. However, it is also noted that Ms B told HDC that she agreed to Ms A's requests at the time, because physical contact was recognised as a valid "grounding" technique in therapy. Ms B told HDC:

> "At the time I was seeing [Ms A], 'touch therapy' or 'holding therapy' was a grounding technique for complex clients, particularly clients who had suffered abuse, to help them

[2] It is unclear how the therapeutic relationship started. Ms A's first appointment with Ms B was on 2 March 2017, and an ACC engagement form was lodged on 3 March 2017.

> be aware and get back into their bodies … This technique is now outdated and has been abandoned by most practitioners as it places the client and therapist at risk of dependency … It is not a technique I would ever use again."

19. Further, Ms B told HDC that she was uncomfortable with Ms A's requests and discussed it with her supervisor at the time. Ms B said that following this, she discontinued the use of physical contact as a tool during their therapy sessions.

20. On 20 November 2017, Ms B recorded:

> "[S]econd part of session spent with [Ms A] lying on couch silent. Reports feeling sad and lonely. Discussed restrictive eating and the contribution this will be making to her low mood and energy levels."

21. The last documented appointment Ms A had with Ms B was on 15 February 2018. Ms B recorded:

> "[Ms A] asked for me to sit beside her for last 15 [minutes] of session and observed her body active and twitching — she was unable to articulate what was occurring however disclosed that she did not want to be here as 'it was too hard' … aware she can text therapist if feeling low and has been given crisis team number."

Visit to Ms A's house in February 2018

22. On 16 February 2018, Ms B documented in her consultation notes that she visited Ms A at her home. Ms B recorded that she drove to Ms A's house after receiving text messages from Ms A that said she had been drinking and was "feeling miserable". Ms B also noted that she received a call from Ms A's child, who wanted Ms B to visit Ms A. Ms B told HDC that prior to going to Ms A's house, she called mental health services. Ms B stated: "[Mental health services] advised they did not have the resources to attend the incident. They advised me that either I could attend or the Police could." Ms B said: "I was concerned for [Ms A] and her children. Ms A had attended an appointment with me that morning and disclosed she was feeling suicidal."

23. Ms B documented that when she visited Ms A, she found her "very intoxicated", and that Ms A "stated life was too hard and couldn't do it". Ms B rang Ms A's friend and asked her to come to the house to take care of the children. Ms B then rang the Police and the crisis team. Ms B said that the Police attended Ms A's house, and Ms A's friend went to the Emergency Department with Ms A.

Termination of services

24. Following the incident on 15 February 2018, Ms B terminated her services with Ms A. Ms B told HDC that following the incident she consulted her supervisor,[3] and they "all agreed that

[3] Ms B told HDC that she had two supervisors at the time of events. One was a counsellor and the other was a psychologist.

[Ms B] should no longer see [Ms A] due to [Ms B's] concerns for her mental health at the time".

25. Ms B told HDC that she met with Ms A and her support person on 19 February 2018 to advise that she could no longer provide her with support, and referred Ms A back to her GP to find a new therapist. Ms B explained that she did not have a case note of this meeting, but she wrote to ACC advising that she was unwilling to continue therapy with Ms A. In her email to ACC, Ms B stated:

> "I am unsure that therapy for [Ms A's] … abuse is helpful at this time given the other difficulties she is experiencing with her drinking and low mood. She has taken a significant amount of my time over the last two weeks with her after hours contact and twice weekly appointments and this is not sustainable or helpful for her."

26. Ms B completed an ACC Closure notice on 7 March 2018. Ms B explained her reasons for terminating the relationship as follows:

> "[Ms A] required services to address alcohol addiction and as such was referred to A & D Services … [Ms A's] issues around addiction impacted on her ability to engage and utilise therapy in a healthy manner … During the last few months of therapy she became very dependent on her sessions, however she struggled to articulate her thoughts and feelings and deteriorated in some areas of functioning, particularly her employment. [Ms A] also has significant attachment issues which impacted significantly on her therapy — she has identified this is an ongoing pattern for her in relationships."

Personal relationship

27. Ms B and Ms A have provided differing accounts about when and how their personal relationship began.

Ms A's account of when personal relationship began

28. Ms A told HDC that Ms B initiated contact via text around June/July 2018 after they ran into each other. Ms A said that she began to see Ms B shortly after she received these messages.

Ms B's account of when personal relationship began

29. In contrast, Ms B told HDC that Ms A texted her in March 2018 to "let [her] know she was doing well and feeling much better", and in May 2018 "Ms A asked [her] if [they] could be friends as she felt [they] had things in common". Ms B told HDC that she did not reply initially, and consulted her supervisor regarding whether she should respond. Ms B stated: "[I sent a response] thanking [Ms A] for letting me know she was feeling better, and advising I was not in a position to be friends due to the ethics involved in being friends with a former client." Ms B said that in response to this text, Ms A "said she still felt [they] could be friends and continued to send the odd friendly text to [her]".

30. Ms B said she started to spend time with Ms A as friends in May 2018. Ms B explained that she ran into Ms A shortly after suffering the loss of a relative. Ms B told HDC: "Ms A saw I

was upset and suggested we go and have coffee … [Ms A] went and had coffee and she was very supportive of me."

Nature of personal relationship between May and December 2018

31. At the start of the friendship, Ms B and Ms A would spend time together doing various leisure activities, sometimes with Ms B's husband. They would also spend time at Ms A's house with her children, playing cards or watching movies.

32. Ms A told HDC that at the beginning of the relationship, Ms B "always instigated and organised [spending time together]". Ms A said that she saw Ms B "pretty much every day and sometimes more than once". Ms A stated: "[M]ostly the evenings would be at my home, or she would visit before going to her home." Ms A alleged that Ms B disclosed details about other clients she was seeing.

33. Ms B told HDC:

> "[A]t the start of our friendship, I talked to [Ms A] about my concerns of being friends with a former client … I explained to [Ms A] the reasons why it may not be appropriate for me to have a personal relationship with a former client and the potential power imbalances … [Ms A] and I decided it was okay for us to have a personal friendship given the passage of time since our professional relationship had ended and that we had discussed the potential power imbalance and did not think there was one between us."

<u>Intimate relationship</u>

34. Ms A told HDC that she and Ms B used to lie on the couch together "spooning" and watching movies. Ms A said that in November 2018 the relationship developed into a sexual relationship, as this was the first time they had sex. Ms A stated that they had been drinking alcohol on this occasion. She said that following the first time they slept together, "the next day they agreed it would not happen again". Ms A stated that following this, communication with Ms B was not as regular.

35. Ms A said that in December 2018, she attended Ms B's birthday celebration. Ms A stated:

> "[Ms B] was upset about her feelings for me and was worried about Christmas. I was feeling very confused and worried. Then she kissed me … We also kissed when I dropped her home. This is the first time physical stuff happened without drinking alcohol."

36. Ms A told HDC that on 24 December 2018:

> "[Ms B] said she loved me but wasn't sure she was brave enough to leave [her relationship]. During that Christmas period she told [her husband] that she wanted to separate and then that's when communication became intermittent. I was devastated that she had just up and gone again."

37. Ms B told HDC:

> "[There] were only a few occasions in our friendship that involved sexual intimacy. The first time occurred in November 2018. I immediately regretted this as I was married and was concerned about the ethical boundary issues as [Ms A] was a former client. I acknowledged to [Ms A] we had crossed a line and that I regretted what happened. [Ms A] and I discussed what had happened and agreed we did not wish to pursue a sexual relationship and only wanted a friendship, so we agreed to put boundaries in place."

38. Ms B said that following this event, there "were two further instances of kissing in 2018 which we both stopped and acknowledged should not have occurred".

Nature of personal relationship between January 2019 to January 2020

39. The relationship between Ms A and Ms B at the start of 2019 was intermittent. Ms A said that she received some flowers and a letter from Ms B in February 2019. Ms A stated:

> "[In the letter, Ms B said that] our friendship was wrong and that she should not have started up a friendship with me and that she had crossed professional boundaries by starting up a friendship. She wished me all the best. That same day I got the letter I [harmed myself] and ended up in hospital. It was all too much. I was hysterical. [Ms B] did not know that I did this. We were back in contact a few weeks later. I don't recall who made contact. This letter was at the suggestion of her clinical supervisor, as the supervisor recognized the ethical issues. Later her supervisor said that she would no longer work with her as she has resumed contact with me[4]."

40. In her response to the provisional opinion, Ms A clarified that from Easter 2019 to the end of August 2019, their relationship was not "intermittent". Ms A said that she and Ms B messaged each other, had another movie night at Ms A's house, and met up for coffee. Ms A stated that they had also planned some trips together, but Ms B cancelled and withdrew contact. Ms A told HDC that she and Ms B were physically intimate on two occasions in 2019, and that after the final sexual encounter in August 2019, she did not see Ms B until approximately October 2019. Ms B said that there was one "further incident of sexual intimacy" in 2019.

41. Ms A also said that Ms B had gone on holiday for two weeks, and that when she arrived home she received a few text messages, but then they did not text again for approximately three weeks. Ms A said that after this time:

> "[T]he friendship picked up again until the early December when [Ms B] messaged saying [a family member] knew about everything that had gone on between us. I heard

[4] In response to the provisional report, Ms B told HDC that her supervisor did not stop her supervision due to her friendship with Ms A, but rather that she had taken on a new role and did not have capacity to continue supervising Ms B. Ms B stated: "I sought a new supervisor and told them about the situation and the letter I had sent to [Ms A]. This was the supervisor who advised me the letter was sufficient and I did not need to report my actions to the SWRB."

from her a couple more times before Christmas but not once in those messages did she end our friendship."

42. Ms B told HDC that following advice from her therapist, she wrote a letter to Ms A terminating the relationship and apologising "for what had occurred".

Nature of personal relationship between January 2020 to July 2020

43. Ms A told HDC that she contacted Ms B in March 2020 about the lockdown, and they messaged during this time. Ms A said that Ms B told her that her husband "was angry that she ha[d] been in contact with [her] again, but [they] continued anyway".

44. Ms B told HDC that Ms A initiated further contact during the lockdown. Ms B stated: "I made it clear I did not want to remain in contact and she understood this."

End of personal relationship

45. Ms A told HDC: "[A]round June/July 2020 I ended contact because I couldn't handle things the way they were anymore." Ms A said that following this, Ms B texted her again but "nothing had changed but she said she was sad about losing [their] friendship". Ms A stated that the final text conversation she had with Ms B was in February 2021 after she found out that Ms B had attended an event with Ms A's friend.

46. Ms B told HDC that she ended the friendship with Ms A in December 2019, and the last contact she had with Ms A was on 21 February 2021.[5] Ms B said that she provided Ms A with details for the SWRB so that she could consider making a complaint, and also suggested that she speak to her new therapist about why their friendship needed to end.

Supervision and advice sought by Ms B

47. In February 2019, Ms B sought advice from her supervisor regarding her (Ms B's) relationship with Ms A. Ms B told HDC that her supervisor advised her that the letter she had sent Ms A in February 2019 (along with the flowers) was sufficient, and she did not need to take the additional step of reporting herself to the SWRB.

Complaint lodged

48. Ms A made a complaint about Ms B to the SWRB on 15 March 2021.[6] The SWRB referred the complaint to this Office on 19 March 2021. In her complaint, Ms A stated: "I have recently come to realise that [Ms B] had a professional role to stop [the relationship] from eventuating."

Further information

49. Ms A told HDC that initially she "loved the friendship", but in hindsight she understands "the damage and impact that [the] friendship has had on [her] mental and physical health". Ms A stated: "[T]his continues to affect my life and gets in the way of my therapy." Ms A said

[5] In response to the provisional report, Ms B told HDC that the personal relationship with Ms A ended on 10 December 2019, but that there was further contact in March 2020. Ms B told HDC that there was then no contact until Ms A contacted Ms B in March 2021, and that they have not had contact since that date.
[6] At this time, Ms A was seeing a new counsellor, who helped her to make a complaint to the SWRB.

that for a long time she had to avoid her usual places in case she saw Ms B. Ms A stated that she had to end friendships because Ms B formed friendships with her friends. Ms A told HDC that she deleted most of her messages with Ms B, but she provided copies of the messages she still had. Ms A also provided HDC with cards Ms B had given her during the course of their relationship.

50. Ms B told HDC:

> "[At the time] I did consider the ethical and boundary issues at the outset and thought I had adequately dealt with those … I was satisfied there was no power imbalance and for that reason thought a personal relationship with [Ms A] was appropriate as she was no longer a client.
>
> …
>
> I can see now how a friendship with a former client may be inappropriate due to an inherent power imbalance … [O]n reflection I had taken a passive role in the friendship with [Ms A] when in reality it was my responsibility to address and stop it."

51. Ms B said that during her friendship with Ms A, most correspondence was via social media. Around December 2020, Ms B deleted most of her text and social messages with Ms A. Ms B retained some of the messages, which were provided to HDC.

Responses to provisional opinion

52. Ms A and Ms B were given an opportunity to comment on relevant sections of the provisional opinion. Where appropriate, their comments have been incorporated into this report.

Ms A

53. Ms A told HDC that these events have affected her ability to attend places that previously she had found "safe" for fear of seeing Ms B. Ms A reiterated that this has left her feeling isolated.

Ms B

54. Ms B provided a substantial submission in response to the provisional opinion. She agreed to provide a written apology to Ms A, "on the basis that she accepts that her personal relationship with [Ms A] was inappropriate and should have never occurred".

Opinion: Ms B — breach

Introduction

55. 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 that complied with legal, professional, ethical, and other relevant standards. As a registered social worker, Ms B was required to comply with the SWRB Code of Conduct.[7] In addition, because Ms B was providing services to ACC's Sensitive Claims clients, she was also required to comply with the principles set out in the Sexual Abuse and Mental Injury Practice Guidelines for Aotearoa New Zealand. I consider that Ms B's conduct was unprofessional and unethical.

Factual findings

56. While there is no dispute that Ms B and Ms A engaged in a relationship of a personal and intimate nature, they have provided differing accounts regarding exactly when their personal relationship began, and when it ended. I am satisfied that the relationship occurred, as both Ms A and Ms B agree that there was a personal and intimate relationship.

57. Ms A has asserted that Ms B initiated contact after seeing her in June/July 2018. However, Ms B stated that Ms A initiated contact in May 2018, and asked if they could be friends. There is insufficient evidence to make a finding as to exactly when a personal relationship began and who initiated it, given the passage of time and that neither party has the original messages. Regardless, both parties agree that a relationship began shortly after their professional therapeutic relationship finished, and it appears that this was approximately three months later.

58. Ms B stated that the last contact she had with Ms A was in February 2020. Ms A said that she ended contact with Ms B sometime around June/July 2020. While it is not clear exactly when the personal relationship between Ms B and Ms A ended, I do not consider it necessary for the purposes of this opinion to make a finding in this respect. I am satisfied that it was sometime between February and July 2020.

Professional standards

59. The SWRB Code of Conduct that applied at the time of events states:

> "You are expected to not form a sexual relationship or have any form of sexual interaction with former clients, where you have (or it could appear that you have), used any power imbalance, knowledge, or influence obtained while you were their social worker to exploit, coerce, or manipulate, intentionally or unintentionally, the person with whom the sexual relationship or interaction occurs.[8]" (See Appendix A.)

60. The SWRB Code of Conduct also states:

[7] The SWRB Code sets out the minimum professional standards of integrity and conduct for registered social workers, issued under section 105 of the Social Workers Registration Act 2003.
[8] Principle 5.10 of the SWRB Code of Conduct.

> "Sexual relationships with former clients may be inappropriate no matter how long ago the professional relationship ceased. There is no arbitrary time limit that makes it safe for a social worker to have an intimate or sexual relationship with a former client. The sexual relationship may be influenced by the previous therapeutic relationship where there was a clear imbalance of power."

61. The SWRB Code of Conduct lists a number of factors a social worker must consider when determining whether a relationship is appropriate. These factors include how long the professional relationship lasted, the vulnerability of the client at the time of the professional relationship, and whether the client is still vulnerable — including the client's psychological, physical, and character traits, and whether the social worker may be exploiting the knowledge they have about the client because of their previous professional relationship.

62. During the course of their therapeutic relationship, Ms B documented that Ms A was seeking therapy under ACC sensitive claims as well as the trauma of a recent bereavement. Ms B also documented that Ms A discussed a variety of issues. The therapeutic relationship ended following an episode in which Ms A disclosed to Ms B that she was suicidal, and subsequently became very intoxicated and required Police intervention and hospitalisation. In Ms B's ACC Closure notice, she stated that Ms A "required services to address alcohol addiction", and that she had been referred to an addiction service. In light of these facts, it is clear to me that Ms B was aware that Ms A was a vulnerable person.

63. Notwithstanding Ms A's vulnerability, Ms B still decided to commence a sexually intimate relationship with Ms A after sharing alcohol with her. In particular, I note Ms A's comments that when she and Ms B spent time together they would drink alcohol, and that when they first had a sexual relationship they had been drinking alcohol.

64. I acknowledge Ms B's submission that at the time of these events she considered that she had adequately dealt with the ethical and boundary issues of being in a personal relationship with a former client, and was satisfied that there was no power imbalance. However, Ms B has commented that she can now see how "a friendship with a former client may be inappropriate due to an inherent power imbalance", and accepts that it was her responsibility to end her relationship with Ms A.

65. In light of Ms A's particular vulnerabilities, I consider it was wholly inappropriate for Ms B to enter into a sexual relationship with Ms A, and I am critical that she did so. With reference to the criteria discussed above and set out in the SWRB Code of Conduct, I consider that it was not appropriate for Ms B to have entered into a relationship with Ms A. In particular, I consider that there was a clear power imbalance given the circumstances in which the therapeutic relationship started and ended. I note that there was clear evidence of Ms A's vulnerabilities during their professional relationship.

66. In my view, Ms B acted unprofessionally and contrary to the SWRB Code of Conduct by failing to maintain appropriate boundaries and engaging in a personal relationship with Ms

A. Accordingly, I find that Ms B failed to comply with professional standards and breached Right 4(2) of the Code.[9]

Adverse comment — conduct during therapeutic relationship

67. As discussed above, it is always the responsibility of the professional to maintain appropriate boundaries in patient relationships. Ms B has acknowledged that she allowed Ms A to place her head on her shoulder and to place her head on Ms B's lap on a number of occasions. She told HDC she did so because Ms A had requested it and that at the time she had regarded touch therapy as a valid grounding technique. I note that this was a service provided under ACC for specific issues, and at the time of these events Ms B was well aware of Ms A's dependency issues and vulnerability. Whether or not "touching therapy" could be considered a valid technique is irrelevant in so far as Ms B ought to have been aware that it was inappropriate in the circumstances of Ms A's case. I acknowledge that Ms B no longer considers this a useful therapy technique.

68. The SWRB Code of Conduct states that the social worker is expected to "maintain personal and professional boundaries and not form inappropriate relationships with clients or those close to them[10]". In addition to the SWRB Code of Conduct, the "Sexual Abuse and Mental Injury Practice Guidelines for Aotearoa New Zealand" published by ACC states that because of the dependencies clients can form with the therapist in this type of therapeutic relationship, "it is the responsibility of the therapist to maintain boundaries so that therapy can be experienced safely by the client" (see Appendix A for relevant sections of the ACC Guidelines). The ACC Guidelines also highlight the importance of respecting the client's boundaries, and the need for the therapist to ensure that their boundaries are not being compromised.

69. Towards the end of the professional relationship, Ms B spent time sitting closely with Ms A on the couch, and this involved some level of physical contact. I also acknowledge Ms A's comments that Ms B would also spend time lying on the couch with her — something that Ms B denies. I acknowledge that Ms A felt that this approach was inappropriate. While I am unable to make a finding as to whether or not Ms B also lay on the couch with Ms A, for the reasons above, I am critical that towards the end of the relationship there was a level of inappropriate physical contact during therapy sessions.

[9] Right 4(2) of the Code states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."
[10] Principle 5.8 of the SWRB Code.

Changes made

70. Ms B has reflected on what happened with Ms A, and now meets fortnightly with her supervisor and weekly with her therapist. Ms B has also changed her client group to another age group. Currently, Ms B is doing further education and, as a result, has had further training and education on ethics, boundaries, and professional practice.

Recommendations

71. I recommend that Ms B:

a) Provide a written apology to Ms A for the breach of the Code identified in this report. The apology is to be provided to HDC within three weeks of the date of this report, for forwarding to Ms A.

b) Undertake further training on maintaining professional boundaries with clients. Evidence that this has been completed is to be sent to HDC within six months of the date of this report.

c) Provide HDC with written evidence of discussions, case reviews, and reflections on boundary issues with clients covered in supervision, within three months of the date of this report. Ms B's report is to be anonymised and countersigned by her supervisor.

72. I recommend that the Social Workers Registration Board consider whether a review of Ms B's competence and/or conduct is warranted, based on the information contained in this report, and report the result to HDC.

Follow-up actions

73. A copy of this report with details identifying the parties removed will be sent to the Social Workers Registration Board and ACC, and they will be advised of Ms B's name.

74. A copy of this report with details identifying the parties removed will be placed on the Health and Disability Commissioner website, for educational purposes.

Appendix A: Relevant standards

Social Workers Registration Board — Code of Conduct 2016

The Social Workers Registration Board publication "Code of Conduct" states the following:

"**Principle 5**

Protect the rights and promote the interests of clients

You are expected to:

5.1 advocate for the human, legal, and civil rights of your client while also making sure that their behaviour does not harm themselves or others

5.2 support the client's right to self-determination — if their capacity and/or circumstances limit the possibility of self-determination, you must where possible protect your client's rights and welfare

5.3 facilitate fair access to services, resources, and other professionals where it is in the interests of your client and make appropriate referrals where possible

5.4 recognise and use responsibly the power that comes from any social work role, keeping the dignity of the client front of mind

5.6 never engage in or become a party to any discriminatory behaviour, harassment, coercion, or sexual or financial exploitation of clients

5.7 never abuse, neglect, harm, or exploit clients in any way

5.8 maintain personal and professional boundaries and not form inappropriate relationships with clients or those close to them

5.9 abstain from sexual relationships or any form of sexual interaction with clients or with those close to them — including any behaviours or comments which might reasonably be interpreted as being a sexual advance or sexually demeaning

5.10 not form a sexual relationship or have any form of sexual interaction with former clients or those close to them, where you have (or it could appear that you have), used any power imbalance, knowledge, or influence obtained while you were their social worker to exploit, coerce, or manipulate, intentionally or unintentionally, the person with whom the sexual relationship or interaction occurs

5.11 report any dangerous, abusive, exploitative, or discriminatory practice of any other social worker to the appropriate authority

5.12 advise clients of how to make a complaint if they are unhappy with the service provided

5.13 end the relationship with the client if it is clear a continued relationship would not benefit them and provide for alternative professional help if necessary.

Protect the rights and promote the interests of clients — Guide

Boundaries

The overwhelming majority of social workers maintain clear and professional boundaries with clients. However, like all professionals, you need to be vigilant in your efforts to avoid inappropriate dual relationships. Within the professional relationship there is almost always an imbalance of power due to your authority, specialised knowledge, ability to access privileged information, and influence as a social worker. You may also have a professional relationship with the client's family/whānau and others close to the client that may increase their vulnerability.

The power imbalance is increased when the client's knowledge is limited or they are particularly vulnerable because of age, character trait(s), or a particular set of circumstances. Take care to ensure that your own personal, sexual, or financial needs are not influencing interactions between yourself and the client. Also recognise that clients may read more into the professional relationship with the social worker and try to have their personal or sexual needs met. When this happens you have to maintain the professional boundary.

You should politely decline 'friend' requests from clients on Facebook and other social-media networking sites.

Sexual boundaries

Clients and people close to them

Sexual relationships or any form of sexual interaction with clients and people close to them are prohibited because:

- sexual relationships can cause significant and enduring harm to clients
- there is a power imbalance between the client and you as a social worker and that will always mean there is the potential for abuse of your position and harm to the client
- it is difficult for the client to give informed consent to sexual contact because of that imbalance of power
- the client has put their trust in you as a professional and the betrayal of that trust can have devastating consequences
- you have a responsibility to protect the interests of your client and not serve your own needs

- a sexual relationship with a client can impair professional judgment
- a sexual relationship with a client can cause damage to public trust in the social work profession.

This list is not exhaustive and there are other reasons why behaviour of this kind is unacceptable.

Occasionally you may be attracted to clients, especially considering the intimate nature of the clinical work you do together. One hallmark of ethical practice is your ability to identify and properly manage these feelings. Sexual relationships, sexual contact, or any other form of sexual interaction between a social worker and a client is never a valid form of therapy.

Sexual relationships or behaviour, or sexual interaction with any person in your client's social system, is also unacceptable because of the potential to cause harm to both the client and the other person. A sexual relationship between you and a person in the client's social system could significantly undermine the trust and confidence between you and your client.

Relationships with former clients or people close to them

Sexual relationships with former clients may be inappropriate no matter how long ago the professional relationship ceased. There is no arbitrary time limit that makes it safe for a social worker to have an intimate or sexual relationship with a former client. The sexual relationship may be influenced by the previous therapeutic relationship where there was a clear imbalance of power.

In considering whether a relationship could be appropriate, you must consider:

- how long the professional relationship lasted
- the nature of the relationship in terms of whether there was a significant power imbalance
- the vulnerability of the client at the time of the professional relationship and whether they are still vulnerable — including the client's psychological, physical, and character traits
- whether you may be exploiting the knowledge you have about the client because of your previous professional relationship
- whether you may be involved as a social worker for the client and/or their family/whānau in the future
- whether you know information that could compromise the client if used out of a professional setting, or if the client was previously a mental health consumer, has an intellectual disability, or has been sexually abused in the past (in these situations a sexual relationship may never be appropriate).

The same considerations apply to relationships with any person in the former client's system. Seek advice from your professional organisation, supervisor, manager, employer, or the SWRB if necessary.

Ending the professional relationship with a client

You may have to end a relationship with a client for either personal or professional reasons (for example, discovery of a conflict of interest, inability to provide services that meet their needs, or as the result of client complaint).

If you have to end a relationship with a client, you must do your best to protect their interests and needs by referring them to an appropriate professional or service provider. In these circumstances you must advise your client that you're no longer going to work with them and the reasons why, and wherever possible you must give them options for the transfer of services.

Individual organisations should have policies in place to support and guide their social workers through this process."

ACC — Sexual Abuse and Mental Injury: Practice Guidelines for Aotearoa New Zealand — March 2008.

ACC's publication "Sexual Abuse and Mental Injury: Practice Guidelines for Aotearoa New Zealand" states the following:

"**Principle 3: Therapeutic Relationship**

The therapeutic relationship is one of the foundations upon which the success of therapy rests. The building and maintenance of a safe therapeutic relationship are essential for positive outcomes, although they should occur alongside ongoing assessment and therapy. This was a strong finding arising from both the international literature and the New Zealand-based research. An effective therapeutic relationship is developed when the practitioner demonstrates a range of attributes that are important, regardless of the model of therapy, specific techniques, or theoretical orientation. These include trustworthiness, assurances of safety (including cultural safety), a non-judgemental, common sense, 'unshockable' attitude, mutual respect, and a belief in the client's ability to progress and improve.

Although a sound therapeutic relationship is key to positive change, it is not sufficient alone to initiate and sustain constructive change for clients. It is one of three elements of the therapeutic alliance, along with establishing agreed goals, as well as collaboration on the process and tasks of counselling. Therapy should be based on a comprehensive understanding of the individual client's needs, and targeted to address those needs efficiently in a carefully prioritised manner.

The quality of the therapeutic environment will influence the outcome of therapy. The therapeutic environment is an important context within which the development of an effective relationship occurs. It includes the physical setting in which the therapy takes

place, as well as the qualities of the client, therapist, and agency (if applicable) where the counselling occurs. The therapeutic relationship should be evaluated in a cultural context. Cultural preferences may be pivotal in developing a positive therapeutic relationship.

The therapeutic relationship must strike an appropriate balance between personal boundaries and engagement. While a high level of connectedness is crucial to effectiveness, a relationship where the client and therapist become overly reliant on the relationship may have a detrimental influence on the outcome for the client. However, it is also important to acknowledge the developmental needs of the adult client, which may mean the client being dependent on the therapist as a transitional attachment figure for a period of time. During this time when client dependence may be necessary, it is the responsibility of the therapist to maintain boundaries so that therapy can be experienced safely by the client. It is this experience that allows the client to contrast a safe therapeutic relationship with earlier abusive experiences and enables re-learning to occur. Nevertheless, the therapy will always work towards facilitating the empowerment of the client, with less dependency on the therapist over the course of therapy. A parallel outcome of the therapeutic relationship should be the ability of the client to develop a range of healthy and supportive relationships with others in their family/whānau, or community setting.

Therapeutic Relationship: Recommendations

3.1 Consider the following attributes of effective relationships regularly throughout the course of counselling:

- Trust
- Empathy (includes allowing the client to see that their therapist is moved by the details of their story)
- Hope
- Humour
- Honesty
- Openness and being open to challenge
- Being non-judgemental and believing the client
- Demonstrating understanding and acceptance of the client's worldview
- Using language appropriate to the client and avoiding jargon
- Developing mutual respect
- Appearing 'unshockable' (although acknowledging the facts are distressing, the therapist demonstrates an ability to tolerate hearing about them)
- Being responsive to the client in each session and being willing to deviate from planned content.

3.2 Attend to the quality of the therapeutic environment, which includes the physical location in which therapy takes place as well as the agency (if applicable) in which the therapy occurs. The aspects of the environment that may be important are that it feels safe, warm, welcoming, inviting, comfortable, private, accessible, homely, and non-intrusive.

3.3 Making connections and acknowledgement of whānau are important aspects of commencing therapy with Māori clients. Acknowledge the client's whānau and hapū by the process of whanaungatanga. Some consider it appropriate to include the presence of a relative in therapy. It may also be appropriate for the therapist to disclose their own origins and cultural affiliations. It is important to have an understanding of tikanga Māori. Prepare in advance of first seeing the client to be respectful of the client's origin and name, using appropriate pronunciation. Anticipate the need to act sensitively with respect to the client's beliefs and practices.

3.4 With children, develop a warm and nurturing presence that cultivates trust, as this will enhance outcomes. Consider developmentally appropriate interventions, plan interesting and engaging materials, and use appropriate humour, play, and fun where appropriate.

3.5 Time and pace therapy according to the child's and parents' resources to cope, and the meaningful social supports available in the child's life. Consider the young person's internal and external resources, for example developing coping skills, building on strengths, developing mastery, and fostering success. Recognise that this is most likely to occur when therapy is supported by the caregiving adults in the child's life, within a physically safe and emotionally secure environment.

…

Principle 3: Therapeutic Relationship outlines one aspect of the therapeutic alliance that provides a foundation for successful therapy. The relationship is developed through the qualities of the practitioner and client and their interaction, as well as various features of the therapeutic environment.

Not surprisingly, the therapeutic relationship emerged as one of the most important ingredients of therapy, based on information gathered from practitioners and clients. Practitioners were unanimous in reporting that the therapeutic relationship is the foundation upon which the success of therapy rests. Clients also identified it as pivotal to their recovery, and the important attributes of therapists that were identified by clients are listed below under 'Therapist variables'. The international literature also clearly described the therapeutic relationship as the major agent of therapeutic change. Both the international literature and New Zealand practitioners reported that particular attention should be focused on attachment issues, given that many people who are sexually abused during childhood develop an ambivalent or avoidant attachment style.

The relationship makes up one of three components of the therapeutic alliance:

- Principle 3: Therapeutic Relationship. This includes the development of a relationship bond between the counsellor and client
- Principle 7: Goals. The collaborative agreement on therapeutic goals
- Principle 8: Rationale and Process. This forms the basis for therapy direction, how to achieve therapy goals, what the tasks of counselling are, and the dynamics of therapy.

These three areas were strongly represented in the findings of the research and the general counselling outcome literature.

Relationship-Enhancing Strategies

Several approaches were recommended for developing healthy rapport with clients that enabled progress. In particular, the initial sessions were reported to be crucial in building and sustaining strong therapeutic relationships with clients. Strategies that both clients and practitioners reported as useful for developing rapport included:

Therapeutic relationship

- Working immediately on building safety for the client and others
- Availability
- Friendliness
- Empathy
- Belief that the relationship between counsellor and client matters
- Matching the language of the therapist and client regarding abuse, effects, and goals.

Therapeutic environment

- Preparing the room and making it pleasant
- Having tea, coffee, water, and healthy food available
- A comfortable therapy setting.

Structure

- Behaving consistently
- Working quickly on self-soothing
- Discussing and collaborating on the pace of therapy
- Working on goals that are meaningful to the client, even if these goals are immediate or limited in scope
- Ability to explain clearly and fully
- Tailoring the approach to the style and values of the client
- Ability to educate clients about abuse and its effects

- Ability to normalise reactions to abuse.

Client-centred

- Willing to respond to the client's needs, including cultural needs, and deviate from the arranged plan
- Conveying belief in the experience of the client
- Having faith in the client's ability to recover
- Being responsive to how the client is in each session
- Accepting that sometimes therapy does not work
- Suggesting a break and knowing when it is time to refer
- Affirmation of the client's resilience.

Therapist variables

- Ability to tolerate the content of the discussion
- Being honest, real, and 'down to earth'
- Being well-trained and professional
- Being open to the client's worldview and willing to put aside their own
- Gentle but firm, ability to gently challenge and be challenged
- Respectful, non-judgemental, and accepting of the client
- Good listener.

Cautions

It is important to note that, while a sound therapeutic relationship is central to positive change, the relationship alone is inadequate for initiating and sustaining therapeutic outcomes for clients. A consistent balance between maintaining personal boundaries and connectedness was found to create the best therapeutic outcomes for clients. Just as research confirmed that a good relationship enhanced outcomes, it was also found that the amount of therapeutic contact a therapist had with adult clients at either extreme reduced effectiveness.

A minimal degree of therapeutic contact was less effective, as was too much therapeutic contact. The latter is often seen in co-dependency relationships between practitioners and clients. A considerable proportion of adult clients who required long-term services were found to have developed co-dependent relationships with their therapists. Amongst other things, co-dependent relationships can be characterised by high attachment but low personal boundaries and mutual dependence between the client and therapist. While deep attachment and client dependence are often necessary for a period of time in order to re-learn appropriate relationships, this best occurs within the constraints of safe and appropriate boundaries. Furthermore, conclusions about the

nature of beneficial therapeutic relationships are impossible to describe because this will differ according to each client and therapist. It should also be noted that the nature of the therapeutic relationship (ideally) fluctuates according to client need at any given time. For example, more frequent contact during times of crisis may be required, with intervals between sessions extending nearer the conclusion of therapy.

Finally, as in Principle 6: Assessment, therapy needs to be based on a sound analysis of each client's needs and targeted to address those needs efficiently in a carefully prioritised manner."