

Inappropriate and unprofessional interaction with disabled consumer

Introduction

1. This report discusses the care provided to Mrs A by Mr B and a charitable trust.¹ The complaint made to this Office on 23 June 2024 concerns allegations of sexualised and inappropriate interactions by Mr B.

Background

2. In September 2022 Mrs A had a medical event that affected her mobility and communication, and initially she received support from a community organisation. The organisation supported Mrs A to make a referral to the charitable trust for ongoing disability support, which commenced in early March 2024. Initially contact between the parties was via phone communication, which later changed to in-person contact as Mrs A attended several events with the encouragement of Mr B.
3. On 26 June 2024 the trust was advised that the community organisation had received a complaint from Mrs A about its employee Mr B. On 27 June 2024 the trust contacted Mrs A to acknowledge her complaint and requested a copy of the original complaint.
4. In her complaint, Mrs A raised concerns that Mr B had had inappropriate conversations with her on multiple occasions, which included asking questions about her intimate relationship with her husband, inappropriate reference to offering a massage, encouragement to visit him at his home, and insisting that she kiss him on his cheeks at an event. In addition, Mrs A said that Mr B breached confidentiality relating to this investigation by contacting Mrs A's father and aunt and failed to disclose that he was related to her.
5. Following the complaint, Mrs A was invited to a meeting with the trust on 2 July 2024. In the meeting, the trust advised Mrs A that due to the seriousness of the complaint, it intended to undertake an independent investigation. On the same date, the trust engaged an experienced licensed private workplace investigator, Mr C, to investigate the complaint.
6. Mr C's investigation included analysing relevant documentation (including the trust's policies and procedures) and records, and interviewing Mrs A and Mr B. Both were provided with the draft investigation report, and they provided their feedback prior to finalisation of the investigation report. The report and its findings have been summarised below.

¹ A national charitable trust providing mental health, disability coordination and support, and social services and support for older people.

Investigation report

7. Mr C's report stated:

'The behaviour [by Mr B] towards [Mrs A] has in my view been inappropriate and unprofessional on several levels:

- Inappropriate and unnecessary questioning relating to her (sexual) relationship with her husband.
- Inappropriate offer for [Mrs A] to visit [Mr B] at his house.
- Breach of privacy and confidentiality relating to this investigation.²
- In relation to the kissing on the cheek; I accept that there is a degree of cultural practice to this incident; however, this still caused [Mrs A] to feel uncomfortable, particularly in light of the other inappropriate conversations that had earlier caused her discomfort with [Mr B's] conduct.

...

Combined, it is clear that these incidents caused [Mrs A] to feel highly uncomfortable being supported by [Mr B].'

8. The investigation upheld the allegations as potentially being sexual harassment.

Mr B's statement

9. In response to allegations that Mr B had multiple inappropriate conversations with Mrs A, he acknowledged that he did ask highly personal questions and that he made a joking reference to offering her a massage. Mr B said that he had asked Mrs A to kiss him on both cheeks as a farewell at a function but described this as 'formative for all of us ... when meeting with new people'. Mr B acknowledged that he had contacted Mrs A's aunt and father in seeking to make an apology, but said that at the time, he was unaware that he was related to her.

Notification of HDC investigation

10. On 20 February 2025 I notified Mr B of HDC's investigation of this matter. I proposed that HDC find Mr B in breach of Right 4(2) of the Code of Health and Disability Services Consumers' Rights³ (the Code) based on a review of the complaints, the trust's response, the trust's policies and procedures, and Mr C's external investigation report of Mr B's conduct (including all interviews and statements) following the complaint.
11. On 10 March 2025 Mr B accepted my proposal and agreed to a breach of the Code.

² This relates to Mr B contacting Mrs A's father and aunt and disclosing the allegations against him, and to the allegation that Mr B did not disclose a conflict of interest to Mrs A or the trust that he was related to Mrs A.

³ Right 4(2) states: 'Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.'

Relevant policies of the trust

Bullying & Harassment Policy⁴

12. The Bullying and Harassment Policy provides a description of what constitutes sexual harassment. The policy states:

‘Sexual harassment is any unwelcome or offensive sexual behaviour that is serious enough to have a harmful effect or has a promise of preferential treatment or the threat of detrimental treatment at work.

...

A single act of a sexual nature, be it words or physical behaviour, may if sufficiently serious, constitute sexual harassment.

...

It is conduct unwelcome or offensive to another person. The test is whether both parties freely and mutually welcome the behaviour.

...

The fact that a person does not express the view that certain behaviour(s) is unwelcome, or offensive does not mean that the behaviour is acceptable, and that no harassment has taken place and is no defense later on.’

Professional Code of Conduct⁵

13. The Code of Conduct provides specific guidance on the standard of personal and professional conduct and behaviour expected of everyone who is employed at the trust. It states:

‘All staff should behave professionally at all times and exhibit a high degree of professional conduct, best practice and accountability while delivering the company’s services.

...

Employees will develop and maintain positive working relationships with all people with whom they have official dealings. Employees must not condone or engage in sexual, racial, or other harassment, that is defined as deliberate or repeated comments, gestures, physical contact or other behaviour unwanted by the recipient or offensive of others.

...

Employees must show respect for and protect the dignity of clients in all actions and communications.’

⁴ Updated June 2023.

⁵ Updated June 2023.

Responses to provisional decision

14. The trust, Mr B, and Mrs A were given the opportunity to respond to the provisional decision.
15. The trust responded that it accepted the findings and recommendations.
16. Mr B responded that he declined to provide further comments.
17. Mrs A responded that she agreed with the breach finding for Mr B, and her additional comments have been incorporated into this report where applicable.

Decision

Mr B — breach

18. As a staff member, Mr B had a duty to provide Mrs A with an appropriate standard of care. This included complying with the trust's Bullying and Harassment Policy and its Professional Code of Conduct. Accordingly, Mr B was required to adhere to the above-mentioned policies and to act in accordance with the Code.
19. I accept and agree with Mr C's investigation findings. I am critical that Mr B engaged in conversations with Mrs A that involved questions and discussions of a sexualised nature. Regardless of Mr B's intentions, the questions were highly inappropriate, unnecessary, and unprofessional and left Mrs A feeling uncomfortable being supported by Mr B.
20. According to the trust's Bullying and Harassment Policy, any behaviour that is 'unwelcome and offensive' and/or 'of a sexual nature, be it words or physical behaviour, may if sufficiently serious, constitute sexual harassment'. The trust's Professional Code of Conduct provides specific guidance on the standard of personal and professional conduct and behaviour and states that '[e]mployees must not condone or engage in sexual, racial, or other harassment'.
21. In addition, I consider that Mr B's conduct in approaching Mrs A's father and aunt following her complaint was inappropriate. The trust's Professional Code of Conduct states that '[e]mployees must show respect for and protect the dignity of clients in all actions and communications'.
22. It is my view that Mr B did not adhere to the trust's Bullying and Harassment Policy and that his conduct constituted sexual harassment. In addition, Mr B did not adhere to the trust's Professional Code of Conduct in not showing respect for Mrs A or protecting her dignity.
23. Accordingly, I find that Mr B did not provide Mrs A with services that complied with legal, professional, ethical, and other relevant standards and breached Right 4(2) of the Code. I note that Mr B has accepted this finding.
24. I also note that Mr B has taken responsibility for his actions and has demonstrated remorse. On Mrs A's request, Mr B has provided an adequate written apology for his actions and the way he made Mrs A feel.

The trust — no breach

25. As a disability services provider, the trust has a duty of care to ensure the protection of the vulnerable consumers in its care. The trust is responsible for providing services of an appropriate standard and in accordance with the Code. At the time of the events, the trust safeguarded this duty of care by having in place comprehensive policies that set out the trust's expectations of staff behaviour and actions.
26. I commend the trust for reacting promptly and appropriately to a serious complaint. This included communicating with Mrs A and engaging Mr C to provide an objective and thorough investigation of the complaint.
27. I am satisfied that the trust had in place appropriate guidance for Mr B to work safely with Mrs A. There is no evidence to suggest that the trust is at fault regarding the interaction between Mr B and Mrs A or in Mr B breaching confidentiality by approaching her whānau, as appropriate policies in respect of this were in place. I consider that the trust was entitled to rely on Mr B, as an experienced staff member, to adhere to the trust's Bullying and Harassment Policy, Professional Code of Conduct, and the Code.
28. I also consider that the failures were Mr B's individual failures, rather than a result of deficient guidance or training, and therefore were not indicative of broader systems or organisational issues at the trust. Accordingly, I find that the trust did not breach the Code.
29. I note that the trust apologised to Mrs A in person for Mr B's inappropriate and unprofessional behaviour and followed this up with a written apology.
30. I note that Mrs A disagreed with the trust's disciplinary outcome and follow-up related to Mr B's misconduct. It is not within my scope to determine whether or not an organisational decision following a disciplinary process is appropriate. However, it remains my view that the training programme the trust devised for Mr B, following its decision was comprehensive and appropriate.

Recommendation

31. I recommend that Mr B refamiliarise himself with the Code by reviewing it on the HDC website.⁶ In particular, he should review Right 1(1) and Right 4(2), which relate to consumers being treated with respect and dignity and the right to have services provided that comply with relevant standards. Reflection on the learning from this complaint and confirmation that he has reviewed the Code should be provided to HDC within three months of the date of this decision.
32. I note that as part of the trust's disciplinary process, Mr B was required to undergo substantial training before recommencing work with consumers. Therefore, I have not recommended further training.

⁶ See: www.hdc.org.nz

Follow-up action

33. A copy of the final report with details identifying the parties removed will be sent to the Ministry of Social Development and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Ms Rose Wall

Deputy Health and Disability Commissioner