

Occupational Therapist, Ms B

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

(Case 04HDC05983)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Mr A	Consumer
Ms B	Provider/Occupational Therapist
Ms C	Team Manager
Ms D	Rehabilitation Assistant
Ms E	Rehabilitation Assistant
Ms F	Work Liaison Occupational Therapist
The District Health Board	Provider/District Health Board

Complaint

On 14 April 2004 the Commissioner received a complaint from Mr A about Ms B, Occupational Therapist. The following issue was identified for investigation:

- *The appropriateness of Ms B's relationship with her client, Mr A, between September 2002 and May 2003.*

An investigation was commenced on 16 August 2004.

Information reviewed

- Mr A's clinical records from the Rehabilitation Unit

Information provided by:

- Mr A
 - Letter of complaint with enclosed emails: 14 April 2004
- Ms B
 - Response to complaint: 21 September 2004
 - Interview: 27 September 2004
- The District Health Board
 - Response to complaint: 21 September 2004
- Ms C
 - Letter: 30 September 2004
 - Interview 29 September 2004
- Emails reviewed:
 - 71 emails from Ms D to Mr A
 - 38 emails from Mr A to Ms D
 - 17 emails from Ms B to Mr A
 - 52 emails from Mr A to Ms B

Introduction

This case raises important issues regarding the setting of boundaries in a professional relationship. It concerns an occupational therapist who engaged in intimate email and internet chat correspondence with a client.

When an occupational therapist (or any provider) has a professional relationship with a client, especially a client with mental health needs, he or she must take extreme care to establish and maintain the boundaries of that relationship. A breach of professional boundaries is a breach of trust and can result in physical and/or emotional harm to the client. Email and internet chat correspondence can be especially difficult to interpret and can blur relationship boundaries. If any doubt is raised about the appropriateness of the communication or relationship, guidance should be sought or the client referred to another provider.

In this case, the correspondence, which was both frequent and personal, created a personal relationship between the occupational therapist and her client. In my opinion, the occupational therapist did not have sufficient regard to the importance of maintaining appropriate boundaries, and corresponded with her client knowing that a personal relationship was developing. She continued the correspondence even after concern about the developing friendship was drawn to her attention. The occupational therapist also failed to seek assistance once she realised she was “out of her depth”. In short, her conduct was unprofessional and unethical, and amounted to a breach of the Code of Health and Disability Services Consumers’ Rights.

Information gathered during investigation

The Rehabilitation Unit

The Rehabilitation Unit is part of a service run by a District Health Board. Mr A became a client of the Rehabilitation Unit in February 2001, having been referred with a diagnosis of a depressive disorder with panic and anxiety features, which is categorised as an Axis II disorder. The rehabilitation service contract primarily focuses on the needs of clients with an Axis I diagnosis, ie, severe mental illness with psychotic features.

Ms C, the Team Manager of the rehabilitation service, was Ms B’s manager, and was responsible for seven other rehabilitation services spread throughout the area. Ms C has been in this post for 14 years and is a registered occupational therapist.

Ms C stated that, to her knowledge, Ms B had not worked within an acute mental health unit or in an inpatient setting, and may have had little experience of dealing with clients with an Axis II disorder. Ms B has advised me that she had no experience with patients with Axis II disorders, and was not aware that Mr A had such a disorder.

Ms B was the occupational therapist assigned to the Rehabilitation Unit with a role that included assisting clients to set and achieve work and education goals. Ms B was supported by two rehabilitation assistants, Ms D and Ms E. Although she was the only occupational therapist working at the Rehabilitation Unit, Ms B shared an office with Ms F, work liaison occupational therapist. In May 2003, Ms B was in her fifth year of practice and had spent all of her post-qualification period in the mental health field. She is currently studying for her Masters degree and has recently graduated top of her class in her postgraduate mental health rehabilitation studies. Ms B had been Mr A's key-worker since his commencement at the Rehabilitation Unit.

Ms B stated, in relation to her role as an occupational therapist and her relationship with Mr A:

"I'm not trained as a counsellor at all, I am trained as a rehabilitation practitioner which means that some of the interactions will be about really personal things that affect people's lives. ... My understanding was ... to connect with clients, to have a good working relationship with them so that they trust you, so that they understand you, so that they feel that they can talk about themselves and their plans ... when I used the word 'friendship', it relates to my being available for him as a person of support as opposed to actually my getting a similar support ... back from him. ... I didn't feel I was getting an awful [lot] out of it for myself in terms of a friendship where you mutually share ... problems, ... it was ... being there for him."

In her response to Mr A's complaint, Ms B stated:

"I am deeply regretful that [Mr A] has misunderstood my close working alliance and appears so distressed."

November 2002

In November 2002, in a team meeting that involved Ms C, Ms B and Ms D, the topic of the use of email between clients and staff of the Rehabilitation Unit was raised. The District Health Board did not have a policy on the use of emails between employees and clients. There were no minutes taken of the meeting, but Ms C's recollection is that a specific request was made for the use of a computer design programme.¹ Her initial response was "why would you want to do that", but she recalls that she clearly stated that email between staff and clients of the Rehabilitation Unit was acceptable on the condition that staff "stick to the task at hand and don't let this lead to relationship building".

This recollection of events is also shared by Mr A. Although he had not been present at the meeting in November, at a meeting with Ms C on 15 May 2003, Mr A reminded her of these words as they had been relayed to him by Ms B in November 2002. Ms C accepts

¹ Of 178 emails made available, two, on 6 January 2003, contain references to a computer design programme. In response to the provisional opinion, Ms B stated that more emails were exchanged on this topic, but had been deleted because of the amount of computer disc space they occupied.

that it is probable that these would have been her words. Ms C believes that in November 2002 she had been clear over her instruction that emails between staff and clients should be used only for work-related activities.

Email correspondence between Ms B, Ms D and Mr A commenced in November 2002.² Ms B states that Ms D began the email correspondence with Mr A, and told her that she had found that it was working well. According to both Mr A and Ms B, Ms B suggested that he download a computer programme called MSN Chat.³

Ms B stated that the reason for communicating with Mr A via email and MSN Chat was that:

“... he feels comfortable because he doesn’t have to sit and talk to you in person, ... it was something he was familiar with ... and we thought ... part of occupational therapy is to engage someone in kinds of activities or mediums that are satisfying to them, that they relate to ... so that’s why I thought this might really work and to an extent it did work.”

Mr A provided copies of email correspondence between himself and Ms B that took place from mid-November 2002 until 30 April 2003. However, it is not possible to quantify their use of MSN Chat, with only one brief extract with no formal reference to date or origin being provided by Mr A. Similarly, there is no record of how much time was spent on the conversations. However, it is accepted by Ms B that she did converse with Mr A using MSN Chat.

Setting boundaries

Mr A and Ms B agree that Ms B stated at a very early stage that a clear professional boundary would exist between them: she as his occupational therapist, he as her client. However, Mr A advised me:

“I don’t deny that she stated certain boundaries existed, she did. I stated emphatically from my side also ... that I did not need a therapist or someone to counsel me in a professional manner. ... I wanted this to be purely recreational and relaxed. She agreed. Over the following months things between us moved to a more personal level.”

Ms B accepts that “emoticons” were used in the MSN Chat correspondence between herself and Mr A. These are small pictures used as shorthand in electronic communications

² 178 emails and one extract from MSN Chat have been made available.

³ MSN Chat: This service enables users to have “conversations” with other people on-line. Having connected to the internet and logged on, this fact is communicated to others whom the user permits the service to inform. This allows conversations in “real time”. Unlike emails, the correspondence is not designed to be kept, and is not archived.

that reflect an emotion: happiness, sadness, etc. She agreed that she used “hug” emoticons, but explained these as friendly gestures rather than romantic ones.

Mr A had made comments about Ms B which she accepts implied that he was physically attracted towards her. Ms B informed Mr A that he had “nice eyes”, although in the context of describing his strengths.

Ms B stated that she retained Mr A’s emails in case she had to produce them at some stage in the future “because I was engaging with a client”. Ms B did not retain all of the emails from Mr A because some were too large to be saved, and she did not retain any of her own emails sent from her personal email account to Mr A.⁴ No emails from Mr A to Ms B sent prior to 30 April were included in Mr A’s clinical record.

Personal disclosures by Ms B

Ms B agreed that over the next few months she informed Mr A of a number of personal matters.

Ms C, having seen Mr A’s complaint, was “very surprised that he knew the [personal] information”.

Ms C stated that she was concerned at some of the language that was used within the emails to Mr A and that “when you get into nicknames or abbreviating names ... it can imply a[n] intimacy”.

Ms B stated:

“There were people I could [have] talked to and I chose not to [because] I felt embarrassed and out of my depth and ... look what I’ve got into ... [and] how do I deal with it.”

January 2003

Mr A stated that he let Ms B know his feelings towards her very soon after their MSN Chat on 25 January 2003. Ms B cannot confirm that these are her words, nor the date, but accepts that it is possible that they are her words, and that she had similar conversations with Mr A at that time, all linked with her setting of boundaries. The section of alleged MSN Chat is quoted in its entirety:

“[Ms B] says:

we have talked a lot on here, and I guess I wonder how you perceive me ... I guess we throw the term friend around a lot, and I hope that from your perspective you have read from me that my intentions are in that way ... this sounds silly but anything further for me is just impossible for so many reasons. I have wanted to

⁴ Ms B’s personal “Hotmail” account does not allow users to retain sent emails longer than 30 days, although paper copies could have been printed and kept.

talk about this for ages, and its all very awkward and I risk looking like the fool and all.”

Ms B told Mr A about a male friend who was unable to maintain a friendship with her after finding he had strong feelings for her. Ms B believed that she related this event to Mr A in the context of:

“one of the discussions we were having when he was talking to me about some other woman he was talking to on email as well as comparing different experiences he’d had.”

Mr A, however, recalled this conversation as occurring very soon after their MSN Chat on 25 January 2003, when he told Ms B of his strong feelings for her.

Mr A stated that in late January:

“I told [Ms B] of these feelings and she was of the opinion that we could still maintain a friendship despite this. It was just something to ‘work through’. I stated numerous times throughout the months of chat that I didn’t think I could be her friend as I had feelings for her.”

February 2003

In early February 2003, Mr A had an altercation at work with another client, and on 5 February informed Ms B by email or MSN Chat that he was intending to leave the Rehabilitation Unit. Ms B recalled that she challenged him (via email or MSN Chat) about his wish to leave and he reacted angrily. She believed that “if I try and appease him, then that’s one way I can get hold of the situation”. Mr A provided three emails from Ms B dated 5 February:

First email:

“I am so sorry, my strong words were rude and insensitive ... and you left, and now I can’t make it better. This is hard to say ... I am really really sorry, please forgive me. ... I guess you can see how imperfect I am. And finally I have earned your wrath ... and yet I hope ...”

Second email (in full):

“I know my words would have really hurt you, I wish I could take them back ... I can’t. I lost it ... I am sorry.”

Third email:

“Hey
This is an awful feeling, I wish for you to log on ... so that at least I can put my failings straight ... even if you never want to talk to me again. I never meant what I

said ... I don't know where those words came from. I am so so so sorry for the hurt I have caused.

..."

Ms B stated that she was concerned over the anger that Mr A was expressing and that she felt that she was "way in over my head". This event was not recorded in Mr A's clinical record.

Client review meeting

In late February or early March 2003, there was a client review meeting involving Ms B, Ms D and Ms E. No record of this meeting has been made available to me, and there is no reference to it in Mr A's clinical record. During the meeting Ms D and Ms E stated that they were moderately concerned that Mr A was developing a "crush" on Ms B. Ms D and Ms E reported to Ms C that Ms B was:

"genuinely surprised to hear this ... and at the time discounted it. ... [Ms B] states that she was ... disbelieving of [the] feedback as it had not been evident to her."

Ms B stated:

"At the meeting ... I decided that the contact that I wanted to have [with Mr A] would be reduced but absolutely ignoring him would actually aggravate his behaviour ... because ... all of a sudden it would be 'I'm here, available, and ... to listen and to be a friend' and then there'd be ... no contact at all."

Holiday

In mid-March, Ms B left for a five-week holiday. Soon after arrival, she sent an email, dated 16 March, letting Mr A know that she had arrived safely, and signing off with the words "internet access here is ssoooooo slow ... so might have to find a different internet café".

Mr A emailed Ms B on 19 March and she sent an email on the same day, thanking him for his emails, giving general news, and signing off, "more news soon ... take care of yourself".

On 27 March, Ms B wrote again. She stated that this email was sent to Mr A in response to an email from Ms D, who was concerned that Mr A had not been attending the Rehabilitation Unit. This email signed off, "take care and send some mail soon (it's been too long)". Mr A replied the next day; prior to sending this email, Mr A's last email to Ms B had been sent on 19 March.

Ms B sent an email birthday card to Mr A in early April.

Ms B accepts that there are likely to be other emails sent that have not been provided to me. This includes an email that contained a digital photograph sent by Ms B to Mr A that was either of her cousins or taken by her cousins.

Ms C was alerted to Ms D contacting Ms B about Mr A's non-attendance, and said that she "was stunned that someone was contacted on leave" and was led to believe by Ms D that Mr A may have emailed Ms B while she was on leave. Being doubtful of this, Ms C went to see Ms F, who shared an office with Ms B. Ms F stated categorically that "[Ms B] wouldn't have given [Mr A] her email address".

In response to the provisional opinion, Ms B states that she decided to stop using MSN Chat with Mr A while she was on leave.

End of April 2003

Ms B returned from holiday on or around 9 April 2003, and then attended a two-week course that kept her away from the Rehabilitation Unit. She returned to work on or just before 27 April 2003. Documents provided during this investigation show that in the period from 23 April to 29 April, 11 emails were sent from Ms B to Mr A. Ms B accepts that it is probable that there were more. The correspondence suggests that there were other emails from both parties, as there are emails written in reply to emails that have not been produced.

In response to the provisional opinion, Ms B advised that on her return from overseas Mr A challenged her about stopping MSN Chat contact. Ms B stated that she told Mr A that she would not be available on-line for chat as she did not have time and had other matters to attend to.

Mr A advised me that on 29 April, in an email or MSN Chat that has not been made available, he declared strong feelings for Ms B. This statement came in a conversation via email that commenced with the topic of going out to the cinema, and Mr A wishing to go just with Ms B. Ms B stated that she attempted to "brush off" Mr A's threats to leave rehabilitation unit.

Ms B referred to the imagery as "a stupid ... joking comment".

On 30 April, Ms B sent an email to Mr A inviting him to a meeting at the Rehabilitation Unit in order to discuss his feelings for her.

At the meeting in Ms B's office at the Rehabilitation Unit on 30 April, Mr A stated the strength of his feelings, and how he believed that Ms B had reciprocated in some way, based on his perception of their relationship over the previous five and a half months. Ms B denied that she had any such feelings, and Mr A left the Rehabilitation Unit.

In Mr A's clinical record of 30 April, Ms B wrote:

"Discussed with [Ms E] (other staff member) and with manager. Allow [Mr A] space and time / await further contact."

However, Ms B did not tell Ms C about the meeting until 1 May and then did not advise her of the extent of the email and MSN Chat contact.

Also on 1 May, Mr A emailed Ms B apologising for his behaviour at the Rehabilitation Unit. He stated that he had “read things totally wrong” and that “I thought to some degree the feelings were mutual, despite you telling me early on that it was impossible for there to be anything else.” He stated:

“I had no feelings toward you, prior to MSN. So when we started chatting and sharing our life stories, the experiences of pain and laughter, gradually I became more involved and I developed deep feelings for you.”

Mr A ended his email with: “I value your thoughts on the matter. Give it to me straight and honest.”

Then, on 2 May, there was a series of emails. First, Ms B wrote to Mr A expressing her “honest thoughts on the matter”. She wrote:

“... [Y]ou are insightful about what has occurred for you in our interactions ... Your commitment to finding a solution is great ... these sincere interactions also contribute to a better outcome for you when you get my support for your work/learning goals ... I cannot go on outings outside of work [to] maintain the alliance formed. I am committed to continue relating as we have, you have not lost “the friendship”, here at [the Rehabilitation Unit] and towards your future work plans.”

Mr A replied asking if Ms B could go on “outings” if he was not at the Rehabilitation Unit.

Ms B responded that, if Mr A left the Rehabilitation Unit, “it would be difficult and unwise” for her to go on social outings “without a chunk of time passing”. She also noted that “this has been difficult for me to work through too”. Ms B advised Mr A that it would be easier for him to contact her at her work email address as she was moving house and it was easier for her to access.

Finally, Mr A sent a more formally worded email, stating that he had received advice from a third party and was deciding “what course of action to take regarding this matter”.

There does not appear to have been any further contact until 5 May when Mr A sent an email to Ms B, which began: “Well, I’m off to secure a length of rope for myself now.” Ms B informed Ms C, who involved Mr A’s clinical team.

Ms C stated:

“[On] Monday 5 May ... the issue of email contact was brought sharply into question, with the discovery of the extent and content of the email unfolding at that time.”

Internal investigation — May 2003

In May 2003, Mr A and his community social worker, alleged that “serious boundary breaches” had occurred as a result of the email and MSN Chat contact. Ms C commenced an investigation into the events. The investigation concluded on 26 May 2003.

As part of the investigation:

- Ms B stated that email contact between herself and Mr A was for only five months. Email and MSN Chat contact commenced in mid-November 2002 at the latest and the last email sent prior to Ms C being aware of the contact was 30 April 2003, a period of at least five and a half months.
- Ms B stated that she did not want any contact with or about Mr A while she was on holiday.
- Ms B stated that the reason she sent the birthday card email was because of the increasing “angst” in his emails to her while she was away, caused by her non-response to his emails.
- Within the internal investigation report, Ms C concluded that Ms B had “significantly” reduced her emails to Mr A “by March”.
- Ms B stated that her email contact with Mr A was not covert.
- Ms B’s colleagues informed her that Mr A was developing a “crush” on her in late February or early March.
- Ms B stated that “by the time she left [overseas], [Mr A’s crush] was becoming more apparent from [Mr A’s] emails”.
- Ms B informed Ms C that she had stopped responding to Mr A’s emails.
- For the internal investigation, Ms B provided a document that became Appendix 6 of that report. This document, entitled “MSN CONTACT / EMAIL CONTACT”, referred to Ms B’s estimated personal usage of MSN Chat in conversing with Mr A in the period from November 2002 to 29 April. From 6 January to 16 March, her estimate of internet contact with Mr A was:

“mostly ‘online’ between 5pm and 7pm (some days less)

– not ‘chatting constantly’ — ranged between 5 min [to] 1 hour while talking to others.

– some longer sessions on [weekends] on email/MSN [Chat] up to 2 hours.”

Ms C also investigated other matters unrelated to this investigation.

Ms C concluded:

“The investigation found no reported or actual evidence to support the claim of ‘serious boundary breaches’. There were no breaches of professional codes of ethics or [the District Health Board] policies. Hence no further investigation or disciplinary action is required.”

The General Manager of the DHB stated:

“Following the investigation by [Ms C], [Ms B] was moved to a new position within a different service area. Both [Ms B] and [Ms D] were required to undergo regular supervision, as well as 6 months special supervision specifically around boundary issues. ... [The] manager has also given all staff a clear directive that using chat rooms and e-mails to communicate with clients about personal issues is not acceptable. Both [Ms D] and [Ms B] now realise that their contact with [Mr A] was inappropriate.”

In response to the provisional opinion, Ms B stated that she apologised to Mr A at a mediated meeting in September 2003. Mr A stated that he has no recollection of Ms B apologising to him at that time.

Code of Health and Disability Services Consumers’ Rights

The following Right in the Code of Health and Disability Services Consumers’ Rights is 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.*
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Other Relevant Standards

The Occupational Therapy Board of New Zealand ‘Code of Ethics for Occupational Therapists’ (1998) states:

“A.3.2 Occupational therapists shall not enter into or continue with any relationships (personal or professional) with clients or their carers which will, or have the potential to, exploit or harm the client and the family/whanau. ...

A.4.2 Occupational therapists shall accurately record client information and interventions to facilitate the care, treatment and support of the client. ...

C.1.1 Occupational therapists shall refer clients to other team members or to other services, or consult with other persons when additional knowledge and expertise are required.”

Opinion: Breach — Ms B

Professional and ethical boundaries

The ethical standards expected of Ms B, as an occupational therapist registered with the Occupational Therapy Board of New Zealand, are set out in the ‘Code of Ethics for Occupational Therapists’. The purpose of the Code of Ethics is “to serve as an aid for analysis, and to guide occupational therapists in ethical decision making”. It was formally adopted in July 1998, prior to Ms B’s qualification as a registered occupational therapist, and reference to the Code of Ethics was made during her training.

One of the fundamental ethical responsibilities of an occupational therapist is to avoid harming a client. Thus, it was incumbent upon Ms B to maintain clear professional and ethical boundaries in her professional relationship with Mr A. In relation to the method and content of her emails and MSN Chat with Mr A, including the personal disclosures she made, Ms B overstepped those boundaries. Ms B also failed to record relevant client information and to consult or refer to another professional when she began to get “out of her depth”. Accordingly, for the reasons that follow, I consider that Ms B breached Right 4(2) of the Code.

Method and content of email and MSN Chat correspondence

Ms C informed me that she was asked in November 2002 whether it would be permissible for staff at the Rehabilitation Unit to communicate via email. She is clear in her recollection that permission was granted for the sole purpose of assisting the use of a software design programme at the Rehabilitation Unit. She told staff that this mode of communication was acceptable if used only for this task and not for “relationship building”. This was Mr A’s understanding, which he obtained from Ms B, who was present at the meeting. I therefore believe that Ms B had a clear understanding of Ms C’s instructions at the time they were given. Of the 178 emails provided to me, which date from 7 November 2002 to 30 May 2003, only two are related to the use of the design programme, both dated 6 January 2003. More emails were sent on this topic, but it appears that Ms C’s instructions were not observed from an early stage in the correspondence.

A relationship that was not therapeutic was formed between Ms B and Mr A involving the use of email and MSN Chat. In an email dated 13 December 2002, Mr A made it clear that for him the intention of the internet communication was recreational. Mr A was also clear in that email that he would be willing to discontinue the internet contact, and he appeared to show no signs of discomfort with the prospect of Ms B discontinuing the contact.

Although not all subsequent emails between Ms B and Mr A have been made available to me, the internet communications continued for a further four and a half months. It is therefore logical to assume that Ms B did not object to the communications continuing.

The use of email and MSN Chat does not allow the full meaning of a message to be relayed, omitting the non-verbal communication element of any message. In my opinion Ms B should have been aware of this and she should have taken more care over her communications. The use of “hug” emoticons was open to misinterpretation by Mr A. Ms B accepts that she prompted Mr A to start using MSN Chat.

It was inappropriate for a health professional to use MSN Chat or email to converse with a client in the manner in which Ms B did. It was also contrary to the instructions given by Ms B’s manager. The medium increased the likelihood of Mr A seeing Ms B as a friend rather than as his health care provider. The content was conversational and personal and thus likely to be relationship building rather than therapeutic. That Ms B believed that the communication was therapeutic reflected a lack of insight and missed the critical point that Mr A believed that a relationship was being built. In my opinion, Mr A’s feelings were fuelled by the contact that Ms B allowed him through the use of email and MSN Chat.

Poems were exchanged between Mr A and Ms B. Ms B’s role was to assist Mr A in his work and education goals: she may have felt at the time that exchanging poems for comment was therapeutic, but I disagree. Ms B was sending poems to Mr A, and thus was encouraging Mr A to believe that she was benefiting from the relationship that they had.

In response to the provisional opinion, Ms B stated:

“[I accept] that there was a level of friendship inherent and perceived in the MSN communications, which [I] know to have been harmful and detrimental both to [Mr A] and [myself], but at the time [I] sincerely believed was appropriate ‘partnership’ conduct as sanctioned by [my] training. [I accept] that this demonstrated a lack of insight.”

Personal disclosures

Ms B made a number of disclosures of a highly personal nature to Mr A. Mr A naturally believed that these disclosures were made not for the benefit of his therapy but because of a relationship that had developed outside work. Ms B should have been aware of the inappropriateness and the risks of her disclosures.

Developing knowledge of Mr A’s feelings

Mr A informed me that he made Ms B aware of his feelings towards her in late January 2003 and she responded that she hoped that they could deal with these feelings and maintain their “friendship”. The extract of MSN Chat from 26 January 2003 is an example of a conversation where Mr A expressed his feelings and Ms B attempted to set boundaries. It is clear that Ms B was aware of professional boundaries, but it appears she knowingly breached them. I am satisfied that Mr A informed Ms B of his feelings in late January 2003, and it was therefore incumbent on Ms B to deal with the issue immediately. She failed to do so.

When she wrote her poem on 5 February, Ms B had been informed by Mr A of his feelings towards her. To write to him in that vein was most unwise; to continue to converse using MSN Chat was inappropriate; failing to review her role as Mr A's key-worker in the light of his disclosure was not acceptable.

Ms B agreed that prior to her holiday Mr A made comments that implied a physical attraction towards her. Ms B should not have ignored this clear indication of Mr A's attraction towards her. In response to the provisional opinion, Ms B stated:

“[I] did not take [the comments] seriously as an indication of attraction, although in hindsight [I accept] that it could be a ‘warning sign’. ... [I] believed that [I] was firmly adhering to appropriate boundaries by ignoring such comments and not challenging them, but [recognise] that this could be misinterpreted as ... being comfortable with them”.

Ms B informed Mr A that he had nice eyes, albeit in the context of telling him his personal strengths. In response to the provisional opinion, Ms B stated:

“There was at least one other client present when that conversation was occurring, and there was nothing personal or intimate that could be misconstrued in the setting in which the comment was made.”

However, I disagree with Ms B, and consider the comment to be inappropriate in any setting.

In late February or early March, at a client review meeting, Ms B was informed by her colleagues, Ms E and Ms D, that they believed that Mr A had developed a “crush” on her. The meeting was not minuted, nor was any comment made in Mr A's clinical record. Ms B now accepts that this was an error of judgement. Although her reaction was described as “disbelieving” and “surprised”, Ms B cannot claim that after this date she was unaware of Mr A's feelings. She should have responded appropriately. It is my opinion that she did not. Ms B did not reconsider her role as key-worker, and continued to communicate with Mr A by email and MSN Chat, albeit at a reduced rate in relation to the latter.

Soon after the client review meeting, Ms B went on leave. She continued to email Mr A during her leave and on return from a two-week course. Although she told Ms C otherwise for the purposes of the internal investigation, there appeared to be no reduction in the email communication between Mr A and Ms B. The email of 19 March implies further emails, the email of 27 March expresses a wish for Mr A to get in contact, and an email birthday card was sent. Ms B's assertion that she continued to email Mr A because of increasing “angst” in his emails of the time, and that his crush was apparent within his emails, is not substantiated by the emails made available to me.

Ms B stated:

“There were people I could [have] talked to and I chose not to [because] I felt embarrassed and out of my depth.”

In response to the provisional opinion, Ms B stated that she saw her trip overseas as an opportunity to reduce interaction with Mr A and have other staff become involved with him because of her absence. However, she did not formally involve either another occupational therapist or her manager (an experienced occupational therapist) prior to departure, nor did she document this as a formal plan.

As a health professional of five years' post-qualification experience in her chosen field, Ms B should have sought advice at an early stage. Opportunities were available to resolve the issue either with her colleague, Ms F, with whom she shared an office, or Ms C. A health professional with Ms B's experience should not be too embarrassed to discuss an issue of this nature with a colleague or a manager. If Ms B felt that she was out of her depth, that is precisely when she should have consulted with a colleague. It is of concern that Ms B placed her personal embarrassment before the welfare of her client.

As the one in control of a relationship with a vulnerable client in rehabilitation, Ms B allowed a situation to develop that resulted in Mr A developing strong feelings towards her. Ms B compounded the problem through the continued use of email and MSN Chat and the language she used, even when she became aware of Mr A's feelings. Ms B did not comply with A.3.2 of the Code of Ethics for Occupational Therapists and therefore breached ethical and professional standards and Right 4(2) of the Code.

Other comments

Internal investigation

Ms C commenced an investigation into this matter in May 2003, as soon as she was aware that there were concerns over the relationship between Ms B and Mr A. It is disappointing to note that Ms B made significant errors of fact in her response to Ms C's investigation:

- Ms B stated to Ms C that she did not want contact with or about Mr A while she was on holiday. Her contact with Mr A by email during this period is inconsistent with this statement.
- Ms B stated to Ms C that "by the time she left for [holiday], [Mr A's] crush was becoming more apparent from [his] emails". No email has been provided to me that indicates such feelings on the part of Mr A. Ms B stated that she believed that totally ignoring Mr A would be counter productive, in that he would become angry, yet she emailed him on 27 March requesting him to contact her, "take care and send some mail soon (it's been too long)", when he had not sent her an email since 19 March.
- Ms B stated to Ms C that she sent an email birthday card to Mr A to relieve the "angst" that was present in his emails to her while she was on holiday. There is no "angst" in any email sent by Mr A to Ms B during her time away, and the only email that could be interpreted as seeking contact was Ms B's own email of 27 March 2003.
- Ms C concluded from information received from Ms B that she had "significantly" reduced her emails to Mr A by March 2003. However, I have been provided with 11 emails from the period 23 April to 29 April 2003 which had not been made

available to Ms C, and Ms B has agreed that more emails were sent. In response to the provisional opinion, Ms B stated that she had stopped MSN contact with Mr A when she went on leave in mid-March, with only one “accidental” contact on 29 April. However, in Appendix 6 of the internal investigation, Ms B estimated her MSN contact to have been “approx 75 times” in the period from 11 to 29 April. Ms B was the author of Appendix 6 of the internal investigation report, and provided it for the purposes of the investigation of Mr A’s complaint, and so should have been aware of these facts. In light of the time difference between when Ms B estimated her usage in May 2003 and her recollection now, I believe that it is more likely than not that she continued to converse with Mr A using MSN Chat, albeit at a reduced rate, after her return from holiday. Nevertheless, even though Ms B may have reduced MSN Chat contact, she continued with email correspondence.

- Ms B stated that her email correspondence with Mr A was not covert. However, her manager, Ms C, and her colleague, Ms F, were both unaware of any contact. Ms F discounted the possibility of email contact between Mr A and Ms B when asked by Ms C in March 2003. I accept that Ms D and Ms E were aware of the contact.
- Ms B wrote in Mr A’s clinical record on 30 April that she discussed him with her manager. This is inaccurate, as Ms C was not informed until 1 May, and was not aware of the email and MSN Chat contact until 5 May. At the time of writing her report, Ms C was unaware that the meeting on 30 April was at Ms B’s behest.

Mr A still required the services of the rehabilitation service after May 2003. A critical factor in the provision of a therapeutic relationship is trust, and it was important for Mr A to believe that his concerns were properly investigated and appropriate conclusions reached. Mr A stated that he felt he was treated as “an obsessed, emotionally and mentally unstable psychiatric patient” in the aftermath of his meeting on 30 April with Ms B and his subsequent involvement in Ms C’s investigation.

Ms C made conclusions in her report based on inaccurate statements from Ms B, and it is therefore unsurprising that Mr A felt aggrieved by the process. Ms C was entitled to accuracy from Ms B. Ms C held Ms B in high professional regard, and believed what she was told by her.

Opinion: No Breach — The District Health Board

Vicarious liability

Under section 72(2) of the Health and Disability Commissioner Act 1994, employers are vicariously liable for any breaches of the Code by their employees. The District Health Board employed Ms B. Under section 72(5) of the Act it is a defence for an employing authority to prove that it took such steps as were reasonably practicable to prevent the employee from doing or omitting to take any action that breached the Code.

Ms C, when asked in November 2002 about the issue of staff from the Rehabilitation Unit contacting clients, was clear that it was permissible, but only if the correspondence involved only work-related issues and that the contact was not relationship building. As Mr A was passed this information by Ms B, it appears that they understood Ms C's instructions at the time. Ms C relied on Ms B, as an experienced and trusted professional, to act as instructed. Instead, she stepped across the boundary that Ms C had drawn. It would have been preferable for the instruction to have been minuted, but I believe that it was clear. Had the instruction been adhered to, matters would not have progressed as they did. Accordingly, the District Health Board is not vicariously liable for Ms B's breach of the Code.

Subsequent events

In response to the provisional opinion, Ms B stated:

“I would like to begin by acknowledging that I have made serious errors in my practice by engaging with the client with inappropriate professional boundaries when as a health practitioner I was responsible for maintaining the therapeutic alliance. Furthermore, I did not seek early supervision once I found the situation had gone beyond my experience. While at all times my prime objective was [Mr A's] best interests in line with developing his prospects and increasing his confidence, I accept that these errors have led to a high degree of distress for [Mr A] and I am truly sorry that what I now understand to be inappropriate behaviour has caused this harm. I wish to explicitly [acknowledge] that I am not proud of, nor wish to shirk responsibility for what has occurred. In particular, I accept the following:

- I recognise that I did not keep clear professional boundaries within the interpersonal relationship I had with [Mr A] and that this made him vulnerable to developing strong feelings for me. My actions sent a mixed message: stating that professional boundaries existed but acting in contradiction by disclosing personal information, engaging with computer media in my own time and which was open to unclear interpretation. By this I made myself available to [Mr A] on a level of friendship outside of the boundaries required from me as his occupational therapist.

- I accept that I wrongly allowed internet communications to develop past my manager's stipulation for work related activities only.
- Furthermore it is unacceptable, and I deeply regret, that I did not seek help from more experienced professionals at an earlier stage — once I became uncomfortable and afraid within the relationship dynamic as a result of [Mr A's] angry outbursts concerning other clients and health professionals, and later his expressed feelings towards me. I recognise in hindsight that this stemmed from a fear of impeding the client's progress, and also being punished by others and the client. Had I sought supervision sooner, I would have been better able to identify the critical issues present and adjust my practice which would have ensured [Mr A] received a safe service.
- It was unprofessional that I did not keep a record of the purpose and content of all the communications I had with [Mr A] within clinical notes, or discuss the manner in which I was working more extensively with my senior colleagues.
- I am disappointed that I allowed the fear I felt about being under investigation from initiating and putting into greater perspective as much information as possible in the early stages of the [District Health Board] investigation which likely would have resulted in a more accurate judgement of my practice and greater sense of justice for [Mr A] being done early on. ...

I have had to learn an exceptionally hard lesson as a result of this experience and the resulting harm caused for [Mr A] and his evident distress. The resultant complaints process, now approaching its 3rd year, are far too heavy a cost imposed on both [Mr A] and myself, for not swallowing one's pride and fears and making better use of other's senior experience that surrounds me in my workplace. I will never make this error again. I am now vigilant about maintaining scrupulous professional boundaries with clients, and treat this as a key focus area, as well as ongoing supervision in my current role.”

Ms C stated, in a letter to my Office dated 22 January 2005:

“[Ms B] is an exceptionally skilled and dedicated occupational therapist, and hard working staff member who made an error of judgement in relation to maintaining clear professional boundaries with [Mr A], which was compounded over the ensuing months by not seeking supervision about the issue. I see this as an aberration during a time of considerable personal stress, and not a mistake she will ever repeat. [Ms B] is highly regarded and professionally esteemed.

My perception, as [Ms B's] manager, is that she has integrated the vast consequences of her actions into her personal self reflection and professional practice. ... [Ms B] accepts that she has breached [the Code]. I do not believe that further disciplinary action would further impress on her the considerable lessons she has already learnt.”

Actions taken

- Following the Internal Investigation, Ms B was required to undertake further training in relation to boundary issues, to move to a different unit within the rehabilitation service, and to work under supervision.
 - Ms B has provided a written apology to Mr A.
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Recommendation

- I recommend that the District Health Board develop and implement a policy and/or guidelines related to internet contact between staff and clients.
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Follow-up actions

- This matter will be referred to the Director of Proceedings in accordance with section 45(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 Occupational Therapy Board of New Zealand.
 - A copy of this report, with details identifying the parties removed, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes, upon completion of the Director of Proceedings' processes.
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Addendum

The Director of Proceedings issued proceedings before the Health Practitioners Disciplinary Tribunal, and at a hearing on 13 December 2005 a charge of professional misconduct was upheld. The Tribunal determined that Ms B requires assistance in identifying and maintaining professional boundaries, and ordered that should Ms B recommence practice, she must consult with a nominated professional approved by the Occupational Therapy Board, and comply with any instructions or training given on boundary identification and maintenance. The Tribunal also ordered Ms B to contribute \$15,000 towards the costs of the hearing and prosecution.
