Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

A Decision by the Deputy Health and Disability Commissioner

(Case 23HDC00633)

Introduction

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

2. The report discusses the care provided to Ms A by a mental health and addiction service (the service) and a support worker, Ms B, in 2021 and 2022.

3. On 13 March 2023, this Office received a complaint from Ms A via the Nationwide Health and Disability Advocacy Service raising concerns regarding:

- Ms B's ethical boundaries and breach of trust when she engaged in a personal relationship with Ms A's ex-partner, Mr C.
- Ms B breaching Ms A's privacy as allegedly Ms B disclosed information to Mr C during their relationship.
- Investigation standards of the service when Ms A initially raised her complaint with it directly.

4. The following issues were identified for investigation:

- *Whether Ms B provided Ms A with an appropriate standard of care in 2021 and 2022.*
- *Whether the service provided Ms A with an appropriate standard of care in 2021 and 2022.*

5. As part of the investigation, information was received from Ms A, the service, and Ms B.

Background

Support worker services

6. In her complaint, Ms A advised that she received support from the service's support worker, Ms B, for approximately two years.

7. The service provides support to people affected by mental distress or addiction, and their whānau.

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

8. Ms A first engaged with the service whilst experiencing significant anxiety that was impacting her life and, as such, she required support with her children and managing at home.

9. On 6 May 2021, Ms B documented having made an introductory telephone call to Ms A. Ms B noted in the clinical records that during this telephone call she was a listening ear for Ms A.

10. Between the introductory telephone call on 6 May 2021 and Ms A's discharge from the service on 23 December 2022, Ms B documented regular communications with Ms A in the clinical records. Each entry detailed what was discussed, plans or actions going forward, and whether they communicated by telephone, text message, or face to face.

11. Throughout the entries in the clinical records, Ms B regularly referred to herself as being a listening ear for Ms A, as Ms A was experiencing anxiety and insomnia, and issues with her children and her personal relationships.

12. Ms B documented the discussions she and Ms A had about the children, including problems with truancy from school, and involvement with Oranga Tamariki.[1]

13. In July 2021 Ms B documented attending the family home to support Ms A to make a routine chart for the children to encourage healthy eating, showering, chores, and exercise during the school holidays.

14. Ms B documented that Ms A requested her attendance at Child, Adolescent and Family Service (CAFS) meetings to support the family, to which she obliged. On multiple occasions Ms B documented contacting and making referrals to other agencies to provide additional support for Ms A and her family. Ms B also provided information to Ms A for funding when she had a high electricity bill.

15. Ms A's clinical records contain copies of the recorded decisions, recommendations, and plans put in place at Oranga Tamariki Family Group Conferences. These conferences were held for the youngest two children, and it is noted that Ms B attended for whānau support.

16. In her complaint, Ms A advised that Ms B had become aware that in May 2021 Mr C had been asked to leave the family home due to drug use.

17. On multiple occasions Ms B recorded in the clinical records discussions she and Ms A had about her ex-partners, including:

- On 18 October 2021 — '[Ms A] received a phone call from the bank because [Ms A's] ex-partner was behind in his mortgage & [Ms A] is still on the mortgage at the bank.'
- On 21 March 2022 — '[Ms A] has been stressed because of a breakup with an on/off relationship. [Ms A] got a trespass order.'

[1] Oranga Tamariki is a government department in New Zealand responsible for the wellbeing of children, specifically children at risk of harm, youth offenders, and children of the State.

- 17 August 2022 — '[Ms A] was upset because of an incident with her ex-partner last night. [Ms A] spoke to Police earlier this morning. The Police have advised [Ms A] [to] contact Woman's refuge and get a protection order. The Police will serve ex-partner with a trespass notice.'
- 10 October 2022 — '[Ms A] also has a new lawyer to start legal proceedings taking her name off house, with ex-partner.'

18. The last documented entries in Ms A's records by Ms B were about text messages she received from Ms A on 23 December 2022 asking to be discharged from the service. The entries state:

- 'Received a text from [Ms A]. [Ms A] requested to be discharged, after hearing information about me from her ex-boyfriend ([Mr C]). [Ms A] requested her notes. I suggested [Ms A] (in text) apply under the privacy act for her information, I will discharge [Ms A] and let my supervisor know.'
- 'Received a text from [Ms A] asking to be discharged from [the service]. I confirmed request.'

Relationship and disclosure of personal information

19. On 23 December 2022 (the same date as discharging herself from the service) Ms A lodged a complaint with the service about an inappropriate relationship between her support worker, Ms B, and her ex-partner, Mr C.

20. The complaint detailed Ms A's version of the care Ms B provided as her support worker and detailed the numerous difficulties Ms B had supported her with, including her break-up with Mr C.

21. In the complaint, Ms A recalled a meeting with Ms B that took place on 21 December 2022. At the meeting, Ms A had confided to Ms B that she could not afford Christmas presents for her children that year, and that she had agreed to go on a date with another man.

22. In her complaint, Ms A advised that immediately after this meeting she was visited by Mr C, who gave her children $20 each and said he wanted them to have something for Christmas and accused her of 'having another man'.

23. As Ms B was the only person Ms A had confided in about her money worries relating to Christmas and a date with another man, she became suspicious of a relationship between Mr C and Ms B.

24. In her response to the provisional opinion, Ms B denied that she had disclosed any of what she discussed with Ms A to Mr C, as they had not been in contact for five months prior to Christmas. However, Ms B accepted the appearance of the communication from Ms A's perspective. Ms A explained in her complaint that later that same day, Mr C confessed to her that he and Ms B had known each other previously, and that Ms B had begun to contact him after he had moved out of the home he and Ms A had shared.

25. After becoming aware of the relationship between Ms B and Mr C, Ms A sent a text message asking Ms B to discharge her from her care, followed up with a message to be discharged from the service entirely, as detailed above.

26. In response to Ms A's complaint, the service undertook an investigation.

27. On 1 February 2023, the service wrote to Ms A with details of its investigation and interim decision and invited her to comment prior to the conclusion of the investigation.

28. The interim decision letter from the service advised that its investigation had established that Ms B and Mr C had had a 'brief association' between June and July of 2022, and that Ms B had advised that since the relationship had ended in July 2022, there had been no further contact between her and Mr C.

29. The service accepted that Ms B's association with Mr C ended at that point and there was no further contact. The service stated in the interim investigation letter to Ms A: '[I]t was entirely unacceptable for [Ms B] to continue in a therapeutic relationship with you whilst having sexual relations with [Mr C].'

30. The service also included in the interim decision details of the meeting with Ms B and her lawyer in which she had acknowledged the relationship between herself and Mr C. However, Ms B advised that she does not believe she passed any information about Ms A to Mr C intentionally or unintentionally, which the service accepted.

31. The service also advised that Ms B resigned during the investigation.

32. The interim decision included the following apologies for Ms A on behalf of the service and Ms B:

> '[The service] wishes to offer its profound apologies to you over what happened. You should never have been placed in this position, and we understand entirely your sense of betrayal.
>
> [Ms B] has also asked me to convey to you her sincere apologies for her failure to end the therapeutic relationship with you. At the time she felt she could manage the situation professionally, but she now realises that this was a mistake, and she should not have continued as your support worker once her association with [Mr C] began.'

33. In her response to the service's interim decision, Ms A advised that during the six months prior to finding out about the relationship between Ms B and Mr C, she had been well, was feeling positive, and was putting things in place towards a better future for herself and her children. This had included drafting a business plan, which she had shared with Ms B.

34. Ms A also provided further details of her and Mr C's five-year relationship, including that she had asked him to move out of their shared home due to alleged drug use. Ms A advised that she had told Ms B about this situation when it occurred.

35. Ms A alleged that it was at this time, after hearing of their breakup, that Ms B sought out Mr C for a relationship by posing as someone else on an online dating app.

36. In response to the provisional opinion, Ms B denied that she sought out Mr C on a dating app after hearing of his and Ms A's break-up.

37. Ms A explained that despite difficulties in their relationship and no longer living together, she and Mr C had continued to be in contact and to support each other. This stopped after December 2022, when she found out about Ms B and Mr C's relationship.

38. Ms A reiterated in her response to the service's interim decision that she was concerned that Ms B had shared information with Mr C during his and Ms B's relationship. Ms A explained that this was evident by Mr C acting differently or saying things specific to an issue with which Ms B had been supporting her. For example, Ms A stated:

> 'Over the last few years there were times I had wondered if she [Ms B] was sharing information. [Mr C] would message something to do with whatever [Ms B] and I had been discussing, he knew who was visiting me, he asked me if I wanted to borrow his car once after I had sold mine. I hadn't told him yet that id sold my car, he [Mr C] had already told me not too.'

39. Ms A said that since finding out about the relationship, her confidence has been destroyed, she is depressed and angry, her anxiety is bad, and she struggles to leave the house, and on four occasions she has contemplated taking her own life. She stated: '[A] bad support worker was worse than no support worker.'

40. In the final decision letter to Ms A, the service advised:

> '[O]ur investigation has established that [Ms B] clearly had a conflict of interest in acting as your support worker at the same time as having a romantic involvement with your ex-partner between June and July 2022. There is no doubt in my mind that [Ms B] should have declared this conflict from the outset and immediately discontinued her working relationship with you. As you know, and as result, [Ms B] has resigned her employment with us.
>
> You have also alleged that [Ms B] passed your personal information on to your ex-partner. I want to be clear that I take this allegation very seriously and understand that if this did take place it would amount to a very deep (and further) breach of trust. However, I can only make a decision based on the information that is available to me and, at present, there is no firm evidence to verify this claim. In the absence of such evidence, I am afraid I cannot conclude that your privacy has been breached in the way you believe it was.
>
> We again offer our sincere apologies and sympathies for the hurt and offence this situation has caused you. What happened to you was unacceptable, and we take that very seriously.'

41. On 23 June 2023, Ms B and the service were notified of the investigation being undertaken by HDC. The service provided a detailed response, including:

> '[B]y continuing to offer care to [Ms A] after she had formed a personal relationship with [Mr C], [Ms B] seriously breached appropriate ethical and professional boundaries. She also breached both [Ms A's] and [the service's] trust.'

42. Ms B provided a response to specific questions posed by this Office in relation to her employment at the service. She also acknowledged that the relationship had occurred and advised:

> 'My understanding, with regards to professional obligations & professional boundaries is for the protection of clients. I should have referred [Ms A] to another support worker, as soon as I became involved with [Mr C].
>
> I did not inform my employer or any other employee at the service, of having sexual relations with [Mr C] at the time.
>
> When I considered transferring [Ms A] to another support worker, all contact with [Mr C] had permanently ended.
>
> I was aware [Mr C] was [Ms A's] ex-partner. In the short time I was involved with [Mr C], neither [Mr C] nor I EVER mentioned or discussed [Ms A]. I never shared [Ms A's] personal information, including her finances, or dating other people.'

The service's communication with Ms A during complaint investigation process

43. As advised, the service undertook an investigation after becoming aware of Ms B and Mr C's relationship through receiving Ms A's complaint.

44. The complaint was received and acknowledged on 23 December 2022 by the Chief Executive (CEO) of the service. The CEO advised that the office was closed for the summer break and therefore, Ms A's complaint would be investigated in the New Year.

45. Throughout the service's investigation period, 16 January 2023 to 1 February 2023, the CEO kept Ms A up to date with the investigation when information was being gathered and meetings were being held in relation to the complaint.

46. On conclusion of the internal investigation, the CEO wrote to Ms A on 1 February 2023 with the service's interim decision and an offer for her to comment on the decision.

47. Upon receipt of Ms A's comments, the service reiterated its findings and finalised its decision to close the investigation. The service acknowledged Ms A's intention to lodge her complaint with the Health and Disability Commissioner and advised her that she could also lodge it with the Privacy Commissioner.

Responses to provisional opinion

48. Ms A was provided with an opportunity to respond to the 'introduction' and 'background' sections of the provisional opinion. Ms A reiterated the detrimental effect the relationship between Ms B and Mr C has had on her, including that since she made the complaint, other support agencies will not support her.

49. Ms B was provided with an opportunity to respond to the provisional opinion. Ms B acknowledged that entering into a relationship with Mr C was a 'very poor lack of judgement' and that she should not have continued to support Ms A when the relationship commenced. Ms B accepted that not disclosing the relationship to her employer was an error in judgement.

50. Ms B also clarified that where it is noted in the provisional opinion that she recorded multiple discussions in Ms A's clinical records about an ex-partner, these were not all in relation to Mr C.

51. Ms B accepted the proposed recommendations and confirmed that these would be completed and responded to within the expected timeframes.

52. The service was provided with an opportunity to respond to the provisional opinion. The service accepted the proposed recommendations, acknowledged that an anonymised version of this report would be published on HDC's website, and apologised further for the impact this incident has had on Ms A and her family.

Opinion: Ms B — breach

53. Under Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), Ms A had a right to receive services that complied with legal, professional, ethical, and other relevant standards.

54. Relevant standards at the time of these events included the Nga Paerewa Health and disability services standard[2] (NZS 8134:2021), which states:

> 'Standard 1.4 I am treated with respect: My services shall be provided in a manner that respects my dignity, privacy, confidentiality.
>
> Standard 1.5 I am protected from abuse.
>
> Standard 1.5.4 Health care and support workers shall maintain professional boundaries with me and refrain from acts or behaviours that could negatively impact on my wellbeing.'

[2] Ms B's actions were assessed against the 2021 version of the standards. The 2008 standards were in force when Ms B commenced working for the service, but the 2021 standards came into force in June 2021 (one month after Ms B commenced supporting Ms A).

55. The service also had its own Code of Conduct and Integrity Policy, which identifies potential conflicts of interest and how they should be managed if they arise, most notably:

> '• Disclose in writing any actual or apparent conflicts of interest which may impact on your work performance.
>
> • This includes any perceived or actual conflicts within your private life.'

56. The Code of Conduct and Integrity Policy also states:

> '[F]or those disciplines and/or employees that have no specific [professional] code or protocols there is an expectation that employees will still act in a highly professional and ethical manner.'
>
> 'Avoid situations where your behaviour could reflect badly on the service or impact on your workplace. As a general principle, personal behaviour outside of work is no concern of the service except where it interferes with your work performance or reflects poorly on the standing or integrity of the service or your profession or trade.'

57. The service advised HDC that Ms B had graduated with a level 6 Diploma in Mental Health Support Work and had approximately 10 years' experience in the profession. Throughout her employment at the service, Ms B had been made aware of the internal policies and procedures relating to Health Codes, Conduct, Confidentiality, and Conflicts and had participated in team meetings regarding policy updates.

58. The service said that Ms B commenced work with Ms A in this capacity in May 2021. On 23 December 2022 Ms A asked to be discharged from the service after becoming aware of a personal relationship between her ex-partner, Mr C, and her support worker, Ms B. On this same date, Ms A made a complaint directly to the service about the alleged relationship.

59. As part of the service's investigation, it met with Ms B and her lawyer. At this meeting, Ms B acknowledged that a relationship between herself and Mr C had occurred throughout June and July of 2022, and that she should have ended her professional relationship with Ms A when the personal relationship started. Also at this meeting, Ms B offered her resignation from her employment with the service, which it accepted and considered appropriate given the serious breach that had occurred.

60. In her response to this Office, Ms B again acknowledged her relationship with Mr C and said that she was aware that he was Ms A's ex-partner, and that when she considered transferring Ms A to another support worker, all contact with Mr C had ended permanently.

61. At the meeting with the service and in her response to this Office, Ms B denied sharing personal information about Ms A with Mr C, either intentionally or unintentionally.

62. I acknowledge that Ms B has admitted the relationship between herself and Mr C and the inappropriateness of it. However, I remain unconvinced that Ms B has an awareness of the gravity of the situation and the impact this type of breach of trust could have on a vulnerable client.

63. This is evidenced by the lack of personal apology to Ms A and the emphasis Ms B has placed on the relationship with Mr C having lasted only a short time.

64. Ms A was a vulnerable client, of which Ms B was well aware when she pursued a relationship with Mr C. The detrimental effect of the relationship between Ms B and Mr C on Ms A's mental wellbeing is apparent in Ms A's response to the service following its interim decision. Ms B was also aware of the vulnerabilities of Ms A's children, and the potential impact Ms A's wellbeing had on their welfare.

65. Throughout her role as a support worker for Ms A, Ms B had been privy to the issues between Ms A and Mr C, including him being asked to leave the family home for alleged drug use, making him potentially vulnerable. Regardless of this, and using this information, Ms B knowingly entered into a relationship with him.

66. I have been unable to conclude with certainty whether Ms B disclosed personal information to Mr C, either intentionally or unintentionally, to which she was privy in her role as support worker for Ms A. I acknowledge Ms A's version of events, particularly the events surrounding Christmas and presents for her children, and I would be critical of Ms B if she did disclose this and other information to Mr C.

67. However, I can conclude with certainty that Ms B used information gained from her sessions with Ms A in respect of the initiation of the relationship itself. Ms B knowingly entered into a sexual relationship with Ms A's ex-partner, Mr C, and she did not adhere to the fundamental ethical standards of a support worker in New Zealand, as detailed above. In doing this, she breached the trust of her client, Ms A, who Ms B knew was vulnerable. Ms B used this information for personal gain, and I consider that this action was reasonably foreseeable as something that would affect Ms A's wellbeing and did not respect her dignity. In my view, the impact on Ms A's wellbeing could have extended to the welfare and wellbeing of her children.

68. Compounding this was Ms B's decision to continue to support Ms A throughout her relationship with Mr C and not disclose it to her employer, contrary to the explicit instruction within the guidance in the service's Code of Conduct and Integrity Policy, and not to make appropriate arrangements for Ms A's care to be transferred to another support worker. This, along with the training and orientation given by the service on its policies and procedures, and her knowledge gained through obtaining a Level 6 Diploma in Mental Health studies, suggests to me that Ms B should have known that what she was doing was wrong.

69. Therefore, as Ms B knowingly engaged in a relationship with a vulnerable client's recent ex-partner and failed to disclose the relationship or end the professional one with Ms A, Ms B failed to comply with ethical standards and the standards required by her employer. Accordingly, I find that Ms B breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code).

Opinion: Mental health and addiction service — no breach

70. At the time of the events, the service had policies and procedures in place that appropriately guided support workers on the expectations required of them in terms of conflicts of interest and how best to manage them, and protection of the patient's private information.

71. The service advised that during Ms B's employment she undertook orientation and internal and external professional supervision and was made aware of the internal policies and procedures relating to Health Codes, Conduct, Confidentiality, and Conflicts. Ms B also participated in team meetings regarding policy updates and was engaged in other short-term professional development, such as Family Drug Service training, Child Protection, Suicide, and Information Sharing. The service described Ms B as a senior member of its service and said that it had no reason to suspect that she would breach its trust in this way because of her seniority and knowledge.

72. In 2022 Ms B knowingly entered into a relationship with her client's ex-partner whilst employed by the service. Accordingly, the service is an employing authority for the purposes of the Act. As set out above, I have found that Ms B breached Right 4(2) of the Code.

73. I note in the information outlined above that the service had an explicit Code of Conduct, of which Ms B was aware, and to which she chose not to adhere. It was also reasonable for the service to expect that Ms B, with ten years of work experience and a Level 6 Diploma in Mental Health studies, would be aware of the importance of maintaining appropriate professional boundaries in her practice. I am satisfied that the service took such steps as were reasonably practicable to prevent this act from occurring.

74. On review of information provided by the service, I have no concerns about the way in which the matter was investigated. I consider that Ms A was kept updated and informed appropriately as the investigation of her complaint progressed. Until her resignation, Ms B was also involved with the investigation appropriately and was held responsible for her failure to comply with the service's internal policies and procedures.

75. I note that the service advised HDC that further professional boundaries training would be provided to staff. With this proactive approach, I trust that the service will continue to remind its staff of their requirements to maintain professional boundaries in adherence with my recommendations below.

Changes made since events

76. Following the incident, the service revisited its training. The service remains confident in its systems, but has undertaken the following:

a) Provided staff with refresher training on confidentiality, privacy, and conflicts of interest.

b) Made changes to its Code of Conduct to be more explicit about what can be considered a conflict of interest and how best to manage a situation if staff are unsure of whether it poses an ethical issue.

c) Updated its Privacy Consent form to include confirmation that the client consents to receive the service's services.

Recommendations

77. I recommend that Ms B:

a) Provide Ms A with a personally written apology for her actions and the impact of this on Ms A as a vulnerable client, and the changes she has made to her practice since the incident occurred. This should be provided to HDC, for forwarding, within three weeks of the date of this opinion.

b) Enter into a mentoring relationship with a senior colleague for at least one year. The mentor is to provide confirmation to HDC that mentoring has occurred, and that Ms B appears to be maintaining appropriate professional boundaries with patients and their families.

78. I recommend that the mental health and addiction service:

a) Use an anonymised version of this case for the wider education of the support worker workforce. This should be in the form of a case study presentation detailing the actions and decisions of the support worker and the results of these actions and decisions, and the appropriate course that should have been taken to arrive at a more desired outcome. Evidence confirming the content and delivery of the presentation should be provided to HDC within six months of the date of this report.

b) Consider formalising the complaint investigation process to ensure that those involved in future investigations have an understanding of what they can expect from the investigation process and how it is conducted. Evidence confirming that this has been completed should be provided to HDC within six months of the date of this report.

c) Review its Code of Conduct and Integrity Policy with a view to providing guidance on maintenance of appropriate boundaries with clients and their whānau. Evidence confirming that this review has taken place and any changes made as a result should be provided to HDC within six months of the date of this report.

Follow-up actions

79. Due to the serious boundary violations of a vulnerable client and her ex-partner and children, who were equally vulnerable, and the lack of insight into the impact of these breaches of trust, Ms B will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.

80. 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.