Caregiver, Mr H

Disability Services Provider

A Report by the

Deputy Health and Disability Commissioner

(Case 06HDC15791)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Complainant/Human Resource & Marketing Manager, Disability Services Provider
Mr B	Consumer
Mr C	Counsellor/Mr B's advocate
Ms D	Mr B's mother
Ms E	Mr B's girlfriend
Mrs E	Ms E's mother
Ms F	Chief Executive, Disability Services Provider
Ms G	Manager, Disability Support
Mr H	Provider/Caregiver, Disability Support
Disability Services Provider	Disability Services Provider
Disability Support	Disability support for independent living

Complaint

On 29 September 2006 the Commissioner received a complaint from Ms A on behalf of a Disability Services Provider about the services provided by an employee caregiver, Mr H, to one of its clients, Mr B. An investigation was commenced on 28 November 2006.

On 26 February 2007, after more information was obtained (and the complaint was referred to the Police), the terms of reference for the investigation were amended by removing the reference to "June 2006". The following issues were identified for investigation:

Mr H

- *The adequacy and appropriateness of the care provided by home care assistant Mr H to Mr B.*
- *The appropriateness of Mr H's actions when he learned that Mr B had made a complaint against him.*

Disability Services Provider

- *The appropriateness of the care provided by the Disability Services Provider to Mr B.*

Information reviewed

The following information was reviewed:

- reports from Mr C
- interview with Ms E and Mrs E
- interviews with Ms A, Ms G and Ms F
- interviews with Mr B and Ms D
- a photograph of an alleged sex game
- Mr B's psychology report dated 10 October 2005
- Mr B's care and safety plan of Disability Support dated [April] 2006 (see Appendix One)
- Mr H's complaint against Mr B dated 16 August 2006
- documentation from Disability Services Provider's investigation:
  - incident/complaint report dated 22 August 2006
  - letter to Mr H dated 23 August 2006
  - minutes of investigation meeting dated 25 August 2006
  - statement of Mr H dated 25 August 2006
  - response letter from Mr H dated 27 August 2006
  - request for meeting with Mr H dated 28 August 2006
  - letter of dismissal to Mr H dated 30 August 2006
  - response of Mr H dated 30 August 2006
  - responses of Disability Services Provider re personal grievance dated 2 and 6 September 2006
  - agreement to Labour Department meeting signed as received on 12 September 2006
- documentation from the Disability Services Provider:
  - position description dated May 2003, updated May 2004
  - person specification dated June 2003
  - individual employment agreement signed by Mr H on 21 June 2005
  - notification to Mr C of Mr H's dismissal, dated 31 August 2006
- policies from the Disability Services Provider issued 1 January 2006:
  - Harassment in the Workplace
  - Orientation and Induction
  - Professional Ethics

Information gathered during investigation

Background
Mr B was diagnosed with a chromosome disorder by amniocentesis[1] prior to his birth in 1988. This disorder has contributed to Mr B's difficulties with expressive language, fatigue and low self-esteem. He has also experienced a number of developmental, emotional and learning difficulties throughout his life.

On 10 October 2005 Mr B, then aged 16 years, was assessed at a university Psychology Clinic by an Intern Clinical Psychologist under the supervision of her clinical tutor, a Senior Clinical Psychologist. The assessment included a statement on his neuropsychological functioning:

> "In general, [Mr B] has difficulty with expressive language and comprehension. These stumbling blocks have negatively impacted his overall profile. The assessment revealed that in general, [Mr B's] intellectual ability lies in the Mild Mental Retardation range, reflected also by his adaptive functioning. Results of this assessment estimate [Mr B's] equivalent age to be 10 years."

Mr B's mother, Ms D, explained that his chromosome disorder is categorised within the "autistic spectrum disorder range"; Mr B appears normal but he has poor social skills, low self-esteem and poor learning ability.

Ms D said that throughout Mr B's life, he had been excluded by his peers. In his younger years, children soon realised that he was different and would exclude him from their games. He is often lonely and, although he makes friends easily, cannot maintain friendships. She said that her son is likely to do anything anyone asks of him to keep their friendship. He acts spontaneously and cannot think through the consequences of his actions. He also suffers from depression. He has attempted suicide twice and has used alcohol and marijuana to help cope with his low self-esteem, loneliness and depression.

Ms D said that her son has not been appointed a legal guardian. Ms D does not hold power of attorney for him but she has always been involved in all aspects of his life.

Mr B's friends / support
For about 18 months Mr B has regularly attended a church on Sunday, Tuesday, Wednesday and Friday nights. Mr B said that the church is not a conventional church — it is a place for "people [who] don't really fit into another church". He said that "some of [the people who attend] are weak and vulnerable like I was". Mr B has played the drums for about two years and joined a rock group of five other parishioners at the church.

[1] Investigation performed on amniotic fluid prior to birth to detect chromosomal abnormalities.

Mr H also regularly attended the church. Mr B described Mr H as his "mate" and someone he thought he could trust.

Mr B receives support from a professional counsellor, Mr C, employed by a counselling service. Mr C visited Mr B regularly, and recorded their meetings. Ms D said that her son trusted Mr C, and communicated openly with him, often discussing things he would not discuss with others, including herself.

Mr B had a girlfriend, Ms E, aged 16 years, whom he met through a mutual friend. Ms E lived in another area and most of their communication was through text messaging.

Independent living
In April 2006, Ms D secured a tenancy agreement on Mr B's behalf and he moved into a flat. Previously he had lived with his mother, who had taken care of him. Mr B said that he liked living alone because he could do what he wanted and did not worry about anything. However, sometimes he did get lonely and bored.

Mr B did not have the home-care skills he needed to live independently and, to help him learn these skills, he was assisted by three caregivers employed by Disability Support, a service provided by the Disability Services Provider. Disability Support assessed Mr B as needing two hours of caregiver support a day.

Disability Support prepared a care plan for Mr B. Mr B's care and safety plan dated April 2006 was provided to all staff who were rostered with Mr B (see Appendix One). The staff were orientated to the plan prior to working with him. The care plan explained that Mr B has a mild intellectual disability and "difficulty with appropriate social skills, which makes him very vulnerable to the point where he can be taken advantage of". The plan set out the requirements for home help and other identified areas of need, such as personal cares and communication. The plan includes help with washing, cooking, shopping, budgeting and medication. Mr B said that his caregivers were supposed to teach him how to make a shopping list, take him shopping, supervise him while he cooked meals for himself, and teach him how to tidy and clean the flat so that he could gain the confidence he needed to live independently.

Disability Services Provider
The Disability Services Provider provides the following services:

- primary health
- public health promotion
- mental health services
- family health services

- disability support for independent living
- home ownership education programme
- addiction services

Mr H's employment by the Disability Services Provider
On 11 March 2005, Mr H signed his employment agreement with the Disability Services Provider, which included a position description (updated May 2004) (see Appendix Two). The Disability Services Provider conducted mandatory police screening of Mr H before employing him. On 13 June 2005, he commenced work at the Disability Services Provider, and was employed for 16 hours each week. Mr H was required to provide nurturing support to his clients to achieve rehabilitation and/or independence outcomes through the provision of home care, house management and personal care.

On 11 June 2006, Mr H was appointed one of Mr B's caregivers. Mr B knew Mr H from church and, when Mr B became aware that Mr H was a caregiver at Disability Support, he asked management to assign Mr H as one of his caregivers. Mr H stated that he had been a caregiver for only about one and a half years, and had no experience with giving care to a friend or acquaintance.

Staff employment and training
One of the services the Disability Services Provider provides is disability support for independent living (Disability Support). Ms F, Chief Executive, Disability Services Provider, reported that recruiting and retaining suitable staff for their disabled clients is a constant challenge. Caregivers are not well paid and maintaining their interests when there is no money for education or personal development provides little job satisfaction or incentive for them to stay. The Disability Services Provider advertises for caregiver staff from time to time, but most simply come in to the office and ask for a job. Ms F said that caring for disabled people is much more than simply keeping watch over them. It involves teaching them the skills they need to live independently, within the bounds of their impairment.

The Disability Services Provider provides two induction/orientation programmes for new staff. The first is an organisation-wide induction programme for all staff, while orientation to the disability service is done "on the job".

The current manager at Disability Support, Ms G, explained that service orientation takes place on an individual basis. The first task is "matching" the caregiver and the client. However, Mr B asked for Mr H to be assigned as his caregiver.

Ms G said that she was a caregiver at the time Mr H was employed by the Disability Services Provider. The former Team Leader oriented Mr H to Mr B's care plan. Ms G and Mr B were in attendance. The former Team leader confirmed that she oriented caregivers to their new clients and that this had included Mr H and Mr B. Ms G also confirmed that Mr H

was appropriately instructed by the previous manager on how to build and manage professional boundaries.

Sex games

Mr B

Although Mr H began working at the Disability Services Provider in June 2005 it was not until June 2006 that he was assigned as caregiver to Mr B. Mr B recalled that soon after Mr H became his caregiver, he started to act and talk inappropriately. Mr B said that Mr H did not assist him with cares. Most of the time Mr H would walk into the flat, check the fridge or cupboards, and then want to play games. They usually played Monopoly or card games. Mr H began to bring Mr B presents such as cigarettes, a mobile phone card and sweets.

Mr B said that one day when they were coming home from shopping, Mr H started talking about what he would like to do to two young girls who they had seen walking home from school. The dialogue and his gestures were sexually explicit. Mr B said that Mr H asked him to get the girls' telephone number because he knew their brother. Mr B refused to do so.

Mr B said that Mr H began to use sexually explicit language and actions, such as exposing himself and masturbating in Mr B's presence. He asked Mr B to touch his penis, and offered him money if he participated in sexual acts. On one occasion, Mr H asked Mr B for oral sex. Mr H told Mr B that it was "alright" because it was only a game. According to Mr B, all the incidents occurred when Mr H was working in his official capacity as his caregiver.

Mr B and Ms E

In June 2006, Ms E travelled to see Mr B, intending to stay with him for about three weeks. Soon after she arrived at Mr B's flat, she was introduced to Mr H. She said that she was uncertain what Mr H was meant to do and he and Mr B just seemed to sit around talking or playing games, or they would go to church.

Ms E said that soon after she arrived, Mr H started acting improperly. He would pull down her blouse, to expose and fondle her breasts and buttocks. Mr B also said that Mr H "kept touching her breasts and her butt". He also called her a "slut". She told Mr B she found this upsetting and he told her not to be silly, it was only a game.

Ms E said that one day, about two weeks after she arrived, she came into the lounge room where Mr B and Mr H were talking and laughing. They asked her if she would like to play a game. She thought that they meant some type of card game, but it turned out to be a "dare game". The idea was that whoever lost the game had to complete a "dare" set by one of the others. At first the dares were "silly" such as walking around the room acting like a chicken or standing in the corner staring at the wall. But soon the dares became sexual in nature, led by Mr H. For example, on one occasion Mr H lost and he was dared "to stick a pen up his butt". Mr H went into the bathroom and when he came out he pulled his pants down to

reveal a pen in his anus. After another loss, Mr B and Mr H hit their penises on the room's gas heater while singing "Baa Baa Black Sheep", a dare suggested by Mr H. Ms E said that she left the room telling them that this was "getting stupid". When she returned she told them she would not "do this stupid stuff".

Initially the men agreed, but the games soon became sexual again. When Ms E lost, she said that she had to skip around the room leading Mr H by his exposed penis. On another occasion, she said that she had to perform oral sex as he pushed her head down onto his penis. Ms E said that she was unable to say "no" because the last time she said "no", she had been beaten up by another man and feared that it would happen again. Mr B said that they played the games every time Mr H came around to the flat, particularly when Ms E was staying with him.

Mr B took photographs and videos of the games on his cell phone. Mr B was able to supply only one photograph for this investigation. It is a picture of two people — a male and a female. The female appears to be holding something at the level of the man's trouser zip with her right hand. Both people are facing the camera. Ms E confirmed that she is the girl in the picture. Mr H has not seen the photograph but acknowledged participating in the game and knew that Mr B was taking his photo. Mr B identified the photograph and confirmed that the people were Ms E and Mr H, and that he (Mr B) had taken the photograph. He said that it is a photograph of Ms E leading Mr H around the room holding his exposed penis.

Ms E said that Mr B did not seem frightened or scared. He and Mr H seemed like good friends. Mr B seemed to prefer Mr H's company. They spent a lot of time together. While they were playing the sex games, Mr B was egging on Mr H to play more. Mr B also made up some of the "dares".

Ms E said that one of the men suggested having sex with her, but she did not agree. She telephoned her mother at the time, but did not tell her mother what was happening. Ms E said that it did not help that they continued to call her a "slut" and accused her of making them do it.

Mr B reported that Mr H would walk into his flat at any time. One day he came in while Mr B and Ms E were having sex, and Mr H asked her to perform oral sex. Ms E denied having sex with Mr B or Mr H.

Mr B told the Commissioner about the events that led to this investigation:

> "He said to [Ms E] that day cos [Mr H] won or something, I reckon he used to cheat, … but he wanted her to lead him around the room by his [penis] so I just quickly took a photo when he wasn't really looking and there was one where he said that he would say something … or tell everyone else that if she didn't do something and she had to take her clothes off and get on the floor with her knees … and sing a song like

> blah-a, I don't know this fire truck thing or something and … he made her suck his [penis]."

Mr B said that Mr H told them it was "alright, it's just a dare game and everyone does it".

Mr B did not tell anyone about Mr H's behaviour for several months after the events because he was afraid. He said that Mr H knew that a gang had beaten him previously and Mr H had threatened to contact them.

Mr H believed that Mr B was the cause of him losing his job with the Disability Services Provider. Mr B said that Mr H:

> "went around church one-by-one and told everyone that I was a liar and … watch out and I made him lose his job and this rubbish … and then for a while there I wasn't really feeling comfortable because people thought I was a liar … every new friend I make there he goes and talks to them and tells them all this crap and then they don't want to know me."

Mr B has not been able to live alone in his flat because of fear of Mr H.

Mr H

Mr H was reluctant to provide any information during the course of this investigation, referring to a breach of his mediation settlement with the Disability Services Provider. However, he did provide statements to the Disability Services Provider. Mr H said that Mr B was "lying" and stated:

> "The allegations made against me are entirely false. They have been made because it has been decided that I can't go around to [Mr B's] house and take him out. For the last 3–4 months since I have been [Mr B's] caregiver, I have been doing 20 to 30 extra hours (for free) over and above my normal shifts. [Mr B] has been texting me most days to keep him company. I would take him to [church] most days and out for coffee's, fishing etc. I did this because he didn't seem to have any other options (few friends, lonely etc).
>
> This is what makes these allegations sad and disappointing. I would definitely describe what I have been doing as CARE giving.
>
> [Mr B] is hurt and lashing out because after an abusive and almost violent incident it was decided at the office after I complained ([Ms G] has details) to limit my visits to working (shift) hours.
>
> Over the time I have been with [Mr B] he has become more abusive and violent (potential) (lurching at me, things of that nature). These would be set off by almost nothing. A card move, a move in a monopoly game, day-to-day things. He would

then comment about his childhood, how he was treated etc. I would then in a sense become his abuser (over a monopoly move) I was called a dickhead, an abuser, a user, a cunt etc. ([Mr C], who [the team leader] works with has witnessed this).

The only thing I can think of that may have brought this on, is that about two weeks after I became [Mr B's] caregiver I played a truth or dare game with him and his girlfriend.

This did not occur during work hours. I repeat I was not working. [Mr B] texted me on a Friday or Saturday night. I went round and we all played a game in which we dared the other people to do things.

This was suggested by his girlfriend (I think) and was agreed on by all parties concerned. It was a childish, funny, silly game. Every one did the dares (many each) everyone was laughing, enjoying it etc. [Mr B] did take pictures on his phone of some of this. (May be using them now).

The dares included:

1. Play a song on a gas heater with penis (me) ba ba black sheep I think!!!
2. Be lead around the room by his girlfriends hand (me)
3. His girlfriend take her top off etc, etc, etc

[Mr B] and his girlfriend did things a bit further on than this — many, many things willingly. I did NOT have sex with his girlfriend.

The next day everything was fine and I [met] them in town (I was texted again!).

Two days later [Mr B] had a big fight with his girlfriend *(Note: This is not [Mr B's] current girlfriend. This girl went back [home] about a week later) because she said she wanted an open relationship (not to do with me). [Mr B] was not keen on this. I came around to do a shift and walked in on the fight. [Mr B's] girlfriend turned on ME!!! (for no reason) and said I had abused her (lies) and mentioned the game we played, leaving out the details of all of us playing it willingly!!! And all doing the dares etc.

[Mr B's] girlfriend rang [Mr B's] mum and her mum and said these things. [Mr B's] mum came around. [Mr B] then stood up for me and told his mother that "it was just a game, he didn't do anything" and "he wasn't working (me that is). [Mr B's] mum heard all this, listened to [Mr B] not his girlfriend and left it at that. ([Mr B's] mum is a witness to the time this happened). Now 3 to 4 months later we have these allegations.

> In the last 3 months (however long it is since this occurred) nothing else has happened of any sort of this kind (dare game) AT ALL.
>
> I have 50 witnesses (over this time period since this happened) from [church], including a Pastor (legal witness) who have seen me interact with [Mr B] almost every day at the [church]. Also every Sunday morning and Sunday night. They will say that we were friends, laughing, joking around, playing music. He would also sit with me and by me every Sunday.
>
> The claims that [Mr B] are making, totally are not consistent with his behaviour over the last 3–4 months since this one harmless silly little fun "game" occurred right up to last Sunday 20 August 2006.
>
> I repeat:
>
> I have at least 50 people who will witness to this. His friendship with me, texting me, etc over this time period.
>
> This is not the behaviour of someone who claims they have been physically and verbally threatened (not to tell) and abused[2], IS IT!!!!"

Mr H acknowledged that he, Mr B and Ms E participated in what he described as harmless sex games such as "spin the bottle" and that he suggested some of the dares. It was a Friday or Saturday night, out-of-work hours, and everyone who participated in the game — Mr B, Ms E and himself — all consented and "engaged in it themselves". He told the Disability Services Provider's investigating team that "he had not breached any laws or standards because they were all consenting adults and that it did not take place during work time". In his view he was having "harmless fun with a 24 year old and his girlfriend".

Mr H denied that he threatened Mr B or suggested that he would get "the bash" from a gang if he told anyone about Mr H's behaviour.

Ms D

Ms D said that she put her son in a flat on his own to learn to live independently. He is vulnerable and needed to learn about life and to stand up for himself. She did not like Mr H but did not want to interfere, and her son did not tell her what was happening.

Ms D said that she received a telephone call, but she cannot remember who called her or the date of the call. The caller asked her to go around to her son's flat because Ms E and Mr B were very upset. She stated:

[2] Mr B had been abused both sexually and physically in the past and was particularly vulnerable to threats of harm, which aroused unpleasant memories of these abuses.

> "I went around [Ms E] was sitting outside sort of just down on the cold concrete crying her eyes out. I went inside [Mr H] was also there. I tried to get to the bottom of what had been happening why [Ms E] was so upset. I couldn't, I thought it was an issue between her and [Mr B] but [Mr H's] attitude worried me very much and when I spoke with him, he again I can't remember the exact things he said but he was very rude to me and I informed him he had no right to be speaking to me in that manner, he said 'I am not calling you those things'. I said I don't care, I don't want that language. He left. …
>
> Whether he was calling me a slut or that type of thing, as I say I am not 100 percent sure now … I feared [Mr B] was so wound up he was threatening to take his life. And um [Ms E] didn't want to stay there so I said well that's fine you can come back with me but I couldn't have brought [Ms E] back that night without bringing [Mr B] too or obviously what would he do. So they both came back here, things were … quiet, feed them and got everybody to bed early and we put [Ms E] on the bus the next day to go home but I still wasn't aware of what had been going on."

From Ms D's recollection, Ms E stayed with Mr B for about ten days.

Ms D said that Mr B's reluctance to tell anyone "about it earlier would be very much based on his fear of retaliation and also not wanting to go through all that again".

Mrs E

Mrs E said that she did not know anything about her daughter's experience at Mr B's place. She received a telephone call from Ms D telling her that something inappropriate had happened to Mr B and Ms E, but did not know the full extent until the Disability Services Provider's investigation.

Complaints to the Disability Services Provider

On 16 August 2006, Mr H made a complaint to Ms G, Manager, Disability Support, about Mr B taking up too much of his time. Mr B was sending text messages and telephoning Mr H continuously, and coming to his home. He said that Mr B was also becoming more aggressive and abusive, and acting out his anger.

Ms G advised Mr H "that he needed to set boundaries" and that he was an employee of Disability Support. She advised Mr H that he needed to make Mr B understand the difference between work hours and his "own personal time". She offered to relieve Mr H of his responsibilities and appoint another caregiver for Mr B. She said Mr H replied that "he would see how things would go once he set the boundaries down to [Mr B]." She told Mr H that she would alert Mr C of the complaint.

At 3.15pm that afternoon, Mr H telephoned Ms G to inform her that Mr B had come to his home to apologise for his behaviour. She again reminded Mr H about professional boundaries and advised him to stay focused only on the work relationship.

On 17 August 2006, Ms G telephoned Mr C to tell him about Mr H's complaint. She arranged to meet Mr C and Mr B on 22 August.

On 22 August, Mr C went to Mr B's flat to take him to the meeting. Mr B told Mr C that Mr H had initiated some inappropriate sexual behaviour. Mr B said that he was unable to say anything earlier because Mr H had threatened to set a gang on him. Mr B said that Mr H knew about his previous encounter with the gang.

The meeting was conducted as planned. The original intention was to discuss Mr H's concerns about Mr B's behaviour. However, following Mr B's allegations about Mr H to Mr C prior to the meeting, Ms G recorded the following:

> "[Mr B] had come in with his counsellor [Mr C] to lodge a complaint against his staff member [Mr H].
>
> [Mr B] has reported that [Mr H] has been acting inappropriately whilst he has been on duty in a working capacity with [Mr B].
>
> [Mr H] has been exposing himself and pulling his penis out while he has been supporting [Mr B]. He has also been saying that he wishes his penis could be sucked. [Mr B] has left the room and when he comes back [Mr H] has just finished masturbating himself.
>
> [Mr B] also says that [Mr H] touches his ([Mr B's]) girlfriend inappropriately by touching her buttocks and playfully smacking her on the buttocks. [Mr H] dared her to lead him around by his penis which [Mr B's] girlfriend did. When [Mr B] saw what was happening he took a picture on his PXT telephone which is dated the 17 June 2006 @ 4.20pm. This picture has been sighted by myself and is still on [Mr B's] phone. When I asked [Mr B] why he waited for two months before he reported anything his reply was that [Mr H] was threatening to hit him or saying things then going or else.
>
> When [Mr H] supports him now [Mr H] is telling him what to do and is not asking for any input from [Mr B] anymore. [Mr B] is being told that we will do this and that either take it or leave it. [Mr B] feels that [Mr H] is using his disability to his advantage.
>
> [Mr H] is always winding [Mr B] up and if he doesn't get his own way then he raises his voice and overpowers him mentally.

> He is always talking in a sexual way and made inappropriate sexual suggestions in regards to two young schoolgirls. He wanted [Mr B] to ask one of them for their phone number but [Mr B] said no, that he knew the girl's older [brother] and she would give him a hiding.
>
> [Mr B] still highlighted the fact that he didn't share this information earlier as he felt threatened by [Mr H] and what he would do to him. Just recently he shared this information with the second staff member that he has and that staff member advised him to talk to [his Counsellor] from [the counselling service].
>
> [Mr B] would like [Mr H] removed from his house immediately but is afraid of the ramifications of the information that [Mr H] knows about his illness and his past associations.
>
> [Mr B] thinks he should be fired?
>
> I spoke to [Mr B] about the seriousness of these allegations and apologised on behalf of our services and that I had a procedure to follow. The first thing would be to remove [Mr H] from the house pending this investigation. Then I would get this report typed and ready to be signed off by both [Mr B] and [Mr C] that this statement is true and correct. Then I would confer with our Human Resources Manager.
>
> [Mr B] is quite happy for this process to take place."

An incident/complaint report was also completed on 22 August 2006.

The Disability Services Provider's investigation

On receiving Mr B's statement about Mr H, the Disability Services Provider commenced an investigation. On 23 August 2006, it advised Mr H:

> "Tena koe [Mr H]
>
> **Re: client complaint — serious complaint**
>
> The purpose of this letter is to let you know that some very serious allegations have been made about you by one of your clients [Mr B]. I have decided that these allegations will be investigated.
>
> The allegations are as follows:
>
> 1. That you have made indecent sexual comments to the client;
> 2. That you have indecently exposed yourself to the client and the client's partner;
> 3. That you have engaged in indecent sexual activity with the client's partner;

4. That you have threatened the client with physical and verbal abuse if he spoke to anybody about these alleged actions.

These are very serious allegations and therefore a full investigation will be conducted.

I request an urgent meeting to inform you further of the details of the complaint and to obtain your response to the allegations.

I would like to meet you urgently on Friday 25 August 2006 at 4pm. I strongly encourage you to bring along legal representation and whanau support to this meeting with you. You will be given every opportunity to put your side forward and whatever you say will be given due consideration before any decisions are made."

On 25 August 2006, the investigating team met with Mr H. His response to the Disability Services Provider enquiry stated:

"The allegations made against me are entirely false. They have been made because it has been decided that I can't go around to [Mr B's] house and take him out."

When asked about the sex games, Mr H told the Disability Services Provider that he thought Ms E had suggested the game. The games did not occur during work hours but on Friday or Saturday night.

On 25 August 2006 Mr B also attended a meeting with the Disability Services Provider. The meeting recorded:

"Present: [Mr B], [Ms D] and [Ms G]

[Mr B] came in with his mother [Ms D] very stressed and emotional. He reported that when he went to [church] today and [Mr H] was there, [Mr H] hit him up about why this investigation is happening and why [Mr B] is lying about him. [Mr H] said to stop f***in bull shitting or he would get [someone] to give him the bash.

He, [Mr H] was saying wait till you come on Sunday, wait till you see [friend] when he grins at [Mr B]. He informs [Mr B] that he has plenty of witnesses at the church and for [Mr B] to watch his back.

[Mr B] feels he can no longer go to [church] because of the threats that [Mr H] is making towards him and threatening that he will get the [gang] onto him.

[Mr B's] mother said that [Mr B] has been down this road before where he was abused by the [gang] [in another area] and went through a very stressful period hence

> their movement to [a new area]. So threats in any form or other in relation to the [gang] is a stark reminder of the trauma that he suffered by them.
>
> [Mr B] feels that [Mr H] is taking advantage of his disability.
>
> [Mr B's] mother has advised him to take out a trespass order against [Mr H] so that he doesn't go near [Mr B's] home. But she said it is up to [Mr B] to make the final decision as part of this integration into supported independent living. [Mr B] has decided to take this option and will pick some forms up from the police station.
>
> At this point of the meeting [Mr B] becomes very emotional and stressed and is very afraid to go back to his flat because of the threats that have been made by [Mr H]."

In his response to the final meeting, on 30 August 2006, Mr H said that he knew Mr B had the intellectual capacity of a ten-year-old boy, but did not have the "mental, emotional, personality of a 10 year old". He said that Mr B told him he was 24 years old. The Disability Services Provider and Ms D told Mr H that Mr B had an intellectual disability; apart from that he was "relatively normal". Mr H knew what Mr B's job was, and was "not a job for a 10 year old". He said that he had not been "taking advantage of a 10 year old".

On 30 August 2006, the Disability Services Provider dismissed Mr H for serious misconduct.

Code of Health and Disability Services Consumers' Rights

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

RIGHT 2
Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

RIGHT 3
Right to Dignity and Independence

Every consumer has the right to have services provided in a manner that respects the dignity and independence of the individual.

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.

Other relevant standards

Disability Services Provider
The Disability Services Provider's philosophy is based on the values and beliefs of Maori. The relevant policies are outlined below:

> "**HE TANGATA**
>
> **PROFESSIONAL ETHICS POLICY**
>
> ...
>
> **Principles**
>
> - Every human being has unique value
> - Every individual has the right of self fulfilment and development of their potential
> - The Professional workers of [the Disability Services Provider] have the responsibility to give objective and disciplined knowledge and skill to aid Hapu/Iwi development and the resolution of conflicts and their consequences.
>
> **Standards of Ethical Conduct (Practice & Behaviour)**
>
> …
>
> - Look for the good in each person
> - Be respectful of each person
>
> …
>
> **Relative to Clients**
>
> - Maintain the client's right to a relationship of mutual trust, to privacy and confidentially and to the responsible use of information …
> - Recognise and respect the individual goals, responsibilities and differences of clients. Within the boundaries of [the Disability Services Provider], the professional services shall assist clients to take responsibility for personal actions and to help all clients with equal willingness. Where the professional

services cannot be provided the clients shall be so informed in such a way to leave clients free to act.

- Help clients to understand that your professional relationship with them is based on enabling them to find ways of achieving their goals, desires and interests, now and in the future.

…

Unprofessional Behaviour

Deliberate misconduct against standards set could mean disciplinary action or dismissal from the Organisation.

This includes:

…

- Violating the dignity of individuals and/or groups;
- Failure to meet the requirements of an Employment Agreement."

Opinion

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

Breach — Mr H

Introduction
Mr B was a consumer of a disability service provided by a Disability Services Provider and its employee caregiver, Mr H. Mr B has the right to services that comply with the Code of Health and Disability Services Consumers' Rights (the Code). The Disability Services Provider and Mr H are bound by the Code.

Under the Code, Mr B has the right to be free from harassment and sexual exploitation (Right 2) and the right to services provided in a manner that respects his dignity and independence (Right 3). Mr B also has the right to services that comply with professional, ethical and other relevant standards (Right 4(2)).

The Disability Services Provider's Professional Ethics Policy sets out the ethical conduct expected of its employees. Mr H's ethical obligation to Mr B in accordance with this policy includes:

- "Be respectful of each person"; and
- "Maintain the client's right to a relationship of mutual trust, to privacy and confidentially and to the responsible use of information."

Sexual exploitation
Mr H admitted that he played a truth or dare game with Mr B and Ms E in which he engaged in indecent acts of a sexual nature. In Mr H's view, this behaviour was not inappropriate. He said that it did not occur during work hours, all parties agreed to participate, and he thinks that Ms E suggested it. In this setting, Mr H considered himself Mr B's friend rather than his caregiver, and the sex games were simply a matter of three adults having some innocent fun.

Many of the allegations made by Mr B and Ms E are disputed or remain unconfirmed. For example, Mr B said that Mr H had been behaving in a sexually explicit way almost from the time he became his caregiver. According to Mr B, Mr H gave him "presents" including

cigarettes, sweets and a mobile phone card. It could be that these were signs of grooming.[3] Mr B claimed that Mr H performed sexually explicit acts in front of him for Mr H's gratification. Ms E and Mr H have refused to provide any further information for the investigation, and I am unable to substantiate the additional claims. Likewise, I am unable to establish on balance whether in fact Mr H threatened Mr B with violence if he told anyone about him. On balance, I am inclined to believe Mr B's version of events given that Mr B has not returned to independent living, and has had difficulty returning to church. It is clear that, as a result of Mr H's relationship with Mr B, he became fearful and felt threatened by Mr H.

Mr H used the caregiver–client relationship as an opportunity to sexually exploit Mr B. A power imbalance existed between Mr H, as a caregiver, and his client, Mr B. Mr B was in a vulnerable position, particularly as he has an intellectual impairment, which is reflected by his adaptive functioning, and his need for friendship. Instead of setting the boundaries between his professional and social relationships with Mr B, Mr H took full advantage of Mr B's vulnerability, knowing of Mr B's impairment.

A caregiver who violates the boundaries of the caregiver–client relationship exploits the client. The client is dependent on the caregiver to honour his or her professional fiduciary[4] obligations to meet the client's needs before his or her own. In this case, the relationship was based upon the trust and confidence of Mr B, the vulnerable client, in the caregiver, Mr H, to support and promote Mr B's independence. I am satisfied that there was a fiduciary relationship between Mr H and Mr B.

In Opinion 03HDC06499, the Commissioner stated:

> "Exploitation occurs where a person in a fiduciary relationship … takes advantage of another for his or her own ends. It is irrelevant to a finding of exploitation whether the person to whom a fiduciary duty is owed is a willing participant."

It is clear that Mr H used his position to achieve his own sexual gratification, on at least one occasion. Mr H's statements that Mr B participated in the games willingly, and that the games occurred "after hours" and were not part of his caregiver role do not wash. Mr H has stated that he was working 20–30 extra hours above his normal shift for 3-4 months. It is clear that Mr H viewed all the time he spent with Mr B as "work" time.

[3] Grooming is when a person tries to "set up" and "prepare" another person to be the victim of sexual abuse. Although not all sexual abuse is preceded by grooming, it is a very common and deceitful process, which can be used by strangers or by those known to the victim.

[4] The relationship between a health practitioner and his or her patient has been likened to a fiduciary relationship. Mr H accepted Mr B into his care and had a duty to protect him from harm. Mr B has the intellectual ability of a 10-year-old boy, and had been sexually and physically abused in the past, making him particularly vulnerable to manipulation and exploitation.

In my opinion, Mr H exploited the professional relationship and violated his fiduciary obligations, and therefore breached Right 2 of the Code.

Mr H had an ethical duty to respect Mr B and maintain a relationship of mutual trust. This is supported by the ethical standards of conduct set out in the Disability Services Provider's *Professional Ethics Policy*, which Mr H was required to comply with. It was expected that Mr H would "be respectful of each person" and, in relation to his client, "maintain the client's right to a relationship of mutual trust". Mr H's care of Mr B failed to meet the ethical standards expected of him.

As a disability services care provider, Mr H was responsible for ensuring that an appropriate professional boundary existed between himself and Mr B. Mr H engaged in games of a sexual nature with his client, Mr B, during the course of their professional relationship. Therefore, Mr H breached fundamental ethical standards and Right 4(2) of the Code.

Independence
Mr H signed a contract with the Disability Services Provider to provide disability services to Mr B. Under its ethical principles, the Disability Services Provider recognises an individual's right of self–fulfilment and development of his or her potential. Mr H was required to support Mr B to achieve independence through the provision of home care, house management and personal care.

When Mr B moved into the flat, it was the first time he had not lived with, and been taken care of, by his mother. He needed support to learn how to care for himself and manage household chores. Mr B's care and safety plan detailed the level of support he needed. Mr H agreed to provide support for Mr B in developing skills of daily living, such as shopping for groceries, dealing with money, and preparing a meal. Mr B also needed to learn appropriate social and communication skills.

There is no evidence that Mr H fulfilled his employment obligations to support Mr B to attain independence. Mr B said that Mr H did not assist him with his cares. He would walk into the flat, check the fridge or cupboards, and they would play games. According to Ms E, while she was staying with Mr B, Mr H came to the flat every day and they would only play games or hang around at church. She did not know what he was supposed to do with Mr B.

Mr H's relationship with Mr B was to prove detrimental rather than beneficial, taking away whatever sense of independence Mr B may have gained. Mr B became reliant on Mr H, sending him frequent text messages and going to his home. Mr H's alleged threatening behaviour rekindled memories of past abuse for Mr B. He has not been able to return to live alone in his flat.

In my opinion, by failing to respect Mr B's dignity and failing to promote and support Mr B's independence, Mr H breached Right 3 of the Code.

No Breach — Disability Services Provider

Direct liability
The Disability Services Provider is bound by the Code. The Disability Services Provider is responsible for providing Mr B with a safe environment in which to develop his independence. The Disability Services Provider could be held directly liable for breaching the Code if found not to have provided such an environment.

Mr H was employed as a caregiver by the Disability Services Provider. Before employing Mr H, it conducted mandatory police screening, as it does with all its employees. The Disability Services Provider orientated Mr H to the organisation and to Mr B's particular needs as outlined in his care and safety plan. The evidence suggests that Mr H was appointed as Mr B's caregiver about 14 days before the events of 17 June 2006 took place.

On learning of Mr H's inappropriate actions, the Disability Services Provider took immediate steps to ensure Mr B's safety. It suspended Mr H and initiated a full inquiry into the allegations, which ultimately led to his dismissal. The Disability Services Provider also alerted me to its concerns about Mr H, should he seek to care for others in Mr B's situation. I am satisfied that the Disability Services Provider took reasonable actions in the circumstances and did not breach the Code.

Vicarious liability
In addition to any direct liability for a breach of the Code, employers may be vicariously liable under section 72(2) of the Health and Disability Commissioner Act 1994 for any breach of the Code by an employee. Under section 72(5), 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 do, that which breached the Code.

I have reviewed the standards of practice operating at the Disability Services Provider when it employed Mr H, which include definitions of acceptable and unacceptable behaviour. The Disability Services Provider has provided me with evidence that Mr H attended its orientation and that Mr H was informed about important issues such as maintaining professional boundaries.

I am satisfied that Mr H was appropriately orientated to the Disability Services Provider's philosophy and ethical values, and had access to other relevant policies. I have reviewed Mr B's detailed care and safety plan, and have been assured that Mr H knew what was expected of him in relation to Mr B. I am satisfied that Mr H was aware of professional boundaries and that his failure to follow accepted practice was a personal lack of

understanding. In my opinion, Mr H's inappropriate behaviour was not due to any omissions in his orientation, or lack of instruction about the Disability Services Provider's Professional Ethics Policy. Accordingly, Disability Services Provider is not vicariously liable for Mr H's breach of the Code.

Follow-up actions

- Mr H 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.
- 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.

Addendum

The Director of Proceedings considered the matter and issued proceedings before the Human Rights Review Tribunal. The defendant did not attend the hearing and the matter proceeded by way of formal proof.

The Tribunal made orders suppressing the names and identifying details of Mr B and Ms E. The Tribunal made a declaration that the caregiver's actions were in breach of Rights 1(1), 2, 3, and 4(3) of the Code. The Tribunal awarded $20,000 in compensatory damages and $10,000 in exemplary damages in respect of those breaches. The Tribunal also ordered the caregiver to pay $10,000 in costs.

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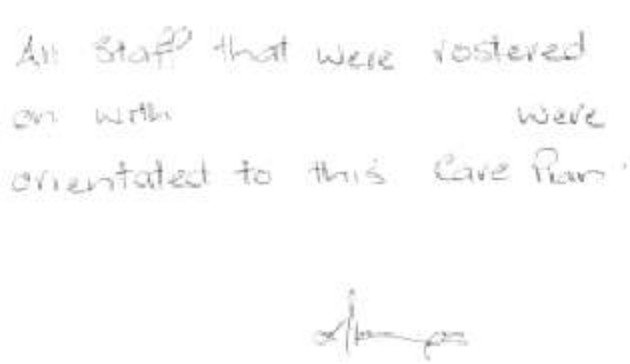
Appendix One


All Staff that were rostered
on with were
orientated to this Care Plan.

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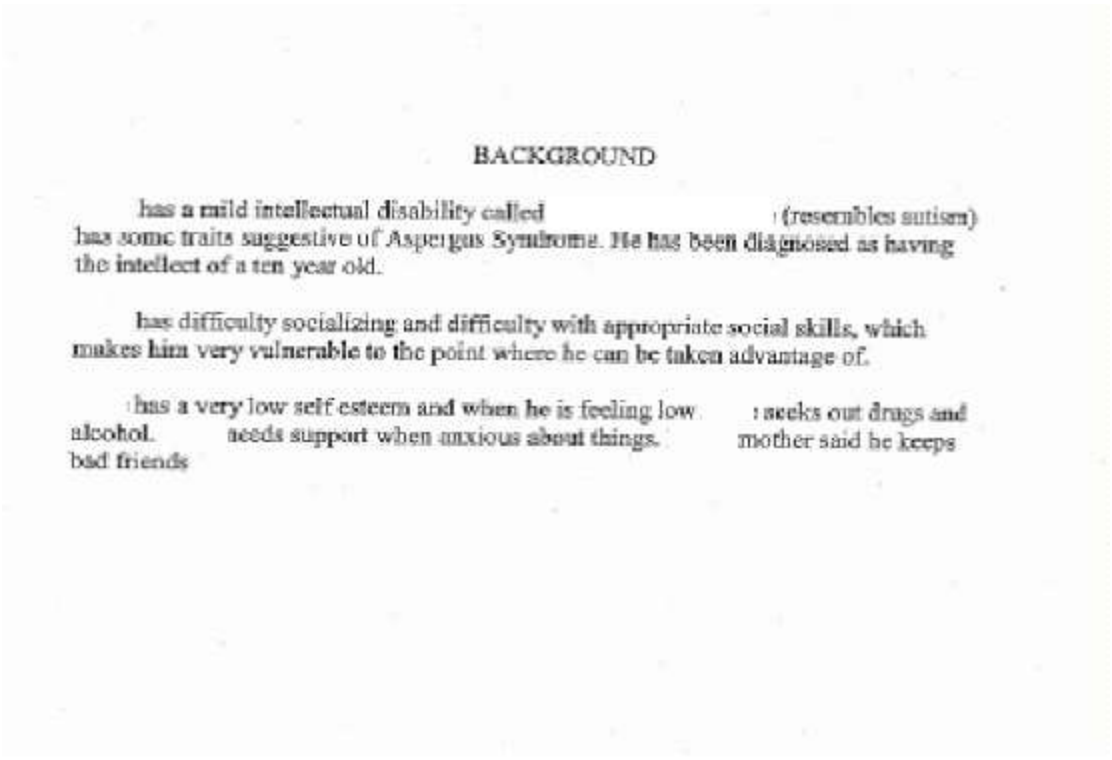

BACKGROUND

has a mild intellectual disability called (resembles autism) has some traits suggestive of Aspergus Syndrome. He has been diagnosed as having the intellect of a ten year old.

has difficulty socializing and difficulty with appropriate social skills, which makes him very vulnerable to the point where he can be taken advantage of.

has a very low self esteem and when he is feeling low seeks out drugs and alcohol. needs support when anxious about things. mother said he keeps bad friends

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HOME HELP

has no understanding of how to look after himself as all of his needs have been taken care of by his mother. He needs to adopt a routine to manage his flat.

WASHING

has never had to do his washing so would need prompting around the management of this.

COOKING

Again has no idea so would need to be supported. will probably be having 1x meal by nan and maybe 2x by his mum weekly, but with the possibility of having all his meals at his own home in the future. NEEDS TO BE ENCOURAGED TO MAKE A LUNCH FOR WHEN HE GOES TO WORK.

SHOPPING

Has no idea on how or why he needs to shop and could quite easily go without, needs full support and encouragement on how to plan his meals and how to shop with the meals in mind.

BUDGETING

Does not quite grasp the concept of this, but will be supported by his mother. His overheads will be automatically paid. What is left would need to cover his grocery shopping. Also smokes so that would have to be worked into his budget.

MEDICATION

has to be supported once a month to be taken to the Doctors to have his monthly injection. Otherwise does not have medication.

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CONFIDENTIAL
Presenting Areas of Need:

Budgeting

does not know how to budget or is aware of the concept.

He will need full support in this area to write up a budget and support to keep within it.

Support will be needed to familiarise with what needs to be paid and why and the consequences if not paid.

Shopping

Has no concept of how or why shopping for groceries is needed. Support is needed to learn to shop and writ grocery list.

oking

Unaware of how to cook a main meal or why it is needed. Support is needed around all aspects of meal planning, to prepare a meal, serve it and to do the dishes. Support is needed around Nutrition and all safety aspects when using the stove.

Homehelp

has had up until now the household chores done for him. Support is needed for a daily routine, to be shown how to do the tasks and prompting to begin and complete each task.

Personal Cares

Support daily to begin the tasks and complete them.

Health/Wellbeing

Daily monitoring needed and support x1 monthly to visit GP for injection which helps control mood swings.

Communication

needs to be given information in a manner that he can understand whether it be verbal or visual.

Information needs to be explained and support with retaining the information.

Instructions need to be given step by step and to be repeated.

can become distressed if not treated well and suffers from bouts of feeling low and lack of self esteem.

needs to have a buddy to talk things through with.

Learning needs to happen daily with repetition and reinforcing to learn and retain.

Able to use cellphone to text.

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CONFIDENTIAL

Planning

Support is needed with daily and weekly planning of living activities which will also include medical needs cultural and spiritual needs and social & leisure.

Social & Leisure

Support to extend social networks and to learn to keep self safe.

Emotional Wellbeing

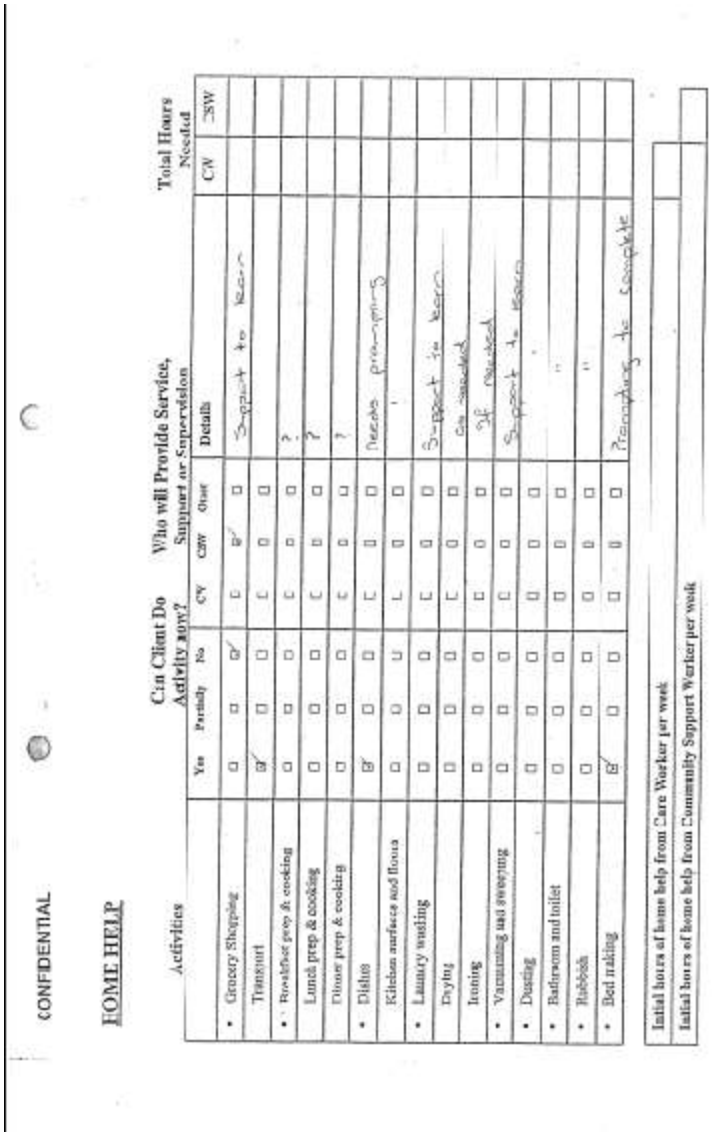
Visits with l x1 weekly from

Hands-on Daily Support

- 1 hour each am - .5 PC / .5 HH = 7 hours am
- 2 hours each pm - .5 PC x7 / 1.5 HH x7 = 14 hours pm
- 21 hours per week to meet the PC, HH, Meal Prep, Planning and Budgeting needs.
- .2 hours per week for grocery shopping CSW hours
- .5 hours per week to be banked for Dr. visit x1 monthly CSW hours
- .2 hours per week to extend social networks CSW hours.

Total – Personal Cares 7 hours. HH 14 hours. CSW 4.5 hours.

Total hours = 25.5 hours.



CONFIDENTIAL

HOME HELP

Activities	Can Client Do Activity now? Yes	Partly	No	Who will Provide Service, Support or Supervision CW	Other	Details	Total Hours Needed CW	SW
• Grocery Shopping	☐	☐	☑	☐	☑	Support to Mum		
Transport	☑	☐	☐	☐	☐	"		
• Breakfast prep & cooking	☐	☐	☐	☐	☐	?		
Lunch prep & cooking	☐	☐	☐	☐	☐	?		
Dinner prep & cooking	☐	☐	☐	☐	☐	?		
• Dishes	☑	☐	☐	☐	☐	Needs prompts		
Kitchen surfaces and floors	☐	☐	☐	☐	☐	"		
• Laundry washing	☐	☐	☐	☐	☐	Support to learn		
Drying	☐	☐	☐	☐	☐	to assist		
Ironing	☐	☐	☐	☐	☐	"		
• Vacuuming and sweeping	☐	☐	☐	☐	☐	Support to learn		
• Dusting	☐	☐	☐	☐	☐	"		
• Bathroom and toilet	☐	☐	☐	☐	☐	"		
• Rubbish	☐	☐	☐	☐	☐	"		
• Bed making	☑	☐	☐	☐	☐	Prompting to complete		
Initial hours of home help from Care Worker per week								
Initial hours of home help from Community Support Worker per week								

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CONFIDENTIAL

PERSONAL CARE:

Activities	Can Client Do Activity now*			Who will Provide Service, Support or Supervision			Total Hours Needed	
	Yes	Partially	No	CW	CSW	Other	Details	CW	CSW
• Bathing and Showering	☑	☐	☐	☐	☑	☐	Needs daily prompting		
Hair Care/Shampooing	☑	☐	☐	☐	☑	☐	"		
• Cell hygiene	☑	☐	☐	☐	☑	☐	"		
• Dressing	☑	☐	☐	☐	☑	☐	Support to make appropriate		
• Grooming	☑	☐	☐	☐	☑	☐	Prompting		
• Skin care	☐	☐	☐	☐	☑	☐	"		
• Toileting	☑	☐	☐	☐	☑	☐			
• Toileting n/a	☐	☐	☐	☐	☐	☐			
• Exercise n/a	☐	☐	☐	☐	☐	☐			
• Medication	☐	☐	☐	☐	☑	☐	Monthly visit to GP		
• Equipment maintenance n/a	☐	☐	☐	☐	☐	☐			
• Communication	☐	☑	☐	☐	☑	☐	Support to understand instructions		
• Planning and Organisation	☐	☐	☑	☐	☑	☐	Full Support		
• Managing Environment	☐	☐	☐	☐	☐	☐			
• Other	☐	☐	☐	☐	☐	☐			
Total hours of personal care from Care Worker per week									
Total hours of personal care from Community Support Worker per week									

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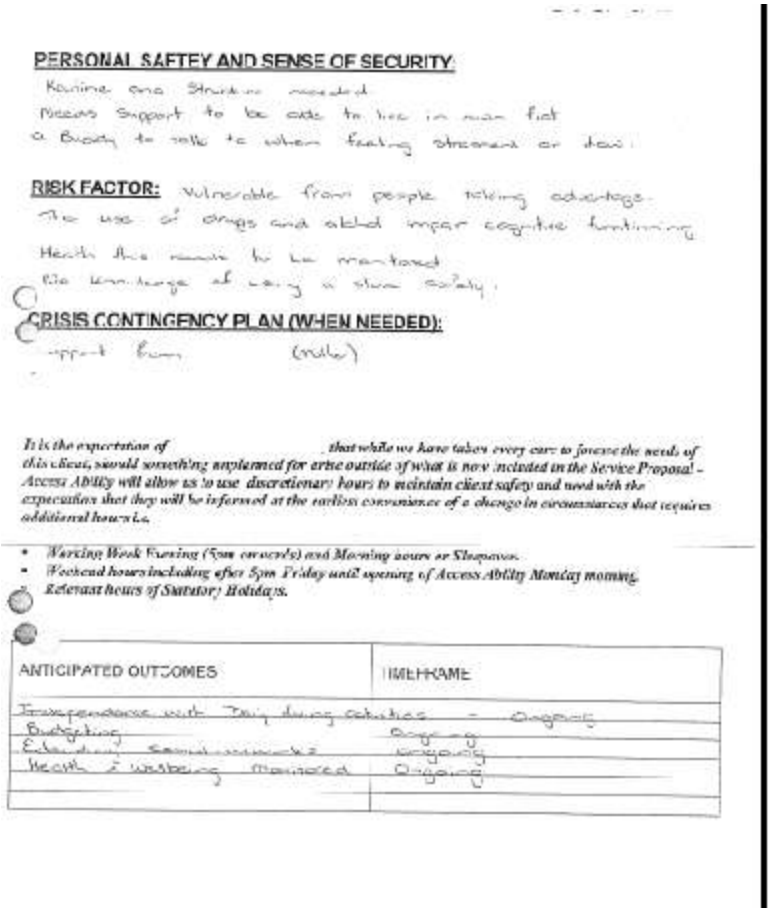

PERSONAL SAFTEY AND SENSE OF SECURITY:

Kevine one Strokes needed
Needs support to be able to live in own flat
a Buddy to talk to when feeling stressed or low.

RISK FACTOR: Vulnerable from people taking advantage.
The use of drugs and alchol impair cognitive functioning
Health Risk needs to be monitored
Risk teenage of being a slave society.

CRISIS CONTINGENCY PLAN (WHEN NEEDED):

support from (male)

It is the expectation of that while we have taken every care to foresee the needs of this client, should something unplanned for arise outside of what is now included in the Service Proposal – Access Ability will allow us to use discretionary hours to maintain client safety and need with the expectation that they will be informed at the earliest convenience of a change in circumstances that requires additional hours i.e.

- *Working Week Evening (5pm onwards) and Morning hours or Sleepover.*
- *Weekend hours including after 5pm Friday until opening of Access Ability Monday morning.*
- *Relevant hours of Statutory Holidays.*

ANTICIPATED OUTCOMES	TIMEFRAME
Independence with Daily living activities	Ongoing
Budgeting	Ongoing
Education seminars/courses	ongoing
Health & Wellbeing Monitored	Ongoing

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Appendix 2

KAIWHANGAI - CAREGIVER
Position Description

May 2003

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Position Description

Position: **Kaiwhangai - caregiver**

Employer:

Vision: To develop a health service that restores and maintains the Rangatiratanga of whānau, hapū and iwi and is based on tikanga in terms of values, attitudes and practices.

Hours of work: As outlined in employment agreement.

Primary purpose: To provide nurturing support to achieve rapid and durable rehabilitation and/or independence outcomes through the provision of:

- Home care
- House management
- Personal care

To support and promote the co-ordinate; development, implementation and review a person's lifestyle goals

Responsible to: Kaiwhakahaere
Toihau/Chief Executive Officer

Reporting to: Key Contact

Functional Relationship:

- Key contact person
- Key worker co-ordinator
- Any other such organisation or health/social personnel with a shared interest or direct interest in care and support of client

Key Worker 2 Updated May 2004

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Key Achievement Area	Key Task	Expected Outcome	Performance Indicator/measurement
Client support (House Management)	Liaison, organize and make appointments for the client in your care for treatment, advice and support purposes	Liaison support is provided. Appointments are made and kept on behalf of client	% of client in appropriate living arrangements
	Promote client responsibility and/or participation in domestic work, preparation of meals	Clients are active in their own care, encouraged toward independent living	Feedback from clients (regular evaluations) Regular reports from House meetings
	Efficient running of the household daily activities	Client households are coordinated and managed to a high standard.	Regular monthly reports and feedback from
(Personal Care)	Provide follow up support, and direction for ongoing personal care	Follow up support and direction provided.	In line with assessment review
	Provide mobility assistance to clients where applicable	Clients are assisted with mobility	Receive regular monthly reports from house meeting
	Provide assistance to clients for personal care such as bathing, dressing, feeding and toileting	High standard of personal care support provided	Client feedback (regular evaluation)

Key Worker

3

June 2

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Position Description

Key Achievement Area	Key Task	Expected Outcome	Performance Indicator/measurement
Administration (Information Management)	Maintain confidentiality of client information	Client confidentiality maintained at all times.	% of information stored correctly and accurately
	Participate and assis in the research, evaluation needs assessment undertaken by the	Participation and assistance provided in evaluations and other research as required.	% of participation and assistance provided in evaluations and other research as required.
	Keep accurate daily, weekly and monthly records, where required of all activities relating to the client	Accurate records are kept to a high standard	% of information stored correctly and accurately
	Participate in regular staff and house meetings	Staff and house meetings attended regularly	No. staff hui attended

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Position Description

Key Achievement Area	Key Task	Expected Outcome	Performance Indicator/measurement
3. Professional Development	Performance Appraisals completed every 12 months.	Annual appraisal completed	% of role outcomes achieve
	Participation in compulsory training in line with employment agreement, position description and annual performance appraisal.	Enhanced performance and development of skills in line with service development and relevant policy	% of all training in line with service development and relevant policy

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Position Description

PERSON SPECIFICATION

Essential:

- Commitment to the well being of tangata whenua in a whanau setting and families in the wider community
- Understanding and commitment to the vision and philosophies of
- Ability to communicate well with all clients of
- Ability to manage time effectively
- Ability to recognise urgent and stressful situations and respond appropriately
- A full drivers license – motor vehicle
- Current First Aid certificate

Desirable Qualities

- Demonstrate links with tribal district
- Practical experience of working and caring for Maori and non-Maori

Personal Attributes

- Honest
- Punctual
- Open minded attitude
- Able to deal with stress
- Good sense of humour
- Whanau / family orientated
- Facilitate conflict resolution

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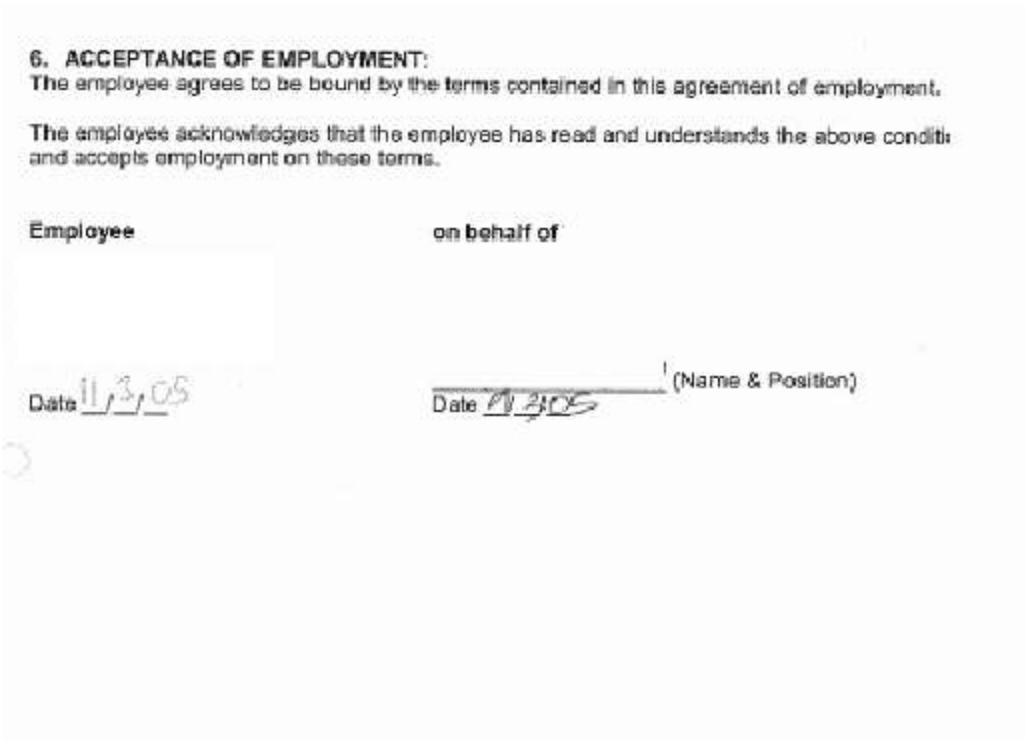

6. ACCEPTANCE OF EMPLOYMENT:
The employee agrees to be bound by the terms contained in this agreement of employment.

The employee acknowledges that the employee has read and understands the above conditi
and accepts employment on these terms.

Employee **on behalf of**

Date 11/3/05 Date 11/3/05 (Name & Position)

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7. FIRST SCHEDULE - PROBLEM RESOLUTION PROCESS

1. Employment Relationship Problems

Employment relationship problems include such things as personal grievances, disputes, claims of unpaid wages, and allowances of holiday pay.

1.1 Tell us First

If you think you have a problem in your employment, then you must let your manager know immediately, so we can try and resolve it with you then and there. If you don't feel you can approach your manager, you can go to another manager you feel comfortable with.

In some cases, there is a time limit on when you have to do this – see "Personal Grievances"

1.2 Mediation Services

If you don't feel happy with our response, then you can contact Mediation Services for free assistance this number is 0800 800 863. The mediator will try to help us resolve the problem, but won't make a decision as to who is right or wrong unless we both want this.

1.3 Employment Relations Authority

If your problem is still not resolved to your satisfaction, then you can apply to the Employment Relations Authority for assistance. This is a more formal step to take, and you might want to have someone representing you. The Authority member will investigate the problem, and will make a decision. These decisions can be appealed by either of us to the Employment Court and then to the Court of Appeal.

1.4 Representation

At any stage, you are entitled to have a representative working on your behalf, and we will work with you and that person to try to resolve the problem, we can also choose to have a representative working on our behalf.

1.5 Personal Grievances

If you feel that you have ground for raising a personal grievance with the organisation (for unjustifiable dismissal, unjustifiable disadvantage, discrimination, duress sexual or racial harassment), then you must do so within 90 days of the action occurring, or the grievance coming to your notice. Otherwise, your claim may be out of time.

You must raise any grievance with your manager so that we know what the grievance is about. You can either tell us, or put your grievance in writing. We can then respond to your claim.

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