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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042

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#### Complaint

The complainant complained about the care her niece, the consumer, received while in the care of a disability services provider. The consumer's mother supported the complaint. The complaint is as follows:

- *The consumer was placed in the care of foster parents by the provider in January 1997. The consumer returned home to her mother every second weekend and the consumer's mother became concerned because of a number of injuries to the consumer's body. These injuries included bruising, a black eye and a lump on her left temple.*
- *The consumer's mother complained about the injuries to the provider's Family Service Manager. Despite this complaint the consumer continued to be looked after by the foster parents.*
- *The consumer was brought home one weekend by the previous Manager of the provider's Family Service. The consumer's mother noticed the consumer was very blue around her mouth and seemed unwell. She mentioned this to the Family Service Manager who said that the foster parents had mentioned the consumer had had a cold that week. The consumer's mother immediately took the consumer to the doctor. The doctor diagnosed a serious chest infection and was concerned about the possibility of pneumonia. He advised that if the consumer's condition did not improve within 2-3 hours she might need to be hospitalised. He also commented that if the consumer had been receiving the antibiotics previously prescribed (the foster family should have been giving them to her) she would not have become so ill.*
- *During the next home leave the consumer's mother noticed more bruising on the consumer's body. Teeth marks were also evident. The consumer's mother contacted the provider's Family Service Manager and insisted the consumer be placed elsewhere. The consumer was then placed in another home.*
- *The complainant asked for a meeting with the provider's Family Service Manager and the provider's Area Manager to discuss her concerns about the consumer's care. The complainant says her questions were ignored by the provider's Area Manager who was arrogant and threatening and nothing was done about the consumer's placement.*

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### Report on Opinion - Case 97HDC5042, continued

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**Investigation** The complaint was received by the Commissioner on 26 March 1997 and an investigation undertaken. Information was obtained from:

The Consumer's Mother / Legal Guardian  
The Consumer's Aunt  
The Foster parents  
The Provider's Area Manager  
The Provider's Previous Family Service Manager  
The Provider's Family Service Manager  
The Provider's Chief Executive  
The Children, Young Persons and Their Families Service (CYPS)  
The New Zealand Police

Photographs showing bruising on the consumer's body which were taken during the period she was living with the foster parents were obtained and viewed.

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**Outcome of Investigation**

**History**

The consumer was born prematurely in November 1984. She has a severe intellectual disability and is epileptic. From birth she was cared for by her maternal grandmother and grandfather. Following her grandmother's death when the consumer was around 7 years old, the consumer continued to be cared for by her grandfather and other family members. However, the family found it increasingly difficult to cope with looking after the consumer, as she required constant care and attention. The family reluctantly decided that it was necessary to find the consumer full-time care outside of the family and they decided they would like the consumer to live in a particular city so she could be close to her mother and her grandfather.

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### Report on Opinion - Case 97HDC5042, continued

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**Outcome of  
Investigation,  
*continued***

**Placement**

There was some difficulty in finding a placement for the consumer. In 1996 assistance was sought from the disability services provider and around the middle of 1996 a Needs Assessment Report was carried out to determine the consumer's specific needs with a view to finding a placement for her within the provider's system.

Early in 1997 the provider's then Family Services Manager, found a placement for the consumer with the foster parents who are the subject of this complaint. By this time the consumer was 12 years of age. The foster parents have brought up a number of children of their own and had looked after children for a number of different provider organisations for a number of years. They had also looked after members of their extended family, through a Kinship Care programme. At the time the consumer went to live with them the foster parents were caring for seven of their own children (four of whom were 15 years or older), two members of their extended family (one was 13 years and one was 14 years) and three children placed with them by CYPS (one was 13 years and the other two were 7 year old twins). In addition, they had another child placed by the provider living with them.

**Selection**

Prior to placing this other child with the foster parents the provider's then Family Service Manager had undertaken a screening programme to assess their suitability to care for children with an intellectual disability. The foster parents had approached the provider offering themselves as caregivers. The foster mother then completed standard provider documentation which provided personal details, including details about her health (stated to be excellent), previous experience in caring for someone with an intellectual disability (which she had), lifestyle and so on. Police checks followed. Two referees were contacted who spoke well of the foster parents. One referee from Parentline highly recommended the foster parents as caregivers. This referee had first come in contact with the foster parents through their fostering of children for CYPS and then later through their fostering of children for Parentline. She also knew them personally.

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### Report on Opinion - Case 97HDC5042, continued

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**Outcome of  
Investigation,  
*continued***

The foster parents were then interviewed in their home. At the conclusion of this process the provider's previous Family Service Manager assessed the foster parents as suitable to be caregivers for children with an intellectual disability and the provider's previous Family Service Manager placed a young man with them.

**The Consumer's Placement**

The provider's previous Family Service Manager considered the foster parents as suitable caregivers for the consumer. One of the reasons for this was that both the foster parents were involved in caregiving, as were their older children. The provider's Family Service Manager saw an advantage in there being a number of people in the household who could share the load, given the consumer's need for constant care and attention.

The foster parents did not receive any formal training from the provider in relation to caring for the consumer. Prior to the consumer coming to live with them the foster parents spent some time with the provider's Family Service Manager who explained what she knew of the consumer's specific needs and how best to care for her. The foster parents received a Personal Information Sheet from the provider. This included details about the consumer such as how she indicated her toilet needs, whether she needed assistance with bathing, eating and drinking, challenging behaviour, and other information that would assist the foster family when caring for the consumer. They also received written information from the school in a nearby city that the consumer had attended and a copy of the Needs Assessment form, which also provided a lot of detail about the consumer. In addition, the foster parents meet with the consumer and her mother. At this meeting the consumer's mother provided additional information verbally about the consumer and how best to care for her.

The consumer's mother did not think the placement with the foster parents was ideal. She preferred the consumer to live in a residential facility rather than a foster home. However, she agreed that the consumer would be placed with the foster parents and in January 1997 the consumer moved to live with them. She attended a special school Monday to Friday, leaving the foster home around 8.10 each morning and returning around 3.00 each afternoon. On alternate weekends the consumer went home to visit her mother.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Outcome of  
Investigation,  
*continued***

**Concerns over Placement**

In mid-January 1997 the provider's Family Service Manager picked up the consumer from the foster parents' home for her first visit home. The foster parents told the Family Service Manager that the consumer had had a restless night and had spent a lot of time trying to get into other people's beds. As a result she was tired. They also said that they thought she might have been coming down with a cold. The Family Service Manager did not notice anything unusual about the consumer during the trip to the consumer's mother's home. In particular, she did not notice any difficulty with the consumer's breathing. The Family Service Manager mentioned to the consumer's mother that the consumer had had an unsettled night and that the foster parents thought she might be coming down with a cold.

From shortly after she arrived home the consumer's mother became concerned about the consumer, as it seemed to her that she was unwell and she was blue around her mouth. The mother took the consumer to her doctor and was told that the consumer was very unwell and if she did not improve within the next few hours she should be taken to hospital. A chest infection was diagnosed, antibiotics were prescribed and the consumer improved.

The Family Service Manager said that the consumer's mother left a message at the provider's office that she had taken the consumer to the doctor and that she was very sick. When the Family Service Manager received that message she went out to the mother's home but said that when she got there the consumer's mother was quite apologetic and said that she had panicked. The foster mother advised the Commissioner that at all times she gave the consumer her prescribed medication. This is apart from one mid-day dose of her epilepsy medication, which the consumer's mother had instructed her not to give.

During the following visit home in early February the consumer's mother became concerned about the number of bruises on the consumer's body, on her cheeks and around one eye and a lump on her temple. In early February 1997 the consumer's mother went to see the Family Service Manager and expressed her concerns about the amount of bruising on the consumer. The foster parents had also expressed concerns to the Family Service Manager. They had phoned her on numerous occasions, reporting falls and injuries and had asked for some protective pads to be purchased for the consumer.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Outcome of  
Investigation,  
*continued***

The foster mother said that the consumer would sometimes walk straight into a wall or a door, or collide with the television set. The foster parents spoke to the Principal at the special school. He felt they may have been too overprotective of the consumer. He reported that it had been observed at School that if the consumer thought she was being watched she would walk into things, but if she didn't think she was being watched she could get through a doorway without hitting it.

At the time the consumer's mother expressed her concerns the provider's Family Service Manager was waiting for the consumer to be assessed at the Child Development Centre at a Hospital. She had written to the hospital in late January 1997 asking for an appointment for the consumer to be seen at the Centre. Following the consumer's mother's complaint, the Family Service Manager decided to seek assistance from an occupational therapist (this subsequently occurred) and to visit the School, which the consumer was attending, to discuss strategies for handling the consumer. In addition, in mid-February 1997, the Family Service Manager wrote to the foster parents' GP, who had attended the consumer, asking him to arrange an urgent referral to Orthotics at the Hospital to enable a helmet and protective pads to be made for the consumer. These were not obtained as the consumer was taken away from the foster parents.

The Family Service Manager says that during one home visit, the consumer went to sit on the side of the bath, and nearly fell in. She says this showed there was also potential for the consumer to be hurt while her mother was looking after her, or indeed, any other person.

In mid-February 1997 the consumer's mother picked the consumer up at school for her weekend visit home. She took the consumer swimming and noticed more bruising and what looked like a bite mark on the consumer's chest. She immediately phoned the Family Service Manager who went to the consumer's mother's home and discussed the consumer's mother's concerns with her. The mother told the Family Service Manager that she was not prepared to have the consumer return to the foster family's care. The Family Service Manager said she would discuss the matter with the provider's Area Manager which she did and it was decided that after the weekend the consumer would be placed in the different residential facility. The consumer began living at another home in late February 1997. She continued attending the special school.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Outcome of Investigation, continued**

The foster parents said that the consumer did not have a bite mark when she left in the morning.

It was because of the consumer's mother's insistence that the consumer be placed elsewhere that the decision was made not to return her to the foster parents' care. It was not because of any concern about the foster parents' treatment of the consumer that led to her being moved to the different home. The decision to place her in a residential facility was due to the consumer's mother's dissatisfaction with foster home care.

The Family Service Manager said she thought the placement with the foster parents was ideal in many ways especially as there was a large family to share the responsibility of caring for the consumer. The Family Service Manager said the foster parents were not looking after any other children for the provider at the time because there had been a complaint from a young girl who was living with them, which turned out not to be substantiated. However before this finding was made the provider took away the boy who was living with them, because they did not want to take any risks.

**The Consumer**

The consumer needs constant supervision; she does not acknowledge pain and has a lack of regard for her personal safety. The consumer tends to be floppy, falls to the ground quite often and collides with objects. She is largely non-verbal.

In 1995, when the consumer was in the care of her family, a paediatrician who had cared for her for several years noted that she had recently fractured her ankle and had fractured toes at the time she was seen. How the fractures happened was unclear and they had not been discovered until the consumer started limping.

The consumer's mother reports that during the period that the consumer was cared for by her family she sustained bruises to her body and had the occasional black eye from hitting something when she had a seizure. The consumer has scarring on her body due to hurting herself during this period. One scar is on her chest and was the result of burning herself when she was a pre-schooler.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Outcome of Investigation, continued**

In 1996 while still in the care of her family the person who completed the Needs Assessment Report for the provider commented:

*There is also the problem of [the consumer] falling and bruising herself. He [the consumer's grandfather] has been questioned regarding bruising and feels that people are being suspicious and judgmental.*

**Meetings to Discuss Concerns**

The day that the consumer moved to the new home her aunt (the complainant) told the provider's Family Service Manager she wanted to meet with her and the Area Manager to discuss the consumer's care while with the foster family. The complainant advised the Commissioner that her complaint was made on behalf of the consumer rather than the consumer's mother.

The meeting subsequently took place and the complainant found the Area Manager to be arrogant and threatening. The Area Manager admits to being defensive. He felt the complainant was attacking him and the provider's Family Service Manager, and was unfairly accusing him of not caring when in fact he cares deeply. The Family Service Manager also found the complainant to be quite hostile. In the Area Manager's view, the provider, and the Family Service Manager in particular, had put a lot of effort into providing a good service for the consumer. The Area Manager considered the complainant had made a number of assumptions about the consumer's care and follow up while she was with the foster family which were wrong in many respects. By the end of the meeting both the Area Manager and the Family Service Manager considered the complainant's concerns had been addressed and her complaint resolved.

The complainant's account of the meeting is that she went hoping to have some questions answered about the consumer's care while with the foster family. Although the consumer was no longer living with the foster parents the complainant wanted to find out what sort of systems were in place to follow up the progress of individuals placed in foster care. She was now concerned about other children who might be in the foster parents' care. The complainant had made a note of her concerns and handed this note to the Area Manager at the beginning of the meeting.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Outcome of  
Investigation,  
continued**

The note, in part, said:

*“Concerns re: recent placement by you for [the consumer]. Appears to have been placed in a home with no follow-up of progress etc.*

*1. Who was, or should have been responsible for this.*

*How often do you check on these kids to see if things are okay. (I'm not talking about phone calls here.)...[various incidents were detailed]*

*...Are these people suitable caregivers??*

*Do you know that the other child in there care is safe?*

*Are you aware that these kids cannot speak out for themselves - Do you even care.” [sic]*

The complainant advised the Commissioner that after reading the note the provider's Area Manager said words to the effect “How dare you make all those assumptions” and she felt quite intimidated. The complainant said he told her if the complainant was not happy with the consumer's care the consumer might end up back on her doorstep. The complainant says she found this threatening and the Area Manager's general attitude unprofessional. Because the complainant felt she had not been heard and her concerns remained unresolved she approached the Police and CYPS in relation to the consumer's care while with the foster parents. She also sought the assistance of an advocate in order to make a complaint to the Health and Disability Commissioner. Shortly afterwards she wrote to the provider's Regional Director who arranged a meeting which the complainant found to be more constructive than the first meeting. A follow up letter she found less so, in that she did not feel it accurately represented the situation.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Code of  
Health and  
Disability  
Services  
Consumers'  
Rights**

*RIGHT 4*

*Right to Services of an Appropriate Standard*

...

- 3) *Every consumer has the right to have services provided in a manner consistent with his or her needs.*
- 4) *Every consumer has the right to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer.*

*RIGHT 10*

*Right to Complain*

- 1) *Every consumer has the right to complain about a provider in any form appropriate to the consumer...*
- 3) *Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints...*
- 5) *Every provider must comply with all the other relevant rights in this Code when dealing with complaints...*

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Opinion:  
No Breach  
The Foster  
Parents**

In my opinion the foster parents did not breach the Code of Rights. I have not found evidence to suggest injuries the consumer sustained while in their care were anything other than accidental. I have not found evidence to suggest her injuries were as a result of carelessness on the part of the foster parents. On the contrary, the evidence suggests that the foster parents were somewhat over protective of the consumer and took steps to prevent her being hurt, including reporting incidents to the Family Service Manager and making enquiries about protective pads and a helmet for the consumer.

In my opinion the foster parents attempted to provide the consumer with a safe living environment. However, they were hampered in their efforts by their lack of knowledge about how to care for the consumer. The foster parents had gained some knowledge of the consumer's abilities and how best to care for her from documentation provided to them by the provider. The Family Service Manager and the consumer's mother had also provided them with information verbally. However, they were limited by the fact they did not know the consumer. In my opinion the knowledge required to enable caring for a child such as the consumer is, to a large extent, built up over time. The foster parents did not have this time before the consumer was taken away from them. The consumer's family had had the benefit of years with her, they knew her intimately and knew the best way to manage her care. However, even the consumer's family could not prevent her from injuring herself on occasion.

The extent to which training by the provider could have assisted the foster parents is uncertain. I note that the foster parents did not receive any formal training from the provider prior to caring for the consumer. The training they received after the consumer left their care focused on the provider's system rather than on how to care for individuals with a disability such as the consumer's.

I also note that while the consumer spent much of each day with the foster family she spent time on a bus travelling to and from school as well as a number of hours each day at school. It is possible that the consumer sustained bruising on the bus and at school.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Opinion:  
No Breach -  
Area  
Manager  
and Family  
Service  
Manager**

In my opinion the provider did not breach Right 4(2) or Right 4(3) of the Code of Rights in relation to the consumer's placement with the foster parents. Appropriate and extensive screening was carried out prior to the consumer being placed. The number of children in residence was not necessarily a negative factor and adequate monitoring occurred while the consumer was with the foster parents. The consumer's removal from their care was not a statement that the Family Service Manager thought them unsuitable to care for the consumer. Rather, it was a response to the consumer's mother's dissatisfaction with the placement.

In my opinion the provider's Family Service Manager did not breach Right 10 of the Code of Rights.

According to Right 10 every consumer (which includes a person entitled to consent on behalf of the consumer) has the right to complain about a provider in any form appropriate to the consumer.

In this case the consumer was unable to complain. However, her mother, as her legal guardian, was entitled to complain.

#### **The Mother's Complaints**

In early February 1997 the consumer's mother complained to the Family Service Manager about the consumer's bruising. By this time the Family Service Manager had already requested an assessment at the Child Development Centre at the Hospital. In response to the consumer's mother's complaint the Family Service Manager wrote to the foster parents' GP requesting an urgent referral to Orthotics so that a helmet and protective pads could be made for the consumer. She also arranged a meeting at the school which the consumer's mother was invited to attend. This meeting took place nine days after the complaint was made and was attended by the foster parents, school staff and the Family Service Manager.

Eleven days after the consumer's mother's initial complaint about the consumer's injuries, she again complained to the Family Service Manager. The consumer's mother said she was not prepared to have the consumer return to the foster parents' care. Alternative arrangements were then made. In my opinion the Family Service Manager took appropriate actions in relation to the mother's complaint and it was reasonable for the provider's Family Service Manager to assume, at the point that the consumer was moved to the other home, that the consumer's mother's complaint had been resolved.

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## Disability Services Provider

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### Report on Opinion - Case 97HDC5042, continued

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**Other  
comments****The Complainant's Complaint**

When the complainant met with the provider's Area Manager and Family Service Manager, the consumer was living at the other home. However, the complainant was concerned about what had happened to the consumer while with the foster parents and she was concerned to ensure that other children in their care were being appropriately looked after.

I consider that the provider's Area Manager did not respond to the complainant's complaint in a professional manner. The complainant came to him with valid concerns and questions. I understand that the provider's Area Manager felt the questions asked by the complainant, which included "Do you even care?" were unfair and he became defensive. The Area Manager's reaction was possibly largely as a result of protectiveness towards the Family Service Manager, who he considered had done a good job in relation to the consumer's placement with the foster parents. Despite this, I consider the way in which he responded to the complainant was not appropriate. However, I am unable to form an opinion in respect of Right 10 of the Code of Rights in relation to this.

The consumer's aunt is not the consumer's legal guardian and is therefore not legally entitled under Right 10 to complain to the on the consumer's behalf. In other words the consumer's mother had exercised her rights which are covered by the Code.

This does not mean that the complainant was/is not entitled to complain about the consumer's care received. It means that I cannot form an opinion that Right 10 of the Code of Rights was or was not breached.

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