

**Mr Damian Peters**

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

**(Case 03HDC06499)**



Health and Disability Commissioner  
*Te Toihau Hauora, Hauātanga*



## Parties involved

Ms A	Consumer
Mr Damian Peters	Provider, Counsellor
Dr C	Ms A's General Practitioner
Ms D	Ms A's Counsellor

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## Complaint

On 9 May 2003 the Commissioner received a complaint from Ms A about counselling services she received. The complaint was summarised as follows:

*Between March 2001 and July 2001, Mr Damian Peters did not provide counselling services to Ms A in accordance with professional standards, in that, while providing Ms A with counselling services, Mr Peters also had a sexual relationship with her.*

An investigation was commenced on 9 June 2003.

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## Information reviewed

- Letter of complaint and accompanying documentation from Ms A, dated 2 May 2003.
  - Letter of response and accompanying documentation from Mr Peters, dated 30 June 2003.
  - Transcript of interviews with Ms A, Mr Peters and Ms D.
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## Information gathered during investigation

### *First meeting*

In 2001 Ms A was a student at a tertiary institution ("the College"). Mr Damian Peters was engaged by the College to provide counselling services to the students. Mr Peters is a qualified counsellor with specific training in sexual abuse counselling. He has been a committee member of the National Association of Neuro Linguistic Programmers for some years.

Mr Peters gave a presentation to the students outlining his services, including Neuro Linguistic Programming (NLP), timeline therapy, hypnotherapy and sex therapy. The cost of each session was \$30, of which the College provided a \$25 subsidy. Ms A attended the

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presentation and thought Mr Peters might be able to help her with her problems of self-mutilation and eating disorder. Ms A said that Mr Peters presented his therapies as “quick and anybody could do it”.

On 20 March 2001 Ms A attended her first counselling session with Mr Peters at the College. She was required to pay \$5. Ms A found Mr Peters very approachable and he affirmed what he had said in his introductory presentation, that the programme was easy and anyone could do it. Ms A said that she had a long history of sexual abuse as a child and had been molested many times under the guise of relaxation and going to sleep. She had not previously had a male counsellor as she felt a man would be unsafe for her. Ms A thought that Mr Peters presented as non-threatening and caring so decided to “give it a go”. Ms A said that at this session she told Mr Peters about her history of eating problems, self-mutilation and sexual abuse. Ms A told Mr Peters she needed help to get better – that she had a good counsellor and doctor but was willing to try any avenue. Ms A said they knew they had a lot to deal with and for that reason she saw Mr Peters for the allocated three sessions at the College.

Ms A said that at the conclusion of the first session Mr Peters enquired whether he could give her a hug. Ms A thought this was unusual but also quite nice and she consented. Mr Peters said that Ms A initiated the hug.

Mr Peters said Ms A initiated consultation as a way of introducing herself and when he asked Ms A why she had made an appointment, she replied that having someone’s undivided attention for an hour was a good way to meet them. Mr Peters said that Ms A insisted she was not a client and her motive for attending was to ask him out. Mr Peters said that he dealt with this interest by informing Ms A that his years of counselling and his code of ethics prevented him from dating clients.

In response to my provisional opinion, Mr Peters submitted that Ms A used her friend’s appointment time when she first attended his clinic, and that this was evidence of Ms A’s keenness to see him and of the fact that she did not use “normal channels” to obtain an appointment.

#### *Subsequent meetings at the College*

Ms A saw Mr Peters again at the College on 27 March and 6 April. During these sessions Ms A said she told Mr Peters that she wanted to talk to him as a person as well as dealing with the counselling. She wanted to learn more about the process and had thought about doing part-time counselling herself. She wanted information on training and had also pursued this with Ms D, her counsellor, previously. Ms A said that in early April she told Mr Peters that she was attracted to him. Mr Peters stated that his professional relationship meant that “nothing could happen” but that he was also attracted to her. Ms A said this made her feel really good and she then believed that Mr Peters cared about her as a person and not just another client. Ms A said that at the conclusion of this consultation Mr Peters told her that he would “give ... more than he should” and kissed her in a sexual manner, which marked the crossing of the professional boundary. Mr Peters said that he had

“already explained ethics and so on to her” and that Ms A told him he was not “crossing any boundaries” as he had not taken down any details about her.

Ms A said that, after they kissed, Mr Peters told her there was a danger in becoming lovers as he was her counsellor and she was his client. Mr Peters warned her that such a relationship could be damaging to her as boundary issues get confused and she had confided “a lot of stuff” in him.

Ms A said:

“He might have told me the risks and I do actually appreciate that ... but my head space wasn’t in the right place to sort of even comprehend that really. All I was interested in was feeling good and this man was helping me feel good and he genuinely cared about me and what’s more, that, yeah, that became largely my focus.”

Mr Peters said at the third session, on 6 April, Ms A became more insistent about wanting to go out with him and he agreed they could go out for a date. Mr Peters said that Ms A did not receive any counselling at the sessions at the College. Mr Peters said he wondered about getting into an intimate relationship with Ms A, who had come to him for counselling, but that he “just saw the counselling room as being somewhere where I had met this woman who had a very clear intention of being attracted to me”. Mr Peters said he did not take any notes of the sessions he had with Ms A at the College.

In relation to intimacy with Ms A following the sessions, Mr Peters said:

“... I certainly recall her getting up and we hugged, and I recall her coming towards me and giving me a hug. I don’t recall any kissing, I don’t recall anything in the first, not that I recall, in the first session ... I have hugged clients occasionally, I’ve asked their permission and it’s usually when there’s been some kind of real emotional trauma, male, female, it wouldn’t make much, it’s just what they’ve been through at the time, I just ask, would you like a hug? And is it ok for me to do that, and if they’re agreeable then I’d do it but it’s usually in my offices in the [city] there, I’ve got a receptionist and staff around.”

Mr Peters recalled kissing Ms A after the second and third session, but believed that “this woman was not coming to me for counselling”.

Ms A said that she had a further one or two sessions with Mr Peters at the College but these were not recorded, as only three sessions were allowed. Ms A said that on a further occasion she cancelled her appointment and Mr Peters rang to see if she was all right. Ms A said she was going through a period of depression and did not want to see anyone. However, Mr Peters insisted on coming to her home to see if she was all right and found that she was depressed and had injured herself. Ms A said that Mr Peters told her that he was concerned she had self-harmed because of him and that he was sorry he had not been

able to help her. Ms A said Mr Peters wanted to take her to hospital. According to Ms A's Public Hospital record she cut herself on 2 May 2001 and was treated at the Emergency Department. Ms A's general practitioner, Dr C, recorded on 3 May 2001 that Ms A had been admitted to the Emergency Department the previous day following her cutting of wrists and abdomen. Further, Dr C recorded that while Ms A was offered support from the general practice she had advised that she had "been in touch with counsellor at school".

In response to my provisional opinion, Mr Peters said that Ms A had not cancelled her session and that he had not rung to check if she was all right – he did not have her home address or telephone number. Further, Mr Peters said that the reason Ms A did not have further sessions at the College was that she had begun to travel to his rooms in the city at this stage.

Ms A said that following the sessions at the College she and Mr Peters decided to continue her counselling at Mr Peters' private practice. The charge for these consultations was normally \$65 to \$85 per one hour session. Ms A said that Mr Peters offered to "work something out" as he told Ms A that he wanted to help her. Ms A thought that Mr Peters cared about her and really did want to help her. Ms A did not pay for any of the sessions she received through Mr Peters' private practice but felt that she had paid "with her body".

#### *Sexual relationship*

Both Ms A and Mr Peters recalled their first sexual encounter as being in mid-April. Mr Peters said that the sexual relationship began and ended before the counselling commenced at his private practice in the city. Mr Peters said that he did not think there was a conflict in providing counselling to someone with whom he had just concluded a sexual relationship; he thought he was doing Ms A a favour in "helping her with some of the issues that she had and [not] charging her". Ms A said that the sexual relationship began in mid-April and continued throughout the three months she saw Mr Peters as a client at his private practice in the city.

According to Mr Peters' records the first session at his private practice in the city was on 17 May 2001 and between this date and 13 July 2001 Ms A had 11 counselling sessions with Mr Peters at this address. Mr Peters said that their first time alone together was after Ms A started coming to see him in the city. They went out to a bar in the city and afterwards kissed.

On the next occasion they met, Mr Peters went to Ms A's house and they spent "a couple of hours making love". Mr Peters and Ms A agreed that they had had sex at Ms A's house on two occasions. Ms A said that on one of these occasions Mr Peters stayed at her house one Saturday night and they had sex. Thereafter, Ms A said they had sex on all but one of the times she saw Mr Peters at his consulting rooms as a client. Mr Peters said that there were only two other sexual encounters and they occurred at his consulting rooms. Mr Peters said that the sexual intercourse was not planned on his part and happened after his last daily session.

Mr Peters said:

“[Ms A] tended to maintain contact. At that stage of the second sexual experience that we had, she, actually no it wasn't it was later, she carried on making contact, she would send me cards, she would ring me up, I still have some of the cards here that she sent me and she sent me a birthday card for my birthday, in fact this one here is my birthday, Happy Birthday from [Ms A]. I would see her after I'd seen my regular clients, I would close the doors, lock everything up and basically on a couple of occasions we had sex on our premises, on the premises of the counselling centre on the couch.”

Mr Peters' birthday was on 7 June, which fell in the middle of Ms A's counselling sessions at his private practice in the city.

#### *Termination of sexual relationship*

Mr Peters said that the age difference became a big factor and that he felt there was a big difference in maturity, with Ms A viewing him as a “father-figure”. According to Mr Peters, once he terminated the romantic relationship Ms A asked if she could see him in his professional capacity as a counsellor. Mr Peters said he then advised Ms A that if she became a client no other kind of relationship could continue. Mr Peters suspected Ms A was initiating the counselling sessions as a way to maintain contact. Mr Peters said that during the final two sessions with Ms A he informed her that he could not help her further. Mr Peters' clinical notes record that at her final visit on 13 July 2001 Ms A came to his office and “just talked. Doesn't want to do any more processes.”

Ms A said that during the sexual relationship Mr Peters told her he had been having a relationship with someone but was intending to end it. Ms A said the sexual relationship ended when Mr Peters cancelled a rendezvous at her house, saying that his girlfriend had turned up and he had not seen her for a long time. Mr Peters was to ring Ms A at a later time but did not do so; Ms A then rang and cancelled her next session with him.

Ms D, Ms A's psychotherapist, noted that Ms A was very distressed when she saw her on 5 July and from that point on she was increasingly distressed and cutting herself. Ms D said that Ms A told her in September that she had had a sexual relationship with “the therapist at the [College], at his office and at his flat a number of times”.

In response to my provisional opinion, Mr Peters and Ms A said that sexual relations did not occur at Mr Peters' flat. Ms A said that she told Ms D they had sex at her flat.

Ms D stated that Ms A also “takes part responsibility because she initiated [it] and Damian Peters initially resisted it”. Ms D said that Ms A had been abused by those with whom she had close primary relationships throughout her life and was her “normal way of being in the world”. Ms D said Ms A had used sex as a way of getting close to people all her life.

In response to my provisional opinion, Mr Peters said that Ms A “is not the innocent [Ms A] portrays herself to be” and that Ms A was “a very sexually experienced woman” who

was angry because Mr Peters terminated the relationship. Further, Mr Peters said that Ms A claimed “she was the one who finished relationships, not the other way around”.

In relation to a male counsellor providing counselling for someone with a history of sexual abuse from men, Ms D said:

“I think most men would be very careful with someone with [Ms A]’s history ... I don’t know if he knew the detailed history, but if he’d done a detailed history he should have had major alarm bells ringing because it’s always going to be an issue with her.”

In response to my provisional opinion, Mr Peters said that Ms D’s statement reinforces his evidence that he did not know Ms A’s history during the sessions at the College. If Ms A had advised him of her history of sexual abuse, alarm bells would have rung as his training and experience in handling sexual issues would have alerted him.

Dr C, the complainant’s general practitioner of nine years, notes that around this time (“mid-2001”) both she and Ms D, Ms A’s psychotherapist, became aware of “escalating self harm”.

In September Ms A phoned Mr Peters about assistance with writing a letter. The outcome of this conversation was that he visited her home to write a letter and during this visit enquired why Ms A had not contacted him, and whether she was in a relationship currently. According to Ms A, she made it clear that his enquiries were unwelcome and asked Mr Peters whether he regretted his conduct, to which he replied, “No, should I?” Upon leaving, Mr Peters kissed Ms A in a sexual manner. There was no further contact between the two.

#### *Code of Ethics*

Mr Peters said that there are very clear boundaries with the NZAC as well as the NZANLP in relation to relationships with clients:

“So I’m very aware of the Code of Ethics and the Code of Practice for both the NZAC and the NZANLP but I didn’t consider that this was breaching any of those ethics so in, in detailed words no I can’t tell you what the Code of Ethics are, I didn’t bring, I should have actually brought a book with me with the Code of Ethics in it cause I actually have them on the reception at the counselling centre, disciplinary practice, the Code of Ethics, the Code of Practice are all there for clients to see. But I’m very aware and also through all the tutoring I got at in my studies when I was doing my qualifications, all about where boundaries lie.”

Mr Peters said he did not consider Ms A a client. When asked at interview about providing a therapeutic relationship to someone who has recently been involved in an intimate relationship with him, Mr Peters said that he treats his current partner:



“I don’t see that as the difficulty as such. Just as a doctor would treat his own family.”

In response to my provisional opinion, Mr Peters said that he has never dated or been romantically involved with a client: “My boundaries are very clear in this area. I have had numerous occasions when I believe I could easily have done so and have been extremely rigid in exercising my belief – that not only was this form of behaviour unethical but could be very damaging to my client.”

At interview, Mr Peters said that he was aware of the concepts of transference and counter-transference and understood them as follows:

“Well there’s a number of areas in transference, I would see for example somebody perhaps transferring, looking at me as somebody that might have the resources to be able to help them with their problems and almost creating a dependency and looking at me almost as a bit of a father figure which I thought that [Ms A] actually did and that was one of the reasons I wanted to get out of the relationship. Transferring, transferring the, the ease and the relief and the freedom that I might be able to give to a client and seeing that as, this guy can help me in so many different ways and all of a sudden transferring what was just simply a relief of an issue into something romantic, seeing it as, this person is lovely, he’s marvellous, he’s fantastic ...”

#### *Analysis of information*

The evidence supports the fact that three counselling sessions, for which Mr Peters received a payment of \$30 per session, occurred on 20 March, 27 March and 6 April 2001. Both parties agree that a sexual relationship occurred commencing in mid-April 2001. Both parties agree and Mr Peters’ clinical notes support the fact that a therapeutic relationship occurred between May and July 2001 at Mr Peters’ private practice in the city.

There is disagreement about the nature of the initial consultations. Ms A said she saw Mr Peters in his role as the College counsellor. Although he received payment for the three counselling sessions Ms A attended, Mr Peters maintained that he did not provide counselling. It seems unlikely the College sessions consisted solely of Ms A forcing her attentions on Mr Peters and that, as an experienced counsellor, he sat through three one-hour sessions while this occurred. I prefer Ms A’s account that she sought counselling from Mr Peters and he provided counselling to her at the College between 20 March and 6 April 2001.

There is disagreement about the duration of the sexual relationship. Mr Peters said it finished prior to commencement of counselling sessions at his private practice in the city. Ms A said it continued from mid-April throughout the counselling period. Ms A sent Mr Peters a birthday card, containing an intimate message, for his birthday on 7 June, which was during the course of the private counselling sessions. Ms A indicated that she was not happy with Mr Peters for terminating the relationship. It seems unlikely that such a

termination would precede a professional counselling relationship. Ms A's general practitioner noted an escalation of self-harm that coincided with Ms A's account of when the sexual relationship terminated, in mid-2001.

For these reasons, I am satisfied that the sexual relationship, initiated in mid-April, continued for the period of the private counselling sessions at Mr Peters' practice in the city.

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## **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 4*

#### *Right to Services of an Appropriate Standard*

2) *Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.*

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## **Other Standards**

### **New Zealand Association of Counsellors Code of Ethics, 1990**

#### **Abuse of Power**

Counsellors shall not abuse their position by taking advantage of clients for purposes of personal, professional, political, financial or sexual gain.

Counsellors are responsible for setting and monitoring the boundaries between a counselling relationship and any other kind of relationship and for making such boundaries as clear as possible to the client.

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## **Sexual Harassment**

In the counselling relationship the client shall be free from the possibility of sexual exploitation or sexual harassment. Counsellors shall not engage in sexual activity with their clients.

### **The New Zealand Association of Neuro Linguistic Programming Incorporated Code of Practice, 1999**

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2.2.6 Practitioners must not exploit their clients financially, sexually, emotionally or in any other way. Engaging in sexual activity with the client is unethical.

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## **Opinion: Breach – Mr Damian Peters**

### *Sexual exploitation*

Despite the conflict of evidence, it is clear that from the first session at the College in March 2001, Mr Peters saw Ms A in his role as a counsellor, and Ms A attended as a client. Mr Peters accepted payment from the College for three one-hour sessions with Ms A. Ms A clearly felt attracted to Mr Peters and Mr Peters appeared to be interested in and caring towards her. Ms D said that Ms A had been abused by people with whom she had significant and close attachments and she therefore felt that was how you got close to people and “used sex as a way of getting close to people all her life”. Any sexual acting out on Ms A’s part when she first attended a session with Mr Peters should have immediately alerted him to the dangers of such behaviour in the counselling relationship. Instead, Mr Peters ended the first session by hugging Ms A and allowed a sexual relationship to develop.

It appears that the sexual relationship continued throughout the time Ms A attended Mr Peters’ private clinic for counselling (May–July 2001). Mr Peters had a simultaneous sexual and professional counselling relationship with Ms A. Exploitation occurs where a person in a fiduciary relationship (such as a counsellor) 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 Peters used his position as a counsellor during the first few sessions at the College to achieve his own sexual gratification. In doing so he exploited Ms A, even though she appears to have been a willing participant or may even have initiated the sexual contact. This amounted to a breach of the fiduciary relationship. The situation was aggravated by Ms A’s sexual vulnerability, although it is difficult to prove the extent to which Mr Peters was aware of this at the time the relationship was entered into.

I am concerned that in response to my provisional opinion Mr Peters reiterated his view that Ms A was responsible for the sexual relationship. Mr Peters demonstrates a lack of understanding about the fundamentals of counselling and his ethical obligations as a counsellor. Ms A paid to attend Mr Peters' counselling clinic. He was her counsellor and she was his client. Mr Peters had a professional responsibility toward Ms A "for setting and monitoring the boundaries between a counselling relationship and any other kind of relationship and for making such boundaries as clear as possible to the client" (New Zealand Association of Counsellors Code of Ethics).

In my opinion, Mr Peters sexually exploited Ms A and, accordingly, in my opinion Mr Peters breached Right 2 of the Code of Health and Disability Services Consumers' Rights.

#### *Breach of ethical standards*

Ms A, as a client of Mr Peters, had the right to counselling services that met appropriate ethical standards. When a health care provider engages in a sexual relationship with a client, fundamental ethical standards are breached.

Mr Peters is a Neuro Linguistic counsellor. He informed me that he is familiar with both the New Zealand Association of Neuro Linguistic Programming Code of Ethics and the New Zealand Association of Counsellors Code of Professional Ethics.

The New Zealand Association of Neuro Linguistic Programming Code of Practice states:

"Practitioners must not exploit their clients financially, sexually, emotionally or in any other way. Engaging in sexual activity with the client is unethical."

The New Zealand Association of Counsellors Code of Professional Ethics states:

#### **"Abuse of Power**

Counsellors shall not abuse their position by taking advantage of clients for purposes of personal, professional, political, financial or sexual gain.

Counsellors are responsible for setting and monitoring the boundaries between a counselling relationship and any other kind of relationship and for making such boundaries as clear as possible to the client.

#### **Sexual Harassment**

In the counselling relationship the client shall be free from the possibility of sexual exploitation or sexual harassment. Counsellors shall not engage in sexual activity with their clients."

Mr Peters, as a Neuro Linguistic counsellor and a committee member of the New Zealand Association of Neuro Linguistic Programmers, had a duty to provide services in

accordance with the above ethical standards. In my opinion, for the reasons set out below, Mr Peters failed to do so.

Mr Peters was flattered by Ms A's attentions. He betrayed his position of trust by entering into a sexual relationship with her. The maintenance of professional boundaries is an integral part of counselling, a process that involves an intense therapeutic relationship where the client confides fears, feelings, emotional responses and vulnerabilities. The importance of maintaining professional boundaries in the counsellor/client relationship cannot be overemphasised. Mr Peters, as a counsellor aware of the relevant ethical codes, could reasonably be expected to have recognised the need to maintain professional boundaries, and to be alert to situations where they were under threat and becoming blurred.

I accept that Mr Peters told Ms A that a sexual relationship could be damaging to her as boundaries become confused. Ms A was indeed damaged by Mr Peters' behaviour. Ms D, Ms A's psychotherapist of long standing, noted that Ms A was "extremely upset and cutting herself" following the conclusion of the relationship with Mr Peters. Ms A, a victim of past sexual abuse, was also left with a feeling of responsibility for the sexual relationship.

Mr Peters was aware of the risk of transference, whereby clients develop positive feelings toward the counsellor during therapy and a counsellor can develop reciprocal feelings (counter-transference). Mr Peters chose to disregard his knowledge. He flouted ethical standards by entering into concurrent sexual and therapeutic relationships, which continued over an extended period, knowing that Ms A could be damaged.

Mr Peters' waiver of fees for the counselling sessions at his private practice, when sexual intercourse occurred, was symptomatic of his failure to maintain professional boundaries.

By engaging in a sexual relationship with a client, Mr Peters failed to comply with ethical standards and breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.

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## **Actions**

- I have referred this matter to the Director of Proceedings in accordance with section 45(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any further action should be taken in relation to Mr Peters.
- A copy of this report, identifying only Mr Peters, will be sent to the New Zealand Association of Counsellors and the New Zealand Association of Neuro Linguistic Programmers.

- A copy of this report, identifying only Mr Peters, will be sent to the College.
  - A copy of this report, with identifying features removed, will be placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.
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## **Addendum**

The Director of Proceedings decided to issue proceedings before the Human Rights Review Tribunal, who heard the matter in March and May 2006. In a decision dated 25 September 2006, the Tribunal found that from March 2001 until mid-July 2001 Mr Peters had provided health care services to the complainant and that during that time and in that context he had engaged in an intimate, romantic and sexual relationship with her. As a result the Tribunal made a declaration that he had breached Right 2, Right 4(2) and 4(4) of the Code. In particular it was found that the defendant failed to have any or any sufficient regard for the complainant's emotional health and well-being when he entered into an emotionally and sexually intimate relationship with her. The Tribunal declined to make a restraining order, but made an award of \$15,000 compensatory damages for humiliation, loss of dignity and injury to feelings, and exemplary damages of \$8000.

In a supplementary decision dated 19 January 2007, permanent name suppression was confirmed for the complainant and declined for Mr Peters. The question of ongoing supervision and how to monitor it has been left to the parties to agree upon. Because the defendant was legally aided, no order for costs was made.