Mental Health Support Worker, Mr B

A Report by the

Health and Disability Commissioner

(Case 16HDC00439)

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Executive summary

1. This report relates to a sexual relationship between mental health support worker Mr B and a mental health services consumer, Ms A, which resulted in the birth of a child. In 2010, Mr B commenced employment with a mental health support service (the service). The service operates a group of flats housing people recovering from mental illness. Mr B underwent orientation in 2010. Boundaries and relationships were part of the core training Mr B attended in 2011. He had further training on boundaries in 2013.

2. Ms A entered the service in 2014. Mr B worked with Ms A and later became Ms A's primary support worker in early 2015. The service told HDC that Ms A's support needs were mostly related to requiring support when unwell. Ms A stated that Mr B was aware of traumatic events in her past because of the entries in her files alluding to this.

3. The service told HDC that concerns about Mr B's interactions with Ms A were raised with it. The issue was addressed via a formal disciplinary process in 2015. One outcome was that Mr B was to undertake further boundary training. This was scheduled, but Mr B did not complete the training. The service told HDC that this fact did not come to light until several months later.

4. Ms A stated that Mr B had been her care worker for about six months when she and Mr B began a sexual relationship. She later estimated that the relationship developed more around mid 2014. Ms A became pregnant in 2015, and gave birth to a child. Mr B initially told HDC that his relationship with Ms A was therapeutic in nature. Subsequently, Mr B acknowledged that he did have a consensual sexual relationship involving intercourse.

Findings summary

5. It was found that Mr B breached ethical boundaries by having an inappropriate personal and sexual relationship with Ms A. Mr B's behaviour towards Ms A had no regard for her vulnerabilities or the significance of his actions in forming a relationship with her. Mr B failed to comply with ethical standards and the standards required by his employer. Accordingly, Mr B breached Right 4(2) of the Code.[1] His conduct was sexually exploitative and, accordingly, he also breached Right 2 of the Code.[2]

6. It was considered that appropriate action was taken by the service to train Mr B and ensure that he was familiar with the policies in place at the service, and that appropriate action was taken in response to concerns about the boundaries of Mr B's relationship with Ms A. However, there is some criticism of the service, that having identified concerns and requiring Mr B to undertake further training on boundary issues, the service was not aware of his failure to do so until several months later.

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[1] Right 4(2) of the Code states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."

[2] Right 2 of the Code states: "Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation."

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7. Mr B will be referred to the Director of Proceedings for the purpose of deciding whether any proceedings should be taken.

Complaint and investigation

8. The Nationwide Health and Disability Advocacy Service sent a complaint about support worker Mr B to the Health and Disability Commissioner.[3]

9. The Commissioner commenced an investigation into the matter on his own initiative under section 40(3) of the Health and Disability Commissioner Act 1994 on 11 August 2016.

10. The following issues were identified for investigation.

- *The appropriateness of the care provided to Ms A by Mr B.*
- *The appropriateness of the relationship between Mr B and Ms A.*
- *The appropriateness of the care provided to Ms A by the service.*

11. The parties directly involved in the investigation were:

Ms A	Consumer
Mr B	Support worker
Mental health support service	Group provider

12. Information from the New Zealand Police and the district health board was also reviewed.

Information gathered during investigation

13. This report relates to a sexual relationship between mental health support worker Mr B and a mental health services consumer, Ms A, which resulted in the birth of a child.

Mr B

14. In 2010, Mr B commenced employment with the service as a support worker. The service is a registered charity that provides a range of options for people who need support, including accommodation. The service supports clients with daily living skills, setting and reaching goals, and living as independently as possible.

The service — orientation, training and policies

15. The service operates a group of flats housing people recovering from mental illness. Staff are on site between 7am and 11pm and provide responsive support at night.

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[3] Ms A subsequently advised HDC that she supported the complaint.

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16. Mr B underwent orientation in 2010. The service supplied Mr B's orientation checklist, which is a detailed six-page list of essential orientation tasks under the headings of "service environment", "administration", "policies and procedures", "health and safety", "client support", and "staff support and development". All of the tasks were signed off as complete by mid 2010.

17. During his time with the service, Mr B had training with regard to professional boundaries. Boundaries and relationships were part of the core training he attended over two days in 2011, and he had further training on boundaries in 2013.

18. The service's "Staff Misconduct Policy" in place at the time of these events states that engaging or attempting to engage in a sexual relationship with a client, with or without consent amounts to serious misconduct and, if substantiated, may lead to dismissal. The service told HDC that this part of the policy is included in boundaries training sessions and the accompanying handout. The document used for boundary training in 2013 also included a definition of boundaries as "the distinction a professional group make between acceptable and unacceptable behaviour, or emotional attachment, in relation to their clients …". The document notes in part that maintenance of boundaries allows the support worker to "control this power difference and [allow] a safe connection to meet the client's needs". Signs of a boundary problem were noted to include "inappropriate or unwanted feelings of friendship or sexual attraction to a client …".

19. The service told HDC that since 2013, boundaries training has been delivered "as soon as possible after staff begin working at the service", and that staff are not required to do the training again unless their service coordinator or manager has concerns about their behaviour in this area.

20. The service told HDC that Mr B commenced permanent work at the flats in 2014. He had been doing some work at the flats, in combination with other sites, from late 2013. the service stated:

> "[A]t that stage [when Ms A entered the service, Mr B] had been working with the service for 4 years and there were no significant issues to date with [Mr B's] performance that would have led us to suspect that the issue raised in this complaint would be a likely occurrence."

Services provided to Ms A

21. Ms A entered the flats in 2014. Ms A told HDC that she had a few general support workers from the service assisting her, including Mr B. Ms A said that these workers were available for chats, going to the supermarket, going for drives, and playing pool.

22. The service told HDC that while they were unable to provide exact dates, Mr B became Ms A's primary support worker in early 2015. The service stated that this change was made at Ms A's request, as she felt that her previous primary support worker was working too few hours per week to have enough time to interact with her. Ms A told HDC that both Mr B and another support worker applied to be her primary support worker in early 2015.

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23. The service stated that, as Ms A's primary support worker, Mr B was expected to follow her risk plans, personal plan, and goal setting.

24. The service told HDC that Ms A's support needs were mostly related to her "mental health symptoms". The service stated that Ms A was relatively independent with her daily care needs and did not need support with cooking, cleaning, or budgeting. The service said that she required support when she was becoming unwell, owing to her impulsive tendencies around self-harm and associated low mood.

25. Ms A's Risk Management Plans set out a number of activities and supports that "work" to address her risk factors. These included going for a drive, "concentrating on someone or something important", and playing pool.

26. Mr B said that he was able to establish a therapeutic relationship with Ms A, who was unsettled and distant from other people. He said that service coordinators suggested that he take Ms A out for drives to a local lookout, and to play pool at a pool hall.

27. Ms A stated that Mr B was aware of traumatic events in her past because of the entries in her files alluding to her past. Mr B said that once he had established a rapport with Ms A, "she trusted [him] with some horrific chain of events". Mr B also said that he had access to Ms A's clinical notes.

Sexual relationship

28. Ms A stated that Mr B had been her care worker for about six months when she and Mr B began a sexual relationship. She later estimated that the relationship developed to more than support work around mid 2014. Ms A became pregnant in 2015, and gave birth to a child.

29. Mr B initially told HDC that his relationship with Ms A was therapeutic in nature. He stated:

> "I acknowledge that I stepped over boundaries (for the protection of patients and staff) but I did not have sexual contact."

30. Mr B stated that he surmised that Ms A had made allegations of a sexual relationship because he had announced that their connection was to be terminated, and that her actions were a consequence of her unsettled, unstable relationships with men in the past.

31. Subsequently, Mr B acknowledged that he did in fact have a consensual relationship with Ms A involving sexual intercourse. He stated:

> "I would like to make one amendment … after stating 'I did not have sexual contact' when in fact I/we had a consensual relationship/intercourse with [Ms A]."

32. Mr B stated that previously he had denied having sexual contact with Ms A because he was concerned about losing his marriage.

33. Mr B stated that he had not disputed that the child was his. He said that the sexual relationship was not forced or manipulated or done when either person was unwell.

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He claimed that the relationship was consensual and that he had treated Ms A with respect. Mr B said that strong emotions for each other probably developed after taking her on countless drives to lookouts at night and taking her to play pool when she was unwell.

Information known to the service

34. The service advised HDC that the first time it became aware of issues regarding Ms A and Mr B was in mid 2015. The service told HDC that although there were concerns about Mr B at this time, including spending too much time with Ms A and not accounting for his whereabouts, there was no evidence that Ms A and Mr B were in a sexual relationship.

35. The service states that it raised with Mr B a rumour that he was the father of Ms A's baby. The service's records state that Mr B denied paternity, laughed, and stated with regard to the rumours that he would not have expected anything different from the clients they work with.

36. The service told HDC that, during her pregnancy, Ms A told staff that the father of the baby was a man with whom she played pool. The service stated: "[S]taff never met the alleged father and never seriously suspected until much later on in 2015 that [Mr B] could have been the father of the baby."

37. The service told HDC that the concerns outlined in relation to Mr B spending too much time with Ms A and not accounting for his whereabouts, were serious enough that it considered that a formal investigation into the matter was necessary. The issue was addressed as a formal disciplinary process, with Mr B formally notified of the concerns via letter.

38. The outcomes of the disciplinary meeting, recorded in a letter sent to him, included a requirement that Mr B ensure that his colleagues knew his whereabouts at all times; that he not support Ms A on her own, but only in a group environment or in case of emergency; and that Mr B undertake boundary training. The letter informing Mr B of the outcomes of the process stated:

> "[I]t was communicated to you that we required you to undertake boundary training and understand that this has now been arranged to happen in the next few weeks."

39. The service told HDC that Mr B's training was scheduled, and that Mr B was asked to contact the trainer to schedule a one-on-one session if he was unable to attend this session. Mr B did not register for, or attend, the training, nor did he arrange for a one-on-one session. The service told HDC that this fact did not come to light until several months later, as at the time they "relied on [Mr B's] responsibility to register himself for the training and [he] did not follow through on our expectations". The service told HDC that the human resources (HR) systems did not track disciplinary action requirements at the time.

40. The service told HDC that following the disciplinary meeting, the role of primary support worker for Ms A was reallocated to another employee. The service stated that

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this was because “we suspected that the relationship [between Ms A and Mr B] was developing more towards a friendship than a professional relationship”.

41. Subsequently, the service held a meeting with Mr B to discuss a number of concerns, including that:

- Mr B was allegedly using his personal telephone to contact Ms A.
- Mr B did not attend boundary training as agreed despite the course having been run “in the interim period”.
- Mr B had been engaging in activities with Ms A.

42. Mr B was issued with a final written warning and instructed not to associate with Ms A.

43. Mr B resigned from the service.

44. Ms A’s baby was born. Ms A said that her relationship with Mr B ended “at least a few weeks before [the baby] was born”.

Protection order

45. After Mr B resigned, Ms A told HDC that Mr B continued to contact her and spend time around the flats, and sent text messages referring to who had been visiting her house, so she knew that he had been watching her. Ms A said that she felt unsafe, and made a statement to the Police, but Mr B continued to send lengthy text messages to her.

46. In 2016, the Family Court made a Protection Order with consent against Mr B. The terms of the order prohibit domestic violence and contact.

Further information — Ms A

47. Ms A told HDC that subsequently Mr B breached the protection order and was prosecuted for the breach.

48. Ms A stated:

> “After quite a bit of counselling around the so-called ‘relationship’, I have realised how wrong the whole thing was, and that he took advantage of a vulnerable (at times) suicidal person. There is no doubt in my mind that he is dangerous with people in my situation and I have concerns about other people he may have worked with in care. I am still suffering panic attacks, depression and insomnia due to this whole thing.”

Further information — support service

49. The service told HDC:

> “This process [for tracking disciplinary action requirements] has since been amended to ensure that this does not happen again. HR now keeps a register of

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disciplinary actions that are required to be undertaken by staff and the disciplinary file or complaint is not closed until those actions have been completed."

50. In relation to training and accompanying records, the service stated that, following a review, training records are now brought to managers' attention, and staff are automatically booked by an administrator for any training that is required. the service told HDC:

> "[T]his process ensures that the overdue training is minimised and that staff who have not completed their training without a valid explanation are stood down and unable to work until the training is completed."

Responses to provisional report

51. Feedback from Ms A has been incorporated into the "information gathered" section of the report where appropriate. Ms A told HDC that she noted that Mr B had "initially denied everything". She did not have any other comment.

52. Mr B did not provide any further comment to HDC.

53. The service responded that it was in agreement with HDC's findings and follow-up actions.

54. The service told HDC that boundary training was introduced as a training module of its own at the beginning of 2013, and subsequently became a part of its core and mandatory training package. It currently employs many staff out of whom over half completed boundary training more than two years ago. The service provided HDC with a copy of its 2017 training and educational material on boundaries. All staff are required to complete the training within the first six months of employment. Over the last two years, the service has also developed training packages to suit one-off training needs as well as core and mandatory training modules, and it proposes to develop a new package concerning boundary issues, which can be used for targeted refresher training purposes.

Standards

55. The Health and Disability Services Standards (NZS 8134.1:2008) state:

> "**Standard 1.7 Consumers are free from any discrimination, coercion, harassment, sexual, financial, or other exploitation.**
>
> …
>
> 1.7.1 Services have policies and procedures to ensure consumers are not subjected to discrimination, coercion, harassment, and sexual or other exploitation.
>
> …

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> 1.7.3 Service providers maintain professional boundaries and refrain from acts or behaviours which could benefit the provider at the expense or well-being of the consumer."

Opinion: Mr B — breach

Relationship with Ms A

56. The service's "Staff Misconduct Policy" explicitly stated that engaging or attempting to engage in a sexual relationship with a client, with or without consent amounted to serious misconduct and would likely lead to dismissal. At the time Mr B commenced employment with the service as a support worker, he was provided with a copy of the "Staff Misconduct Policy". He also underwent training with respect to professional boundaries, and boundaries and relationships were part of the core training he attended over two days. Mr B received further training on boundaries. I am satisfied that Mr B was aware of his responsibility to maintain appropriate boundaries, and, in particular, not to engage in sexual relationships with clients.

57. When Mr B first began providing services to Ms A, he had been working with the service for four years.

58. At the time of these events, Ms A was vulnerable, owing to her significant mental health issues. She has a history of depression with episodes of self-harm, and required support when she was becoming unwell.

59. Under Right 2 of the Code of Health and Disability Services Consumers' Rights (the Code), Ms A had the right to be free from discrimination, coercion, harassment, and sexual, financial, or other exploitation. Under Right 4(2) of the Code she had the right to have services provided that complied with ethical and other relevant standards.

60. As Ms A's primary support worker from early 2015, Mr B had access to Ms A's clinical notes and was expected to follow her risk plans, personal plan, and goal setting. Mr B told HDC that once he had established a rapport with Ms A, she trusted him with a "horrific chain of events", including her experiences of sexual violence.

61. It is clear that during the period in which Mr B was a support worker at the flats, a sexual relationship developed between Mr B and Ms A. While initially Mr B denied this and asserted that Ms A's actions were in part a consequence of her unsettled, unstable relationships with men in the past, subsequently he acknowledged that he had had a consensual relationship with Ms A involving sexual intercourse.

62. Ms A stated that the sexual relationship between herself and Mr B began when Mr B was a general support worker at the service. Subsequently, Ms A became pregnant. The relationship ended prior to the birth of the child.

63. Any relationship between a service user and a healthcare provider, whether or not the healthcare provider is registered, is likely to involve a power imbalance and a degree

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of vulnerability on the part of the service user, and the trust that this vulnerability will not be abused. It is important that healthcare providers have an understanding of this reliance and vulnerability — and even more vital when the patient is highly vulnerable, as in this case. In my view, Mr B took advantage of Ms A's vulnerability.

64. When a healthcare provider engages in a sexual or intimate relationship with a client, fundamental ethical standards are breached. I do not consider that such a relationship being consensual alters this fact. It was Mr B's responsibility to maintain appropriate boundaries in the support worker/consumer relationship, and he failed to do so, despite being aware of the expectations and standards required by his employer, the service. Accordingly, I am of the view that Mr B failed to comply with ethical standards, and that his behaviour was sexually exploitative. Mr B stated that the relationship was consensual. In my view, it is irrelevant whether Ms A consented to the sexual relationship. As a healthcare provider, the onus was on Mr B to maintain professional boundaries and ethical standards.

65. By having an intimate relationship with Ms A concurrently with a professional relationship, I am satisfied that Mr B breached ethical standards.

66. It is clear that Mr B knew that it was inappropriate to enter into a sexual relationship with Ms A. When the service asked him to comment on a rumour that he was the father of Ms A's baby, Mr B denied paternity. Despite being instructed that he was not to support Ms A other than in a group environment, he continued to use his personal telephone to contact Ms A and to engage in activities with her.

67. As a support worker, Mr B did not belong to any professional organisation, but he was bound by the standards set out by his employer. The service's "Staff Misconduct Policy" states that sexual harassment and engaging or attempting to engage in a sexual relationship with a client, with or without client consent, amount to serious misconduct. The service had provided induction training to Mr B upon commencement of his employment, and follow-up training regarding boundaries.

Conclusion

68. I find that Mr B breached ethical boundaries by having an inappropriate personal and sexual relationship with Ms A. In my view, Mr B's behaviour towards Ms A had no regard for her vulnerabilities or the significance of his actions in forming a relationship with her. Mr B failed to comply with ethical standards and the standards required by his employer. Accordingly, Mr B breached Right 4(2) of the Code. His conduct was sexually exploitative and, accordingly, he also breached Right 2 of the Code.

69. I find it concerning that while initially Mr B denied that there was a sexual relationship between himself and Ms A, and asserted that Ms A's actions were a result of him wanting to terminate their working relationship, and of Ms A's unsettled, unstable relationships with men in the past, subsequently he acknowledged that he had had a consensual relationship with Ms A involving sexual intercourse.

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Opinion: Support service — adverse comment

70. An employing authority such as the service may be directly liable for a breach of the Code. It may also be vicariously liable for the acts or omissions of an employee under section 72(2) of the Health and Disability Commissioner Act 1994 (the Act). However, a defence to vicarious liability is available to the employing authority under section 72(5) if it can prove that it took such steps as were reasonably practicable to prevent the act or omission by its employee.

71. The service's "Staff Misconduct Policy", both at the time that Mr B began his employment, and at the time of these events, explicitly stated that engaging or attempting to engage in a sexual relationship with a client, with or without consent, amounted to serious misconduct and could lead to dismissal. Mr B underwent training with respect to professional boundaries, and boundaries and relationships were part of the core training he attended over two days. Mr B received further training on boundaries. The service told HDC that the relevant parts of the "Staff Misconduct Policy" are included in the boundary training. I am therefore satisfied that Mr B was aware of his responsibility to maintain appropriate boundaries, and, in particular, not to engage in a sexual relationship with a client. I note that Mr B acknowledged to HDC that he had "stepped over boundaries" in his relationship with Ms A.

72. The service told HDC that Ms A's support needs were mostly related to her "mental health symptoms". The service stated that Ms A was relatively independent with her daily care needs, and did not need support with cooking, cleaning, or budgeting. The service said that she required support when she was becoming unwell, owing to her impulsive tendencies around self-harm and associated low mood.

73. Ms A's "Risk Management Plans" set out a number of activities and supports that "work" to address her risk factors. These included going for a drive, "concentrating on someone or something important", and playing pool.

74. The service told HDC that while it is unable to provide exact dates, Mr B became Ms A's primary support worker in early 2015. The service stated that this change was made at Ms A's request, as she felt that her previous primary support worker was working too few hours per week to have enough time to interact with her. The service advised HDC that the first time it became aware of issues regarding Ms A and Mr B was in mid 2015. The service said that although there were concerns about Mr B at this time, including spending too much time with Ms A and not accounting for his whereabouts, there was no evidence that Ms A and Mr B were in a sexual relationship.

75. When the service raised with Mr B a rumour that he was the father of Ms A's baby, he denied paternity.

76. During her pregnancy, Ms A told staff that the father of her baby was a man with whom she played pool. The service stated that it was not until much later on in 2015 that staff seriously suspected that Mr B could be the father of Ms A's baby. The service said that although there was evidence of a breach of boundaries, there was no evidence that Ms A and Mr B were in a relationship.

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77. The service told HDC that the concerns outlined in relation to Mr B spending too much time with Ms A, and not accounting for his whereabouts, were serious enough that it considered that a formal investigation into the matter was necessary. The issue was addressed as a formal disciplinary process, with Mr B formally notified of the concerns via letter.

78. The outcomes of the disciplinary meeting included a requirement that Mr B ensure that his colleagues knew his whereabouts at all times; that he not support Ms A on her own, but only in a group environment or in case of emergency; and that Mr B undertake boundary training. The letter informing Mr B of the outcomes of the process stated:

> "[I]t was communicated to you that we required you to undertake boundary training and understand that this has now been arranged to happen in the next few weeks."

79. The service told HDC that following these discussions, the role of primary support worker for Ms A was reallocated to another employee. The service stated that this was because "we suspected that the relationship [between Ms A and Mr B] was developing more towards a friendship than a professional relationship".

80. The service told HDC that Mr B's training was scheduled, and that Mr B was asked to contact the trainer to schedule a one-on-one session if he was unable to attend the session. Mr B did not register for, or attend, the training, nor did he arrange to attend a one-on-one session. The service told HDC that this fact did not come to light until later, as at the time they "relied on [Mr B's] responsibility to register himself for the training and [he] did not follow through on our expectations". The service stated that the human resources (HR) systems did not track disciplinary action requirements at the time.

81. Subsequently, the service held a meeting with Mr B to discuss a number of concerns, including:

- Mr B was allegedly using his personal telephone to contact Ms A.
- Mr B did not attend boundary training as agreed.
- Mr B had been engaging in activities with Ms A.

82. Mr B was issued with a final written warning and instructed not to associate with Ms A. Mr B subsequently resigned from the service.

83. When the service became aware of boundary concerns, it took prompt action in the form of formal disciplinary action, and the reassignment of the role of primary support worker. I note that at this time the service could find no evidence of a sexual relationship between Ms A and Mr B, but took action because it considered that the relationship was moving towards a friendship. This action was followed by further disciplinary proceedings and a written warning to Mr B not to associate with Ms A.

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84. I consider that appropriate action was taken by the service to train Mr B and ensure that he was familiar with the policies in place at the service. I also consider that appropriate action was taken in response to concerns about the boundaries of Mr B's relationship with Ms A. I am therefore satisfied that there were not any additional steps that would have been reasonably practicable for the service to have taken to prevent Mr B engaging in a sexual relationship with Ms A.

85. I am critical, however, that having identified concerns, and having required Mr B to undertake further training on boundary issues, the service was not aware of his failure to do so until several months later. I note that the service has put in place measures to ensure more effective monitoring of compliance with disciplinary action requirements.

Recommendation

86. I recommend that the service, within three months of the date of this report, promptly develop and implement its proposed new training package concerning boundary issues and advise HDC on the completion and implementation of the package; and introduce a system that ensures and documents that those staff identified as requiring refresher training receive it within three weeks of identification.

Follow-up actions

87. Mr B will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994, for the purpose of deciding whether any proceedings should be taken.

88. An anonymised copy of this report, with details identifying the parties removed, will be sent to the district health board, and it will be advised of Mr B's name.

89. An anonymised copy of this report, with details identifying the parties removed, will be sent to the Ministry of Health and the Mental Health Foundation, and will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Addendum

The Director of Proceedings decided not to issue proceedings.

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