

Psychologist, Mr B

Opinion – Case 98HDC17012

Complaint

Ms A complained to the Commissioner about services provided by a psychologist, Mr B. The complaint is summarised as follows:

- *The combining of the therapeutic role with a role where Mr B and Ms A were working together from February 1997 until November 1997 was inappropriate.*
- *The unprofessional way in which Mr B severed the therapeutic relationship over the telephone when he found it too difficult, leaving Ms A devastated and unsupported, only to later change his mind.*
- *The roles of the therapist and work colleague were complicated by the discussions relating to a business partnership and this mixing of roles was inappropriate.*
- *Termination of the relationship very suddenly left Ms A without a therapist, friend, work colleague and business career.*
- *Mr B's psychology practice is not supervised in a way that would have prevented this happening.*
- *Mr B's psychology practice is not accountable to any professional board and Mr B does not respond to any complaints he does not wish too.*
- *The intimate style of the therapeutic relationship.*

Investigation Process

The Commissioner received Ms A's complaint on 14 August 1998 and an investigation commenced on 17 November 1998. Information was obtained from:

Ms A	Consumer
Mr B	Provider / Psychologist
Dr C	Consultant Psychiatrist
Mr D	Registered Psychologist
Ms E	Clinic Director
Mrs F	Business partner of the Clinic
Dr G	Psychiatrist
Dr H	Registered Psychologist
Ms I	Registered Psychologist

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Investigation Process
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Copies of Ms A's clinical records were obtained. The Commissioner received independent advice from a registered psychologist.

Information Gathered During Investigation

Background

In August 1994 Ms A was referred to a trust (the Trust) by her general practitioner. Ms A has a history of depression, anxiety and obsessive compulsive disorders. At the Trust clinic Ms A initially received treatment from a psychiatrist. The psychiatrist left the Trust and Dr C continued Ms A's treatment. During the course of treatment Dr C prescribed Prozac for Ms A. Shortly after starting Prozac, Ms A suffered a panic attack. She rang the Trust but Dr C was not available. No other psychiatrist was available and the receptionist referred Ms A to a psychologist, Mr B.

Mr B is an unregistered psychologist undergoing professional supervision as part of the Psychologists Board registration process. Mr B was supervised by Mr D, psychologist. Mr B commenced full time employment with the Trust in May 1995. (He gave notice on 11 August 1997 and left the Trust on 29 September 1997.)

Following Ms A's phone call to the Trust about her panic attack, Mr B rang her. He advised Ms A to continue taking Prozac and to monitor her panic attacks. Ms A arranged an appointment with Mr B for the following Friday. The date of this first appointment cannot be confirmed but appears to be on or about 29 August 1995. Ms A advised the Commissioner that as far as she is able to recall her first appointment with Mr B was in August 1995, which was confirmed by Mr B. Ms A advised the Commissioner that she found Mr B to be a kind, pleasant and affable person, and she decided to continue seeing him as her therapist. In about October of that year Ms A increased the frequency of her psychotherapy sessions with Mr B from fortnightly to weekly.

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Mr B advised the Commissioner that he was aware that Ms A was developing a strong positive psychotherapeutic transfer (dependence, neediness and attraction) to him in therapy. Mr B advised the Commissioner that he suggested to Ms A at this time that sessions should return to being every two weeks but Ms A protested at being abandoned and continued to attend on a weekly basis.

During November 1995 Mr B advised the Commissioner that he again discussed transference with Ms A and also discussed the development with his supervisor, Mr D. Mr D confirmed that Mr B first presented Ms A in supervision on 29 November 1995. Mr D noted that it is not uncommon in therapy for a client to develop unrealistic beliefs about the therapist, and this indicates that the therapeutic relationship may need to be managed with considerable care.

On 30 November 1995 the Trust's Executive Director wrote to Ms A because Mr B had informed him that Ms A was interested in voluntary work at the Trust. The letter advised Ms A to submit her curriculum vitae for the Trust's consideration. Ms A advised the Commissioner that she submitted her curriculum vitae as requested and attended the November board meeting to be interviewed for a position.

Ms A continued to see Mr B for treatment on a regular basis throughout 1996 until November 1997.

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Therapeutic relationship 1996–1997

When Ms A began working at the Trust is unclear. Mr B advised the Commissioner that Ms A commenced work on a day to day basis at the Trust and was appointed as group co-ordinator by Ms E, Clinic Director, in early 1996. Other documentation shows that Ms A wrote to the chairman of the Trust on 10 September 1996 protesting the sale of Trust property but there is no indication of Ms A's employment designation in her letter. The Trust, through its lawyer, advised the Commissioner that Ms E appointed Ms A to the position of group co-ordinator for three months beginning in May 1997 (ending on 27 July 1997). The Trust advised:

“It was agreed, as a result of her particularly energetic lobbying, that there be a period of 3 months on a trial basis where she worked on a role of assisting and co-facilitation of group meetings and other support structures for patients.”

Ms A advised the Commissioner that she was employed by the Trust from February to June 1997, initially as a 'volunteer' but she was not paid until April to June 1997. Ms A worked for approximately 20 hours per week recruiting people for group work relating to anxiety disorders. She was also involved with promotional work for the Trust. A letter dated 20 May 1997, published on the Trust's letterhead, advertised two group therapy sessions to be conducted by Mr B and Ms A on 3 and 11 June 1997. It is clear that Ms A continued to see Mr B in a clinical capacity approximately once a week during her period of employment with the Trust.

Overlapping boundaries

Mr B advised the Commissioner that both before and after Ms A commenced working at the Trust, he raised issues with Ms E about the management of therapeutic and collegial boundaries and suggested that the arrangement, whereby he both treated Ms A and worked with her as a colleague, was unsuitable. Mr B states that both Ms E and Ms A indicated he would be discriminating against those with mental health difficulties if he refused to work with Ms A. Mr B stated that on protesting further, he was given the impression that his employment would be in jeopardy if he did not continue both the therapeutic and collegial relationship with Ms A.

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During this time, Mr B said that he also raised concerns with his supervisor, Mr D, who acknowledged the difficulties a self-help organisation places on therapeutic staff. Mr D advised against continuing the therapeutic relationship. There is no suggestion in the information provided by Mr D that Mr B raised any concerns about allegations of discrimination against mental health consumers. Mr B advised the Commissioner that pressure from Ms E had significantly affected his judgement and led him to continue Ms A's therapy.

Mr D confirmed to the Commissioner that, from November 1996, Mr B raised his concerns about the administration at the Trust. Mr B reported many tensions between clinic staff and Ms E. Mr B saw the potential for more conflicts of interest arising as a result of some members of the administration at the Trust also being in treatment. These concerns were drawn to Ms E's attention and he had considered leaving because of his concerns about the Trust's willingness to perpetuate this situation.

The Trust, on the other hand, had difficulty in clarifying whether a therapeutic relationship between Mr B and Ms A continued while Ms A was working there. Nevertheless, the Trust warned Mr B against counselling its employees. Mr B was counselling two people employed by the Trust before they started working for the Trust. The Trust knew about this. However by continuing therapy Mr B was not complying with new management practices initiated by the Trust. On 15 May 1997 Ms E wrote to Mr B advising him (amongst other things):

“I realise that it is a difficult position to be in when you have been employed in a situation where you have been working without supervision for two years. This being said, we need to bring the clinic back to a responsible management position

... I would also ask that you think carefully of the situation created by you counselling two of our employees. I would ask that you discuss these matters with [...] and myself.”

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Likewise, on 11 July 1997 in a memorandum to Mr B, headed “*Formal Notification of Concerns*”, a (later) Clinic Manager advised:

“Dear [Mr B]

I am formally notifying you of my concerns regarding conflict with your professionalism relating to the management and the organisation structure being developed for the clinic.

The escalation of interpersonal conflict within the clinic and your stance regarding your personal attitude towards the CEO and her view of client management disturbs me, as does your active therapeutic involvement with clinic staff and your involvement with the 24 hour voluntary support members regarding management issues

Conflict relating to: ...

- **professional interest:** *Treating [...] against the express wishes of Chief Executive Officer who has notified you of her concern in writing*
- *Individual plans of treatment for all patients are to be accessible on all patient files.”*

On the same day in another memorandum, the Clinic Manager advised Mr B:

“In the 11 weeks [11 days] I have been employed by [the Trust] I have managed to meet with you three times. At the end of each meeting, I have felt that nothing has been accomplished. This feeling was reinforced when I was documenting the results of our last meeting, therefore I am providing written feedback

Our July 8 meeting touched on a number of issues of concern to me as Clinic Manager

Yet to be resolved:

- *conflict of interest/role treating [...]; [Ms A], [...].*
- ...

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- *peer supervision will be required until the end of 1997.*

Mr B responded to both these memoranda in a letter on 21 July 1997:

“My professional responsibility is to provide clients with treatment. [Ms E’s] inability to manage clinical and interpersonal relationships can make this very difficult.

...

I see my role as primarily providing psychological services as an individual and group basis to clients at the Trust. My commitment is to those clients which has been affected at times by [Ms E’s] involvement.”

Mr B did not express a wish to cease treating Ms A in his letter of 21 July.

Mr B advised the Commissioner through his lawyer that:

The continuation of the dual roles of [Mr B] throughout 1996 and 1997 led to an overlap of therapeutic and collegial boundaries by [Ms A]. This often spilled over into therapy sessions with [Ms A] apparently becoming concerned at attention [Mr B] gave to other staff members and clients, and feeling abandoned at continually being kept at arms length by [Mr B].

Despite the problems in therapy, [Mr B] and [Ms A] developed a good collegial relationship. Due to this, and in light of ongoing management problems at [the Trust] [Mr B], [Ms A] and another colleague [Mrs F] held discussions in late 1996 about the establishment of their own mental health clinic.

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In February 1997 [Ms A], [Mrs F] and [Mr B] entered into a partnership to plan and establish their own clinic [...] (not set up until October 1997). At the request of [Mr B], early discussions between the partners focused on the need for strict therapeutic and collegial boundaries. It was agreed by all that in the interests of the partnership [Ms A] would find another therapist, but until then would continue to see [Mr B].”

The Trust advised the Commissioner that:

- *“They [Mr B and Ms A] were not working together for that period of time [February-November 1997]. [Ms A] was employed for a period of 3 months only.*
- *It was divulged by neither her or [Mr B] that there was a continuing therapy*
- *The parties apparently went to some lengths to conceal the overall nature of their relationship. This must have involved both of them. When it was suggested that because of the inappropriate amount of time that was being spent together behind closed doors that there may be a therapeutic relationship as well. [Mr B] refused to discuss it and laid emphasis on client confidentiality. [The Clinic Manager] is prepared to go on oath to say that on a number of occasions when she attempted to try and track down and deal with this issue there was invariably a petulant response which claimed client confidentiality and she was not able to make any progress in the area in terms of direct discussion with [Mr B].”*

On 25 July 1997 the Trust Board advised Ms A that her three-month position was disestablished.

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Dr C, consultant psychiatrist to the Trust at the time, advised the Commissioner that:

“... In coming into power at the Trust in the beginning of 1997 she [Ms E] appointed [Ms A] and another client whose first name was [Mrs F] to work respectively as Group therapist with [Mr B] and the receptionist. I was strongly against this move but not consulted and although [Mr B] agreed with it, I believe he had some misgivings at the time. In reality both ladies did an excellent job and this and the fact that it had been a historical practice at [the Trust] to have clients involved [as therapists and employees] lead to the anxieties which [Mr B] and myself had felt.

At the same time [Mr B] was certainly aware that this jeopardised the therapeutic relationship he had with each woman. Although both were doing well, and indeed highly functional, at that time there was still a need for ongoing medication.

The relationship with [Ms A and Mrs F] at that time had clearly been transformed to one of friendship rather than therapy. [Mr B] and I discussed this and I know he wished and advised that they should see a Psychologist other than himself.

After four months, [Ms E] suddenly fired Ms A; she was one of about half a dozen people fired by [Ms E] that year. Outrage at this behaviour further cemented the close bonds developing between the three and by the end of 1997 they had resolved to form a clinic of their own whose name derived from a fusion of the letters of their Christian names.

[Ms A] initially presented with depression and more long-standing problems of OCD [obsessive compulsive disorder] and dysthymia. From then, the onset I suspected that she probably had deeper adjustment issues manifested at a personality level and that a light touch was required to avoid hostile and ambivalent transference developing. I think [Mr B] agreed about this and was initially fearful however, the change of circumstance brought about by [Ms E's] employment of [Ms A] reduced the situation, which was completely unprofessional from a therapeutic point of view.

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[Mr B] *recognised this and did his best to steer [Ms A] towards alternative counselling. Being fired from the Trust caused an exacerbation of her depression in the middle of 1997, fortunately this responded to a change of antidepressants*

Mrs F advised the Commissioner that in her view Mr B was not treating Ms A in a strictly therapeutic sense. It was more like a relationship between friends rather than therapist. She confirmed that Mr B tried to refer Ms A to another therapist. Mr B advised the Commissioner that after Ms A's dismissal from the Trust, she became depressed and requested that he continue with the therapy sessions. Given Ms A's discomfort at attending the Trust he counselled her off site either at lunchtime or on weekends.

Mr B sent the Commissioner a number of pages of documents, which appear to be clinical records. Through his lawyer, Mr B advised the Commissioner that these were notes taken by him during his therapy sessions with Ms A. A document, dated 12 May 1997, describes "[Ms A] – *really bad – she uses people – rude hostile – lies*". Although there is much more to this documentation, it does not draw any conclusion for this assessment and is unsigned. Other documentation is recorded on slips of paper claiming "*I will write a lot before I die ... - you don't know ... from my death you'll learn*". Another slip of paper records "*... it's winning OCD [obsessive compulsive disorder] ... - music at funeral*". Many of the recordings are written on postcards. One of the pages refers to Ms E's dismissal of Ms A. All this documentation is recorded in the first person and enclosed in inverted commas. None of the slips of paper are dated or signed.

About the end of January 1997, Mr B was encouraging Ms A to ring him at any time by providing her with his after-hours telephone number and e-mail address. Mr B advised the Commissioner that he gave Ms A his contact details because she was in crisis from time to time but he did not consider that he was encouraging her emotional dependence on him. Ms A's e-mails to Mr B refer to this contact. Mrs F confirmed that Ms A would ring Mr B at all hours during the night and sometimes several times in the one night.

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Severing therapeutic relationship by telephone

Ms A advised the Commissioner that her collegial relationship with Mr B was not good. She says that it was fraught with arguments and difficulties.

Ms A stated:

“The combination of roles was a disaster from the beginning. There was a lot of strife in the therapeutic relationship as well as the working role and I was finding it very difficult to cope with.

During this period, he [Mr B] decided that he couldn't cope with the two roles either, but instead of talking it over with me face to face, he told me over the phone on two occasions that he wanted to end the therapeutic relationship. He couldn't cope with the combined roles and that it was becoming too difficult all round. Both times that he told me of his decision, he slammed the phone down in anger and wouldn't talk about it to me which sent me into a tail spin and into a suicidal state.”

Ms A also stated *“each time after one of these episodes, he would decide to continue with the dual roles and we would start all over again”*.

Mr B advised the Commissioner that he was always extremely cautious in trying to end the therapeutic relationship but he attempted to do so on numerous occasions. Often Ms A would telephone him at night, becoming abusive and angry if he suggested that she should see another therapist. He terminated these calls because of Ms A's erratic behaviour. Ms A advised the Commissioner that Mr B frequently contacted her by telephone and he gave her his cell phone number so that she could call him whenever she needed. She stated:

“[Mr B] used to ring me after sessions to see if I was all right and was always encouraging me to call him any time of the day – 24 hours! I thought this was quite amazing that a therapist was so available.”

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Mr B provided the Commissioner with copies of letters written to him by Ms A. In one (undated) letter Ms A apologises for “*getting wound up on the phone*” the previous night. The letter stated “*I projected all that abandonment stuff onto you yesterday in the sessions and also last night by becoming hostile, blaming and aggressive (again)*”. In another letter Ms A stated that she was ashamed about her behaviour the previous night when Mr B wanted to sever their friendship or therapeutic relationship, and accepted full responsibility for her behaviour “*however, I will understand if you don’t want to be involved with me in any other way than as partners in the groups*”.

Ms A provided the Commissioner with two undated letters which were written to her by Mr B. One is hand-written and includes the statement:

“You are bloody special so don’t leave us. (Maybe I need to deal with this issue). Yours psychologically, [Mr B].”

The other letter is typewritten and contains the following statements:

“You are a special person in my life, I have a few special people – those people who mean far more than the rest. I’m terribly sorry you feel I have betrayed your trust or damaged you with letting you know about the other special people. I think I have misled you in the past by not making it clear that there are other special people in my life, but I have wanted you to feel special – because you are.”

The letter also stated:

“I will be calling you regularly over the next few days, to monitor how you are.”

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Ms A advised the Commissioner that she had been paying Mr B \$80.00 per counselling session but once she left the Trust in July 1997 she stopped paying for these sessions. Although Mr B did not require any payments after this time he continued to treat her. She advised the Commissioner that both while she was working at the Trust and after she left she would often have clinical sessions with Mr B in cafes. Mr B confirmed that after Ms A left the Trust he had to counsel her “*off-site either at weekends or lunchtimes*”. Mr B also treated Ms A’s 14-year-old son during this period.

Referral to another therapist

Mr B advised the Commissioner that during 1997 Ms A attended other therapists including Dr G, psychiatrist, Dr H, registered psychologist, Ms I, registered psychologist and a psychotherapist. Despite this Ms A became increasingly reluctant to stop seeing him and his attempts to terminate the relationship were exacerbated by Ms A’s emotional instability.

Ms A advised the Commissioner that she did not see Dr H, Ms I and the psychotherapist until December 1997, after the business partnership with Mr B and Mrs F was dissolved. She said she saw each of the three therapists on one occasion only to see whether “*she liked them*”. Ms I confirmed that she saw Ms A on one occasion on 26 November 1997, following a referral from Mr B. Dr H advised the Commissioner that she had two consultations with Ms A on 3 and 10 December 1997. Mr B referred Ms A to her. On the first occasion Dr H saw Ms A by herself, but the second time Mr B attended the session with Ms A. Dr G confirmed that Ms A did not commence seeing her until 27 January 1998, following a referral from Mr B and Dr C. Ms A continues to receive therapeutic services from Dr G. The Commissioner was unable to contact the psychotherapist.

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The project – establishing business relationship

In September 1997 Ms A, Mr B and Mrs F entered into a partnership to plan and establish a Clinic. The Clinic was to be a privately run mental health centre. Mr B's lawyer advised the Commissioner that:

“[A]t his request early discussions between the partners focused on the need for strict therapeutic and collegial boundaries. It was agreed by all that in the interests of the partnership [Ms A] would find another therapist, but until then would continue to see [Mr B].”

Ms A disputes this, advising that Mr B did not discuss finishing the therapeutic relationship with her at this stage. Ms A recalled that Mr B suggested that they would be able to combine all the roles (clinical, business and collegial) if they were careful.

Mrs F advised the Commissioner that usually any business meeting would quickly dissolve into discussions about Ms A's problems. She attempted to keep minutes of these meetings but it was of little help because no business was actually discussed. Ms A would start to talk about her own concerns and quickly dissolve into tears. In Mrs F's opinion her behaviour was outrageous. No copies of minutes of the meetings were provided.

During 1997 Mr B, Ms A and Mrs F contributed \$25,000 each to the project. Mr B's lawyers advised:

“There is no suggestion that [Mr B] used his position of trust to exploit or coerce [Ms A] in any way – if anything, it was [Ms A] who used her position to coerce [Mr B] into continuing to treat her. In the circumstances, and given the attempts by [Mr B] to have [Ms A] see another therapist, his actions in entering into a business partnership with [Ms A] were reasonable and did not deprive [Ms A] of any of her rights.”

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A Certificate of Incorporation issued under the Companies Act 1993 shows that Mr B, Ms A and Mrs F were named directors of the Clinic at its incorporation on 22 October 1997. The directors changed on 22 December 1997 when Ms A's name was removed. On that date the registered office of the company changed its address.

Termination of therapeutic and business relationship

Ms A's clinical notes showed that Mr B made an application to the local Director of Area Mental Health Services for assessment of Ms A under the Mental Health (Compulsory Assessment and Treatment) Act 1992 on 3 September 1997. The grounds on which Mr B made the application are stated as: "*major depressive disorder and serious risk of self harm. Cannot contract own safety. – Hopeless – wants to be left alone – 'I won't be here at 7.30am'.*" Accompanying documentation (undated) requested a review by a psychiatrist. Mr B recorded that at 8.20 (whether am or pm is not noted) he paged the Crisis Team and discussed Ms A's threats of suicide with them. Mr B also recorded that Ms A refused to attend a psychiatric assessment. He was advised by "... that a compulsory treatment order would be necessary.

The Crisis Team was stationed at a house. The Manager of the house, advised the Commissioner that the application for compulsory assessment of Ms A arrived in the evening and the on-call duty registrar assessed Ms A. The registrar visited and concluded that Ms A did not require admission to the house and the registrar would not support the referral. The house took no further action.

Mr B's lawyer advised the Commissioner that:

"[Ms A's] threats of suicide became more serious and [Mr B] had little option but to refer her to the Mental Health Crisis Team. Needless to say that the therapeutic relationship ended at this stage."

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He continued:

“While this step may have appeared ‘sudden’ to [Ms A] it was only after numerous attempts by [Mr B] to encourage [Ms A] to see another therapist. [Mr B] advises that as it happened [Ms A’s] condition deteriorated to a point where referral and encouragement by [Mr B] were ineffective and it was in the interest of [Ms A’s] safety to involve the Mental Health Crisis Team.”

Ms A disputes that her therapeutic relationship with Mr B ended when he referred her to the House. Mrs F confirmed that Ms A’s behaviour was becoming uncontrollable with temper tantrums, outrageous demands, rage and tears. Ms A was very demanding of Mr B’s time and very possessive of him. It was becoming impossible to tolerate her mood swings, with her behaving in a businesslike manner one day and uncontrollably the next. Mrs F admitted that she was totally out of her depth and suspected that Mr B was too.

Ms A advised the Commissioner that when the Clinic was initially established in October 1997 it was run from a studio in the backyard of her home. Mr B saw clients in the studio while Ms A attempted to negotiate a tenancy agreement on a suitable commercial property. Ms A advised that one day in late November 1997 Mr B, Mrs F and herself had a meeting in the backyard studio to discuss the tenancy. An argument developed and the three agreed to meet later that day to discuss the matter further. At the meeting that afternoon Mr B and Mrs F advised Ms A that they wished to end the business partnership. Mr B also told her at that meeting that he wished to end his clinical relationship with her.

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Mrs F advised the Commissioner that it was not as clear as that. Meetings were never strictly business meetings because of Ms A's domination of them. This meeting in November was specifically called to discuss whether to proceed with the business partnership. Mr A (Ms A's husband and shareholder in the clinic) also attended the meeting, which was unusual because he did not attend any of the other meetings. Ms A agreed to withdraw from the business venture and Mr A agreed with this decision. Ms A advised the Commissioner that she was absolutely devastated by this decision. Ms A's name was removed from the company register on 22 December 1997.

Events in 1998/1999

During 1998 Ms A initiated further contact with Mr B and Mrs F, with the object of resolving past conflicts. She visited the Clinic at its new premises and meetings were held to discuss the breakdown of the partnership the previous year. Three e-mails dated 23 February 1998 from Ms A to Mr B suggest a meeting between her, Mr B and Mrs F. It appears that the suggested time for the meeting would be Saturday at 1.00pm (28 February). These e-mails were followed up by another on 24 February wanting their thoughts on the Saturday meeting. Ms A sent two additional e-mails; one on 24 February and one on 28 February before the meeting. The intent of the meeting was to resolve the difficulties of the past months.

An e-mail, sent by Ms A on 3 March 1998, referred to a talk she had had with Mr B that evening. Ms A suggested that she would call Mrs F the following day. The three had lunch on 19 March 1998. Ms A's emails continued at one or two a week during March and throughout April, May and June and referred to Mr B's responses to her e-mails, discussions and meetings between the three of them. Late in June Ms A was organising a seminar and in an email dated 2 July 1998 asked Mr B to be guest speaker. Mr B agreed with that request the same evening.

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In February 1998 Mr B wrote a personal reference for Ms A when she applied for a new job. In an e-mail to Ms A dated 27 February 1998 Mr B referred to the possibility of co-authoring a book with Ms A on obsessive compulsive disorders. In July 1998 there appeared to have been a further breakdown in the relationship between the parties and Mr B decided to cancel a speaking engagement arranged by Ms A on or about 15 July. On 25 July Ms A refers to a letter that she sent to Mr B which was to be sent to “[a regional health board]”. Ms A had second thoughts about the wisdom of sending it and asked Mr B to return it to her by courier. Mr B did not do so and Ms A e-mailed him again on 26 July. Mrs F advised the Commissioner that Ms A’s demands again began to dominate and they realised that such a relationship could not be re-established. It was after this attempt at reconciliation failed that Ms A made her complaint to the Commissioner.

Ms A continued to try to contact Mr B during the course of this investigation. In September 1998 a number of “*hang up calls*” received by the Clinic were traced to Ms A’s address. Ms A advised the Commissioner that it became apparent to her, over the following months, that Mr B and Mrs F were reluctant to “*keep up contact*”. She felt betrayed by this and her mental health started to deteriorate again. Ms A advised that some of the calls were “*hang up*” calls which she regrets but most were calls she made but decided not to go ahead with at the last moment for fear of “*rebuttal*” by Mr B and Mrs F. Mrs F found these calls intimidating.

In response to specific aspects of Ms A’s complaint, Mr B’s lawyer stated:

“As [Mr B] is not registered as a psychologist under the Psychologists Act 1981, we agree that he is not accountable to the Psychologists Board. [Mr B] is nevertheless aware that he is accountable to the Health and Disability Commissioner by reason of section 3(k) of the Health and Disability Commissioner Act and consequently the Complaints Review Tribunal ...

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[Mr B] is aware of his responsibilities under Clause 1 of the Code to inform consumers of their rights and to enable consumers to exercise them. Furthermore, [Mr B] is aware of the patient's rights to complain under Right 10 and that [Ms A] has the right to complain to either:

- [Mr B],
- a person authorised to receive complaints about [Mr B],
- an independent advocate provided under the Health and Disability Commissioner Act 1994, or
- the Health and Disability Commissioner

During attempts in 1998 by [Ms A] to contact [Mr B], [Mr B] advised [Ms A] of her right to complain and even encouraged her to do so. Had [Ms A] chosen to complain directly to [Mr B], he is aware that his responsibilities under the Code include complying with a complaints procedure set out in Right 10(6) and responding to the complaint

Throughout his time at the Trust, [Mr B] was supervised by [Mr D], a registered psychologist. [Mr B] has continued to be supervised by [Mr D] since commencing work at [the Clinic]. [Mr B] consulted with [Mr D] frequently about [Ms A] and obtained advice as to how to deal with the overlap between therapeutic and collegial boundaries. [Mr D] counselled [Mr B] and recognised the difficulties he was under, especially the pressure exerted by the clinic director

At [the Trust], [Mr B] also worked closely with [Dr C] and consulted with him regularly as to [Ms A's] clinical status. As a staff member of the Trust, [Dr C] was aware of the difficulties [Mr B] was experiencing with being both a therapeutic and collegial relationship with [Ms A]”

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**Independent
Advice to
Commissioner**

The Commissioner received independent advice from a registered psychologist.

Therapeutic/collegial relationship

The independent psychologist advised the Commissioner that it was not appropriate for Mr B to continue treating Ms A while Ms A was working at the Trust. In doing so, Mr B placed himself in a conflict of interest situation. A psychologist's prime responsibility is to help the client. Therefore the client's interests and welfare must take priority. If a psychologist places himself in a situation where he has an additional role (ie, colleague, business partner, friend), he is putting himself in a situation where the client's interest and welfare are not the sole issue. There is a high risk that at times the client's interest and welfare will not be of prime importance.

In this case when Mr B learned that Ms A was considering working at the Trust, it was his responsibility to discuss the situation with her and to make it clear that he would not be able to both work with her and continue treating her therapeutically. By working with Ms A, and treating her therapeutically, Mr B was not maintaining the interests and welfare of his client as of primary importance. The advisor also stated that Mr B was putting himself in a situation where it would be difficult to maintain professional objectivity and integrity.

The independent psychologist advised the Commissioner that although Mr B stated that he continued to treat Ms A because he had the impression that his employment would be in jeopardy if he did not continue both the therapeutic and collegial relationship with Ms A, his behaviour was inappropriate. The advisor stated that it was unethical and unprofessional for Mr B to do something which he believed was inappropriate for his client, because he believed he could lose his job if he did not do it. The advisor stated:

“Professional and ethical requirements come first and it is quite inappropriate for [Mr B] to give this as a reason for deciding not to work with [Ms A] as well as continue seeing her therapeutically. He was placing self-interest ie, the possible loss of his job, over the welfare of his client.”

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Independent
Advice to
Commissioner
continued**

The independent psychologist continues:

“It was up to [Mr B] to terminate the therapeutic relationship when [Ms A] indicated that she was going to start work at [the Trust] and he should not have allowed anything to have interfered with this decision. Given that he unfortunately did not do this, it was inappropriate that he kept continuing to see her. He did not seem able to act in a professional way and a contributing factor might have been his inexperience and his seeming reluctance to recognise this.”

The independent psychologist also noted that Ms A's clinical notes contained no record of Mr B's discussions with Mr D about his continuing to treat Ms A therapeutically. If Mr B had discussions about this with his supervisor, Mr D, it would have been appropriate to keep records of these discussions.

The independent psychologist advised the Commissioner that it was not appropriate for Mr B to enter into a business relationship with Ms A while he was still treating her therapeutically. Again, he was putting himself in a conflict of interest situation and was not acting with professional objectivity and integrity or maintaining his client's interests and welfare as a primary focus. In the advisor's view there had clearly been difficulties brought about by Mr B working with Ms A and treating her therapeutically. Adding the third role of business partner was “*very surprising, unethical and unprofessional*”.

In response to Mr B's advice that he only entered into a business relationship on the basis that the therapeutic relationship was to be terminated, the advisor states that this “*is not good enough*”. Ms A consulted other therapists but did not start seeing another therapist clinically until after the business relationship faltered. Even if she had it would have been inappropriate to have entered into a business relationship with her so soon after he stopped treating her therapeutically, especially after all the difficulties there had been.

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Independent
Advice to
Commissioner
*continued***

The advisor stated:

“[Mr B] was the psychologist and [Ms A] the client and [Mr B] had an ethical and professional responsibility to make his client’s interests paramount. It was clearly not in her interests that he treat her therapeutically, work with her and then enter into a business relationship with her.”

Clinical records

The independent psychologist advised the Commissioner that in Ms A’s 1995/1996 clinical records there are only brief notes about the initial appointments and there appeared to be no details of a full assessment of Ms A’s problems and a proposed treatment plan (treatment goals and interventions to be used). The notes rarely summarised what had come from the appointment, what was proposed at the next appointment, and how this related to the overall treatment plan. There are no comments about progress made or comments about altering treatment goals or interventions.

The 1997 clinical notes are undated and do not summarise what came from the appointments or identify future treatment goals. The advisor stated *“a number of the notes are in fact just brief scribbled notes on small bits of paper including business cards and a change of address card”*. There did not appear to be any records in Ms A’s clinical notes regarding details of telephone calls between Ms A and Mr B, apart from the initial telephone calls on 1 September 1995 when Mr B first had contact with Ms A. It is usual practice to record notes of telephone calls. It would be unclear to another psychologist reading the notes what action Mr B had taken. The notes clearly do not meet the standards required by the New Zealand Psychological Society ‘Code of Ethics’.

Therapy

After reviewing Ms A’s records, the independent psychologist could find no details of cognitive behavioural therapy carried out by Mr B to help Ms A’s depression or any details about treating her panic attacks. There was also no mention of the use of psychological questionnaires, which may have been appropriate to measure the current level of depression.

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Independent
Advice to
Commissioner
*continued***

The independent psychologist referred to the letters apparently written to Ms A by Mr B and stated that such comments seem to suggest that Mr B did not know how to behave in a professional ethical way. The comments and letters were very inappropriate. The advisor stated:

“Psychologists have a professional relationship with their clients to help them with their problems. Behaviour like this is more like a close friendship, and not that of a professional relationship between psychologist and client.”

In relation to the information provided by Ms A that Mr B encouraged her to contact him by telephone, the advisor stated:

“I am concerned that he appears to have been encouraging her to depend on him rather than teaching her how to cope with difficult situations herself.”

In the advisor's view:

“As [Mr B's] treatment did not appear to be helping [Ms A] make progress with her problems, and he certainly saw her for a quite considerable period of time, he had a responsibility to terminate his therapeutic relationship with her, but he did not seem able to do this.”

In the advisor's opinion Mr B did not provide Ms A with treatment that complied with accepted professional and ethical standards.

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Independent
Advice to
Commissioner
continued**

Attempts to end the therapeutic relationship

In relation to Mr B's attempts to end the therapeutic relationship, the independent psychologist advised the Commissioner that it is not appropriate to end or attempt to end a therapeutic relationship on the telephone. It should have been done face to face during an appointment, with Mr B then arranging for Ms A to be seen by someone else. In relation to the comments from Mr B that he would be left with little choice but to see Ms A again after she expressed increasingly depressed and suicidal thoughts, the advisor stated:

"[Mr B] seems to be saying that he allowed himself to be manipulated into seeing [Ms A] again after terminating his therapeutic relationship with her."

The advisor stated that dealing with difficult situations is part of a psychologist's job, but Mr B did not seem to deal appropriately with such a situation. The advisor noted the discrepancies between Mr B's and Ms A's recollections of the events surrounding the termination of the therapeutic relationship. In the advisor's view, if Mr B terminated the professional relationship at the business meeting in front of the other business partner then this was not professional. If Mr B later helped Ms A to find someone to provide clinical treatment then this action was appropriate; if he did not his failure to do so was inappropriate.

Other issues

The independent psychologist advised the Commissioner:

"I am concerned at the attempts to put much responsibility for this unfortunate situation onto [Ms A]. I accept that at times [Ms A] was not an easy person to deal with. However [Mr B] was the psychologist and [Ms A] was the client. It is part of a psychologist's job to deal with people who can be difficult and it was his responsibility to ensure that he did not get into situations in which he was not putting his client's interests first, and in which he would have a conflict of interest."

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**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 4

Right to Services of an Appropriate Standard

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

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

Other Relevant Standards The Psychological Society of New Zealand 'Code of Ethics'

1. Responsibility

1.3 While taking account of their obligations under the law, psychologists who are practitioners hold the interests and welfare of their clients to be of primary importance. They recognise that, since psychological practices so directly and intensely affect clients, these should be used only in the best interests of clients.

1.4 The welfare of research subjects, students and clients takes precedence over the self interest of colleagues, employers and other agencies.

2. Competency and Accountability

2.3 Psychologists keep sufficient records of their professional activities:

- a) for their own reference*
- b) to ensure that at some future date the client, or other psychologists who become responsible for that client, can be informed of the action taken.*
- c) to allow the information to be presented clearly if necessary.*

5. Professional Relations

5.4 Psychologists terminate a clinical or consulting relationship when it is clear that the client is not benefiting from it. When appropriate they offer to help the client find alternative sources of assistance.

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Opinion:
Breach
Mr B**

In my opinion Mr B breached Rights 4(1) and 4(2) of the Code.

Right 4(1)

Due care

Mr B and Ms A were in a therapist/client relationship. As her therapist, Mr B owed Ms A a duty to exercise reasonable care and skill in providing psychological services to her. One aspect of that duty was the requirement that he take due care to avoid causing Ms A reasonably foreseeable emotional harm. Ms A was clearly emotionally fragile and had significant mental health needs. It was incumbent on Mr B to take reasonable care to ensure that Ms A did not suffer avoidable harm during the course of her therapeutic relationship.

Mr B showed no regard for Ms A's emotional health and well-being by entering into an inappropriate emotionally intimate relationship with her, and a business relationship with her. He showed further disregard for her safety by the manner in which he terminated his therapeutic relationship with her.

It is no answer for Mr B to say that Ms A was a demanding client who encouraged the blurring of boundaries in their relationship. It is precisely because mental health consumers are vulnerable that providers of psychological services need – and are legally required – to exercise due care and skill in the course of therapy.

In my opinion Mr B clearly violated his duty of reasonable care and skill, and thereby breached Right 4(1) of the Code.

Clinical practice

Mr B did not provide Ms A with therapeutic services with reasonable care and skill. A psychologist should make clinical decisions only after a full assessment of the client's problems. Therapeutic interventions should follow a proposed treatment plan. The outcome of each consultation should be recorded, together with a proposal for the next appointment. It should also document how the consultation relates to the overall treatment plan.

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Opinion:
Breach
Mr B
continued**

There is no evidence that Mr B formally assessed Ms A, formed a plan of treatment or recorded the outcome of consultations. I am advised that it would have been appropriate for Mr B to apply cognitive behavioural therapy to help Ms A with her depression. There is no evidence of that, nor of any treatment for her panic attacks.

Rather, Ms A's records indicate that her treatment was haphazard and appeared to be at the whim of Mr B or the demands of Ms A. There is no evidence that any accepted treatments were carried out. In my opinion, Mr B's therapeutic management of Ms A was not provided with reasonable care and skill, and breached Right 4(1) of the Code.

Right 4(2)

Clients' best interests

Clauses 1.3 and 1.4 of the 'Code of Ethics' of the Psychological Society of New Zealand state that psychologists hold the interests and welfare of their clients of primary importance, and that the welfare of clients takes precedence over self-interest, and the interests of colleagues, employers and other agencies. In any circumstances where the psychologist is unable to put the client's interests first, the psychologist breaches the ethical standards set by the profession if he continues to treat the client.

Mr B continued to treat Ms A after she commenced voluntary work at the Trust, where he was employed. In doing so he set in motion the circumstances whereby a conflict between his role as therapist and his role as work colleague was a high risk. If a conflict arose in the workplace, he could no longer ensure objectivity and act with integrity. In such circumstances, the client's therapeutic interest may no longer be the clinician's primary focus. Mr B took that risk. Mr B did not take active steps to inform Ms A that if she commenced employment he would be unable to treat her. He did not terminate his therapeutic relationship with Ms A once she did commence work at the Trust and he continued to treat her, against the professional advice of colleagues and the express wishes of the Trust management.

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Opinion:
Breach
Mr B
continued**

Mr B advised that he continued to treat Ms A because he feared for his job. I have received no evidence from Mr B to support this belief. In fact, I find to the contrary. I accept that Trust management attempted to establish the nature of the relationship between Ms A and Mr B, which Mr B attempted to hide. Further, the Trust warned him against the practice of counselling employees. In continuing to treat Ms A because he believed his job to be in jeopardy, Mr B again placed his interests above the welfare of his client. Mr B implied that Ms A manipulated him into continuing the therapy. I do not accept this. In any event as a provider of psychological services, it was his duty to resist, and handle appropriately, any attempts at manipulation by a client.

Mr B further complicated the potential for conflict by entering into a business partnership with Ms A. It was totally inappropriate for Mr B to enter a business relationship with Ms A while he continued to treat her. Mr B should have foreseen the likelihood of conflict and taken active and deliberate steps to avoid it. Mr B argued that he entered the business relationship on the basis that the therapeutic relationship would be terminated and only treated Ms A as an interim measure. In the words of my advisor, "*this was not good enough*". Even if the relationship had been terminated, it would have been inappropriate for Mr B to enter into a business relationship so soon after termination.

In my opinion Mr B clearly failed to meet ethical standards, and thereby breached Right 4(2) of the Code.

Terminating a therapeutic relationship

Clause 5.4 of the 'Code of Ethics' of the New Zealand Psychological Society states that the psychologist must terminate a clinical relationship when a client no longer benefits from the therapy. Mr B treated Ms A from 25 August 1995 until the end of 1997. Mr B's treatment did not appear to be helping Ms A make progress with her problems. Mr B had a professional responsibility to terminate his therapeutic relationship with Ms A when it became obvious that the therapy was no longer of benefit.

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Opinion:
Breach
Mr B
continued**

I accept the advice of my independent advisor that, in such circumstances, the professional way to terminate a therapeutic relationship is face to face and at an appointed time. Clause 54 of the 'Code of Ethics' states that, when appropriate, the psychologist helps the client find alternative sources of assistance.

The evidence in this case suggests that on at least two occasions Mr B tried to terminate his therapeutic relationship with Ms A by telephone. He eventually cut off all contact with Ms A during a business meeting, with others in attendance. It was only then that he referred Ms A to another therapist.

In my opinion, Mr B should have discussed these issues with Ms A much earlier and taken steps to have an ongoing therapist available for her, especially following his application for compulsory assessment and treatment in September 1997. Mr B failed to do this and thereby breached Right 4(2) of the Code.

Clinical records

Clause 2.3 of the 'Code of Ethics' of the New Zealand Psychological Society states that a psychologist must keep records sufficient for their own use and for the future use of any other therapist who may take responsibility for the client's therapy. Mr B's documentation of his consultations with Ms A does not comply with this professional standard.

Mr B provided me with records that appear to be verbatim recordings of Ms A talking. Mr B's documentation of therapy sessions is scribbled on pieces of paper. There is no structure to the documentation. It does not follow a recognisable treatment plan, and in many instances the records are undated. It would be unlikely that another therapist would be able to continue Ms A's therapy when required to do so. Furthermore, Mr B's records are incomplete. There is no record of his telephone conversations with Ms A, or of his conversations with Mr D or Dr C.

In my opinion Mr B failed to keep clinical records that complied with the professional standards expected of a professional psychologist and thereby breached Right 4(2) of the Code.

Continued on next page

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

**Opinion:
Breach
Mr B
continued**

Intimate style of the therapeutic relationship

I accept the advice of my independent advisor that Mr B's letters to Ms A suggest that he did not know how to act in a professional and ethical manner. Mr B's behaviour, as expressed in the letters, was more like that of a close friend than of a health care provider. Mr B's letters to Ms A show his inability to delineate the boundaries between therapist and friend. This clouded his clinical judgement and meant that he was unable to make clinical decisions about Ms A's therapy with any degree of reasonable objectivity. In my opinion, Mr B did not provide services that complied with professional standards and thereby breached Right 4(2) of the Code.

Emotional dependence

The role of a therapist may include assisting clients to find solutions to difficult situations and to encourage them to take control of their life. Mr B gave Ms A his after hours telephone number and encouraged her to phone him at any hour. In so doing, he made it clear that he would be available to her at any time and discouraged her from finding her own solutions to her problems. Mr B fostered an emotional dependence that was inappropriate. In my opinion, Mr B did not fulfil the accepted professional therapeutic role and thereby breached Right 4(2) of the Code.

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

Opinion:
No Breach
The Trust

Vicarious liability

Employers are vicariously liable under section 72(2) of the Health and Disability Commissioner Act for ensuring that employees comply with the Code of Health and Disability Services Consumers' Rights. Under section 72(5) it is a defence for an employing authority to prove that it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do the thing that breached the Code.

The Trust was Mr B's employer at the time that he became Ms A's psychologist. I am satisfied that the Trust attempted to establish whether Mr B was continuing to treat Ms A while they were co-workers. In the event the Trust was unable to confirm that a clinical relationship existed. The Trust gave Mr B written warning not to treat Ms A (or any Trust employee) on at least two occasions. I am satisfied that Mr B took steps to hide the therapeutic relationship he had with Ms A, agreeing to meet outside the Trust premises, such as cafes.

In the circumstances I accept that the Trust took such steps as were reasonably practicable to prevent Mr B breaching the Code of Rights. Accordingly, the Trust is excused from vicarious liability for Mr B's breaches of Rights 4(1) and 4(2).

Psychologist, Mr B

Opinion – Case 98HDC17012, continued

Actions

I recommend that Mr B take the following actions:

- Apologises in writing to Ms A for breaching the Code of Health and Disability Services Consumers' Rights. This apology is to be sent to the Commissioner who will forward it to Ms A.
 - Undertakes appropriate professional training about maintaining professional boundaries with clients.
-

Other Actions

- In accordance with section 45(f) of the Health and Disability Commissioner Act 1994 I will refer this matter to the Director of Proceedings to determine whether any further action should be taken.
 - A copy of this report will be forwarded to the Psychologists Board of New Zealand with the recommendation that a copy be placed on Mr B's registration file.
 - In notifying the Psychologists Board of my opinion, I will advise that in my view Mr B's actions in regard to Ms A have demonstrated that he is not a suitable person to be registered by the Board.
 - A copy of my opinion, with identifying features removed, will also be sent to the New Zealand Psychological Society.
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Addendum

The Director of Proceedings laid before the Human Rights Review Tribunal a charge alleging a breach of Rights 4(1), (2) and (4) of the Code of Health and Disability Services Consumers' Rights (the Code). Prior to commencement of the hearing, the parties reached an agreement to resolve the matter, and asked the Tribunal to consider certain orders by consent as part of the arrangement. On the basis of an Agreed Statement of Facts, the Tribunal declared that the actions of the defendant were in breach of Rights 4(1), 4(2) and 4(4) of the Code.