

Ms C, Psychologist

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

(Case 08HDC14245)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Overview

This report reviews the appropriateness of the relationship between a psychologist and a man who was her client from July 2007 until her suspension from work in January 2008.

Throughout the investigation by HDC and the prior disciplinary process by her employers, a district health board (the DHB), the psychologist has denied that she has had an intimate relationship with the client. In contrast, a number of witnesses have provided evidence that suggests that they commenced an intimate relationship either prior to, or soon after, the ending of the professional psychologist/client relationship. The man was invited to respond to the complaint, but has chosen not to provide a substantive response.

This report considers the conflicting evidence, and measures the psychologist's conduct against professional standards set by the New Zealand Psychologists Board.

Parties involved

Mr A	Consumer
Ms C	Provider
Ms B	Mr A's former wife
Ms D	Mr and Ms B's daughter
Ms E	Friend of Ms D
Mr F	Ms D's former husband
Mr G	Ms C's son
Mr H	Registered nurse
Dr I	Psychiatric registrar
Mr J	Ms D's partner

Complaint and investigation

On 28 August 2008 the Health and Disability Commissioner (HDC) received a complaint from the New Zealand Psychologists Board about the services provided by psychologist Ms C to a client or former client of hers, Mr A. The following issues were identified for investigation:

The appropriateness of the care provided to Mr A by psychologist Ms C.

The appropriateness of the relationship between Mr A and psychologist Ms C.

An investigation was commenced on 11 September 2008. Information was obtained from Ms C, Ms B, Ms D, Mr J (Ms D's husband), Ms E (a friend of Ms D), Mr F (Ms D's former husband), and the District Health Board (DHB).

Information gathered during investigation

Ms C

Ms C qualified as a clinical psychologist in July 2004, and commenced employment at a DHB. Her job description¹ required her to display “[b]ehaviour consistent with, and according to, professional codes of conduct”.

Mr A

On 5 July 2007, Mr A was admitted to hospital as a result of a referral by the Police and the mental health team. He had recently moved out of the family home and had also left his job. He had given up alcohol and was taking Antabuse (a medication prescribed for alcohol abuse or dependency). He was experiencing a major depressive episode with suicidal feelings. This was in addition to a pre-existing type II bipolar affective disorder, which was being managed with lithium and Priadel (mood stabilisers). By consent, Mr A remained in hospital until 17 July, when he was discharged and returned to live with his wife. His prescribed medications were venlafaxine (anti-depressant), risperidone (anti-psychotic), lithium, and Antabuse. His treatment plan included a referral to a clinical psychologist for further treatment, and Ms C was assigned to his case. On 18 July, she wrote to Mr A to arrange a first appointment for 23 July.

July to December 2007 — clinical care

Ms C's assessment on 23 July recorded Mr A's main concerns, which included a “recurrent depressive disorder”, recent separation from his wife, and being unemployed. Ms C also recorded that Mr A had a “chronic problem with alcohol”, and “experienced outbursts of anger and extreme mood swings”. Following her assessment, Ms C planned to meet Mr A on a regular basis, with the next appointment set for 14 August.

Between 14 August and 27 November, Mr A attended 12 appointments with Ms C. The subject matter of the sessions concentrated in the main on anger management strategies, Mr A's relationship difficulties with his wife, and management of his alcohol problem.

During the appointment on 11 December (which was to be Mr A's last appointment with Ms C), Ms C recorded that he had had “a very stressful week as he thinks his 30-year marriage is over”. The next appointment was arranged for 7 January 2008, but

¹ Signed by Ms C on 26 May 2005.

this did not take place; the reasons for the appointment not taking place were not recorded.²

Ms C advised that her normal practice was to make handwritten notes during a consultation, and type them up afterwards. The notes were then printed out and signed by Ms C, who would then pass them to the administration staff to insert into the clinical notes.

The appointment on 11 December 2007 commenced at 10am and, according to Ms C, the appointments generally lasted an hour. The electronic version of Ms C's clinical record of that appointment has been obtained from the computer on which she saved her notes. The final version of her typed notes for this appointment was saved on the computer at 11.23am on 11 December 2007, and comprises over 400 words.

Events in December 2007

On 19 December 2007, Ms B, Mr A's wife, received two text messages sent to her in error by Ms C's son, Mr G.³ The messages read:

“Hi [Mr A], its [Mr G] here. [Ms C's] son. Are you still able to come to [another city] with us today?” (Sent at 12.56pm.)

“Hi [Mr A] mum is all good for [the trip] so if you are still keen let me know. Cheers.” (Sent at 5pm.)

After receiving the second text message, Ms B called the mobile phone from which the text messages were sent, spoke to Mr G, and ascertained that he was the son of Ms C, whom she knew was her husband's psychologist.

The DHB alleged during the disciplinary process that Ms C travelled to another city with her son and Mr A to buy a car for her son. Ms C stated in response:

“In early December 2007, when I had my last scheduled therapy session with [Mr A] [11 December 2007], at the end of the session [my son] was waiting in the waiting room for me as I had arranged to have lunch with him. My son had been working hard to get himself his first car and he was desperately keen for this to happen as soon as possible but needed my help, which is why he had come to see me in my lunch hour that day. Immediately he saw me my son enthusiastically launched in saying he had found a couple of cars on TradeMe and could we go look at them. [Mr A] was still there and heard this conversation. I told my son we would not look at any cars until they had been checked by AA. My son said this would cost \$150.00 per time and he could not afford it. Then [Mr A] said he was a motor mechanic and looked at cars for people all the time and he gave my son his card and told him he would be happy to give some advice on a vehicle for him at

² Attempts were made by the mental health team at the DHB throughout January 2008 to contact Mr A, leaving messages on his mobile phone, but he did not call back.

³ Ms B was temporarily in possession of her husband's mobile phone.

no charge. I thanked [Mr A] but said it was not a good idea. I then forgot all about the conversation and went to lunch with my son.

...

Around 19 December 2007 my son purchased a car he'd seen in [another city] — I found this out later. I also found out later that [Mr A] had gone [there] with him. Over the next day or so after 19 December I learned my son had been to [another city] and had purchased a car, because he asked me to go [there] to collect it. I remember saying something to him about it needing to be AA checked and he told me he'd had a mechanic look over it. I didn't ask who and he didn't tell me it was [Mr A].”

Mr G stated:

“[On 11 December 2007] Mum came out of a locked area with a man, who I now know to be [Mr A], she was about to say goodbye to him or organise the next meeting when I interrupted them to tell Mum about the cars I had seen on TradeMe. [Mr A] was standing there when I spoke to Mum.

I said to Mum that I had seen more cars on TradeMe. Mum said that she didn't want to look at any yet and that she wanted an AA report for any I was interested in. I didn't want to do that because it was so expensive. I said this to her explaining that this would cost me \$150 each. At this point [Mr A] said that he was a mechanic and that he wouldn't mind having a look for me. He pulled out his wallet and hunted around in it before he gave me a card of his. Then he left the building.

Mum and I were still inside [the clinic] when [Mr A] left. We stood there talking for about two minutes. ... Then we went off to lunch together.”

Mr G added: “I won the auction although I needed Mum to pay for the car.”

Events in January 2008

Ms B said that she was told by friends that they had seen her husband, hand-in-hand with a woman, enter a driveway. Consequently, on the morning of 11 January 2008, Ms B parked where her friends had described. Ms B stated that, at 8.15am, she saw her husband leave the driveway of what she subsequently discovered was Ms C's house.⁴ He was riding his motorbike, and Ms B followed him back to their own home. She confronted him about where he had been, but he did not answer her questions directly. Nevertheless, Ms B made a formal complaint to the DHB later that day about the relationship between her husband and Ms C.

⁴ Ms B advised that her husband had not spent the previous night with her.

On 14 January, Ms C was suspended on full pay until completion of an internal investigation.⁵ She was advised not to have contact with Mr A.

On the morning of 17 January, Ms B again waited in her car in the road outside Ms C's house, and said that she saw her husband came out of the same driveway as on 11 January. Ms B stated that her husband walked over to her car, accused her of spying on him and Ms C, and said that he had been helping her out as she had cancer.⁶

5 to 7 February 2008 — Incident at Ms C's house and subsequent events

On the afternoon of 5 February, Mr A arrived at Ms C's house at 4pm. According to Ms C, he told her that he knew where she lived because "he had followed her home from work many weeks ago". Ms C stated that Mr A was intoxicated and making threats towards his wife.

Ms B was staying in the South Island at the time, and said that her husband called her and "made threats to smash up his house and [Ms B's] car". Ms B subsequently contacted the Police because she was concerned about her husband's clinical condition.

As a result of Ms B's call to the police, Mr A was arrested at his home on the evening of 6 February and placed in custody; the police required pepper spray to subdue him. The mental health team was subsequently called by the police, and Mr A was visited at the Police Station by Registered Nurse (RN) Mr H. Following his assessment, Mr H wrote in the clinical record:

"[Mr A] did not appear to be suffering from a mental disorder ... rather a reaction to his marriage breakdown and new partner suffering from ? terminal cancer, it also appears that new partner has probably broken off the relationship."

Mr H subsequently advised HDC that Mr A told him that Ms C was his partner and, as his former psychologist, her job was at risk because of this relationship. Mr H advised that the "new partner" referred to in his clinical note was Ms C.

Mr A was released from custody on 6 February, having made an appointment to see a psychiatrist on the following day.

As arranged, Mr A was reviewed by psychiatric registrar Dr I on 7 February. Dr I recorded that Mr A had had an argument with his wife "over an alleged affair" with his psychologist, whom he was "helping ... through" her difficulties. Mr A advised Dr

⁵ Ms C was subsequently dismissed by the DHB in August 2008 at the conclusion of the internal investigation.

⁶ During her subsequent interview with HDC, Ms C stated that she had been diagnosed with cancer in the past, but that she is currently "perfectly well".

I that his psychologist only had three months to live, and that he had been “doing odd jobs around her house to help her”.⁷

On 7 February, Ms C’s lawyer wrote to Ms C’s managers at the DHB to give her account of the events of 5 February:

“[Mr A’s] reason for visiting [Ms C’s] house on [the evening of 5 February] was, as far as she could ascertain, to apologise for his wife’s complaint against her. He said enough to [Ms C] that suggested to her that [Mr A] has deliberately misled his wife into believing he is involved with [Ms C] because he wants to distract his wife from something else.”

Ms C also made a police report at 4.47pm on 7 February, at her lawyer’s recommendation, in which she stated that Mr A “was extremely intoxicated with alcohol and he had come to her to apologise for his wife and the trouble she has caused”.

February/March 2008

In late February or early March 2008, Mr A’s daughter, Ms D, and her partner, Mr J, went to Ms B’s house to tell Mr A that they were engaged to be married. According to Ms D, Mr A was at the house because he was feeding her mother’s dog in her absence. As they arrived, Ms and Mr J saw a woman leave the house by a back door. They recall that, soon afterwards, Mr A received a text message on his mobile phone, and the woman re-entered the house. Ms and Mr J stated that they were then introduced to Ms C. According to Ms D, Ms C told her that she had “come around for a sauna”.

22/23 March 2008 — The Club

In March 2008, Ms D was manager of a Club (the Club), described by Ms D as the only strip club in the city. On the night of 22 March, because she was leaving for another job, the owner of the Club told Ms D that she could invite some friends to the Club, and a sum of money was put “behind the bar” to pay for drinks for Ms D and her guests.⁸ Ms D invited her father as one of her guests, and he asked if he could bring his “girlfriend” (using that word specifically, according to Ms D). Also present at the Club that night as guests of Ms D were Mr J and a friend of hers, Ms E. Mr J recalled that Ms C arrived with Mr A at around 9.30pm, and they left together at approximately 3–4am the following morning.

Using Ms D’s camera, Ms E took digital photographs at the Club. The photographs were provided to HDC by Ms D. The photographs show Mr A, Ms C, and Mr and Ms D. The digital information on the photographs indicated that they were taken between 10.40pm on 22 March 2008 and 2.21am the following morning.

⁷ Ms C stated that she had not known that Mr A provided this assistance. She stated that he dropped off some topsoil in December 2007, but she was unaware of this “for several weeks” as she was, at the time, living with her daughter. Ms C also stated that Mr A mended her garage door and her son’s car, both unknown to her.

⁸ Ms D stated that this was an otherwise normal night at the Club.

Ms C was shown the photographs (and the associated encoded data indicating the date and time the photographs were taken) during her subsequent interview with HDC. She maintained that she had never been to the Club, was not aware that there was a strip club in the city, and challenged the statements made by those who claimed they saw her there with Mr A.⁹ Ms C suggested that the digital images may have been altered in some way. She also suggested that the photographs may have been from another occasion at another pub (the Pub) (described below).

Three weeks after the interview with HDC, Ms C provided the following statement:

“I did go to [the Club], but was extremely embarrassed about going to a strip club (even if only for a farewell party) as I am a practising Catholic. That is why I was not as upfront as I should have been.

One evening in March, [Mr A] turned up at my house and insisted on getting me out of the house as I was very low about my suspension from work. I let myself be persuaded. It was a private function for his daughter.”

Other incidents

At the end of March 2008, Ms D changed jobs to work at the Pub. Ms D stated that, to her knowledge, on five or six occasions over the next few weeks Mr A came to the Pub accompanied by Ms C. Ms D added that on some occasions Ms C arrived on the back of Mr A’s motorbike. Mr J recalls a time when Mr A and Ms C joined him and Ms D for drinks at the Pub. Mr J stated: “I understood they were a couple.”

In her statement of 20 October 2008, Ms C described an incident that she said occurred in April 2008:

“[Mr A] arrived at my house with [Ms D]. He asked for my help as his daughter was in an intoxicated state and he did not want [Ms B] to see her like that. ... I had to explain to [Mr A] that I could not provide help for his daughter, but I could direct them to the appropriate services.”

During her interview with HDC on 4 November 2008, Ms C gave a different account of this incident:

“[Ms C]: [Mr A] just arrived and [Ms D] was very intoxicated. She fell out of the car. She was so intoxicated that she hit her head. The head was bleeding so I put a cold compress on that. And she vomited everywhere. Tried to clean it up but didn’t manage. So ... I wasn’t terribly thrilled about that, and I said, ‘What’s going on?’, and he said, ‘She needs help. She needs help right away and her mother doesn’t want to know and [Ms D] doesn’t want her partner to know she’s in this state so I didn’t know where else to go.’

⁹ Mr and Ms D, Ms E.

...

Investigator: So she turned up drunk, she cracked her skull, came inside, made a mess of your bathroom, you gave her a cold compress and ...

[Ms C]: And some Panadol because she moaned about her head being sore.

Investigator: And sent them on their way or ...

[Ms C]: Well, she was not capable of moving for a while. She was lying on my couch moaning. Twenty minutes, and then they just packed up and left.

Investigator: Ok. And this occurred while you were still employed by the DHB?

[Ms C]: On suspension.

Investigator: Did you tell the DHB about this very unwelcome visit at all?

[Ms C]: No.

Investigator: Did you think to mention it to them at all?

[Ms C]: I found them so adversarial and every time I said something to them it got twisted and used against me, I wasn't talking to them. Basically, I wasn't sharing any information."

In April 2008, Ms B learnt that Ms C's house was for sale. On 23 April, Ms B visited the house in the guise of a potential buyer, but did not enter the house because she saw Ms C was home. However, Ms B stated that she looked in the garage and saw her husband's motorbike, which is very distinctive.¹⁰

According to Ms B, on 2 May¹¹ she was telephoned by her daughter, Ms D (who was by now working at the Pub) to say that Mr A was at the Pub with Ms C. Ms B immediately went there and confronted her husband and Ms C. A verbal altercation ensued.

¹⁰ Ms B stated: "I went to [Ms C's] house in the guise of a house buyer ... When there, I saw my husband's [motorbike] and his push bike in her garage."

¹¹ Ms B provided a copy of a page from her diary for 2 May 2008, in which this incident is described.

Ms C described an incident which she stated occurred in April, but which appears to have been the same incident as described above by Ms B, albeit differently. Ms C stated:

“I was at the [Pub] with friends and by chance [Mr A] was also there. He wanted to buy me a drink. I declined. [Mr A] introduced me to his daughter, who was working behind the bar and then his wife arrived and tried to cause a scene; I left straight away and went home alone.”

Mr F, who had previously been married to Ms D (and thus is a former son-in-law of Mr A), stated that he has seen Mr A with Ms C on a number of occasions.

Ms D’s friend, Ms E, advised that she met Mr A and Ms C in a shop on 26 or 27 October 2008. Ms E recalls that they spoke about his daughter’s wedding.

Other matters

Contact outside therapeutic sessions

In her initial response of 7 October 2008 to the complaint, Ms C stated that the only time she met Mr A outside therapeutic sessions had been on 5 February 2008.

On 20 October 2008, as a result of a further request for information from Ms C, she stated:

“I did not have contact with [Mr A] outside of therapy sessions from 20 July 2007 through to 30 December 2007. When he was no longer a client I had contact with him on intermittent occasions throughout 2008, but I do not have a record of times and dates. The contact I had with [Mr A] was always initiated by him, as he would drop by my house to update me on the investigation and to offer his support. I tried to make [Mr A] aware that it was not helpful to have him drop in and that I was worried that it would prejudice my situation further.”

Ms C stated in her response to HDC of 20 October 2008 that Mr A has, since August 2008, parked his van outside her house. In her subsequent interview with HDC, Ms C reconfirmed this, but stated that he did not come into the house:

“He doesn’t come inside he just stands outside and talks. I don’t have him invited in.”

Later in the same interview, Ms C agreed that Mr A also parks his motorbike in her garage for safekeeping, and on occasion has left his trailer containing work equipment outside her house. For this service, Ms C said that Mr A has filled her car with petrol, and has also worked on her car. She accepts this payment in kind, she said, because she has not been in employment since her dismissal from the DHB in August 2008.

During her interview, Ms C was asked about her views on the appropriateness of her relationship between herself as a psychologist, and Mr A as a former client:

- “[Ms C]:** Well I ... don’t see myself as a psychologist since the beginning of the year, so I guess I wasn’t looking at it from that point of view.
- Investigator:** When you say beginning of the year, what, from suspension?
- [Ms C]:** I haven’t worked as a psychologist since I was suspended. ... And when I went and spoke to the former Clinical Director at the University, [he said] ‘You’ll never work in this town again.’ So I basically waved it all goodbye. He said, ‘You’ll never ... work again as a psychologist, that’s over’, so that’s how I’ve seen it ever since.
- Investigator:** So from your point of view, there are no issues with a relationship of any sort with a former client in your current circumstances?
- [Ms C]:** The Code of Ethics is unclear on that. I know other people have friendships develop [with] clients once they’ve finished working with them. Their suggestion is that it should be more than a year. Other people say you shouldn’t have a friendship at all.”

Websites

According to the New Zealand Domain Name Commission (NZDNC),¹² “[Mr A]” is the registrant¹³ for a web domain name. The domain name was registered on 29 July 2008, and technically managed by an internet company. An address and telephone number are given as contact details for the registrant.

Also according to NZDNC, Ms C is the registrant for another internet web domain. The domain was registered on 7 May 2008, and technically managed by the same internet company as Mr A’s web domain name. The address and telephone number given as contact details for Ms C are the same as were given for Mr A, which are the contact details recorded by the DHB for Ms C.

In her lawyer’s letter of 6 November 2008 to the New Zealand Psychologists Board, Ms C advised that the website had been disestablished.

Mr A

Mr A did not provide information to the DHB during the disciplinary processes. Mr A was written to at the commencement of the HDC investigation inviting him to

¹² www.dnc.org.nz

¹³ According to the NZDNC website, a registrant is “the person, or entity, that holds the right to use a third-level domain within the .nz name space (eg. dnc.org.nz)”.

comment on the complaint, but he did not respond to the invitation. On 13 January 2009, Mr A's mobile telephone was called by an HDC Investigator to invite him to comment on the investigation. Mr A declined to comment.

Following this telephone call, Mr A was written to again to invite him to provide a response, but he did not contact this Office. A copy of the information gathered during the HDC investigation was also sent to Mr A and his comment was invited, but he did not respond.

Ms C's response to the provisional opinion

In response to the provisional opinion, Ms C's lawyers stated:

“[Ms C] strongly believes that [Ms B] has lied to the Commissioner to get back at her ex-husband (through [Ms C]) for the break up of the marriage.

Throughout the investigation process [Ms C] has felt railroaded, disbelieved and seriously disadvantaged by the lack of witness evidence supporting her case, most particularly that of [Mr A].”

Opinion

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

Opinion: Breach — Ms C

Introduction

Throughout the internal disciplinary inquiry performed by the DHB, and this subsequent HDC investigation, Ms C has consistently denied having an intimate relationship with Mr A.

However, having carefully considered the evidence, I am satisfied that an intimate and therefore inappropriate relationship developed between Ms C and Mr A. I set out below the reasons for my opinion, and discuss why in my view Ms C's actions and subsequent behaviour constitute a serious breach of Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code),¹⁴ and warrant her referral to the Director of Proceedings.

¹⁴ Right 4(2) of the Code: “Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.”

Standard of care

At the commencement of the investigation, one of the issues I decided to investigate was the standard of care provided to Mr A by Ms C. However, having considered the information provided during the course of the investigation, it is clear that the more important issue is the appropriateness of the relationship that developed between them. Accordingly, I have decided not to make a finding on the standard of psychology services provided by Ms C to Mr A.

Evidence of an inappropriate relationship

A number of attempts have been made to obtain a response from Mr A. In the absence of any substantive comment from him, I have relied on the medical record of his conversations with Ms C during their consultations, and the record of the consultations with RN Mr H and Dr I on 5 and 7 February 2008.

Ms C has asked me to accept her submission that an intimate relationship did not develop between her and Mr A. However, I am concerned about much of the evidence relied upon by Ms C in her defence. In my view it is relevant to the measure of Ms C's credibility that she has not always provided an honest, consistent, or complete account of events, and some of her evidence is challengeable.

Meeting of Mr A and Mr G

Ms C stated that her son and Mr A first met on 11 December 2007 after a clinic appointment; Ms C said that she and her son went to lunch immediately after the appointment, and this is supported by her son's statement. However, there is a significant flaw in this account. Ms C advised that her usual practice was to make handwritten notes during a consultation, and subsequently type the formal record on a computer. In relation to the 10–11am appointment on 11 December 2007 with Mr A, the final version of the clinical record was saved on the computer at 11.23am on the same day. The record of that consultation comprises just over 400 words.

Put simply, the saving at 11.23am of the final version of a 400-word clinical note is not compatible with Ms C's account of the incident. The time the record was saved supports the scenario that she typed the clinical record up immediately after the appointment, and then went to lunch with her son. The events could not have occurred as she (and her son) described it.

I also find it hard to accept Ms C's position that she was unaware of the subsequent contact between Mr A and her 15-year-old son: that Mr A and her son travelled together to another city without her knowledge to buy a car; that the first she knew of the car being bought was when her son asked her to travel to collect it; and that she did not ask her son who he had travelled with to buy the car, or mechanically check it over. This appears implausible at best, especially as Mr G stated that he had "needed Mum to pay for the car", which I note is also contradictory to Ms C's statement: "Over the next day or so after 19 December I learned my son had been to [another city] and had purchased a car."

At first glance, it is unclear why Ms C would have provided a misleading response on this point. However, she submitted this evidence to support her position that she did not travel with her son and Mr A to purchase a car, and that the subsequent contact between them was without her knowledge. If her evidence on this point is questionable, then it raises doubt over the reliability of her statement (and her son's) that she did not travel.

On the balance of probabilities, in my view Ms C provided a misleading account of her son meeting Mr A and the subsequent car purchase.

Mr A's vehicles

Ms C stated that Mr A has serviced her car and filled it with petrol to "pay" for him parking his van at her house. He has also kept his motorbike in her garage, and on occasion left his trailer and work equipment outside her house. To me, this is evidence that Ms C overstepped the boundaries in relation to her contact with Mr A.

I also note that in her initial response, Ms C did not provide HDC with the full details of Mr A's property kept at her house, and that Ms C's account altered during her subsequent interview with HDC. Initially, she stated that Mr A parks only his van outside her house. However, as a result of a direct question, Ms C agreed that Mr A also keeps his motorbike in her garage for safekeeping. This evidence contradicts her earlier written statement that "he just stands outside and talks", and she does not invite him inside. Ms C also added during her interview that on occasion Mr A left his trailer containing work equipment outside her house. It is notable that Mr A keeping property outside her house and in her garage is not compatible with Ms C's statement that described her contact with Mr A during 2008:

"The contact I had with [Mr A] was always initiated by him, as he would drop by my house to update me on the investigation and to offer his support. I tried to make [Mr A] aware that it was not helpful to have him drop in and that I was worried that it would prejudice my situation further."

I find it implausible that Ms C was the only person with whom he could leave his property, and that Mr A would park his van and motorbike at Ms C's house and sleep elsewhere. His wife stated that she understood that he was living with Ms C, and he gave her address when he registered a website (discussed further below). It seems more likely that he was living at Ms C's house.

Contact outside consultations

To her employer (the DHB, until her dismissal in August 2008), Ms C stated that there had been no inappropriate relationship between her and Mr A. Throughout the disciplinary process, she told her employer that the *only* contact she had with Mr A outside the professional consultations was on 5 February 2008, when Mr A appeared outside her home, intoxicated and unwelcome. Similarly, in her initial response to HDC of 7 October 2008, Ms C described only the incident of 5 February 2008.

However, in her second response to HDC of 20 October 2008, Ms C's position expanded somewhat, and she stated that she had had "intermittent" contact with Mr A since 30 December 2007 and "throughout 2008". She added:

"The contact I had with [Mr A] was always initiated by him, as he would drop by my house *to update me on the investigation* and to offer his support." (My emphasis.)

It is unclear how Mr A could have updated Ms C on the investigation. By all accounts, Mr A was not interviewed by the DHB, or provided any information during the disciplinary process. In my view, it was therefore impossible for Mr A to provide Ms C any such "update" on the DHB's investigation, and her statement is open to challenge.

I also note that Ms C advised in relation to the incident of 5 February 2008¹⁵ that the purpose of Mr A's visit was to apologise for his wife's complaint, which had come about as a result of Mr A deliberately misleading his wife "into believing he is involved with [Ms C]". However, this claim by Ms C is not consistent with other evidence. Mr H recorded that Mr A "did not appear to be suffering from a mental disorder ... rather a reaction to his marriage breakdown and new partner suffering from ? terminal cancer, it also appears that new partner has probably broken off the relationship". Mr H subsequently stated that Mr A specifically named Ms C as his partner, and that her job was at risk because of their relationship.

In short, Ms C's account and Mr A's subsequent recorded statements are not consistent. While I accept that Mr A has not been interviewed by HDC, his recorded statements certainly do not support Ms C's position. I am inclined to rely on the account described in the clinical record, and RN Mr H's subsequent statement.

I am also concerned that Mr A was seemingly aware of Ms C's history of cancer. However, in the absence of comment from him, it is not possible to say how he became aware of this, or why he seemingly described her as having terminal cancer. At the very least, it raises concerns that Ms C shared personal details with a client or an immediate former client. Had she done so, this would have further blurred professional boundaries, and placed an unnecessary burden on Mr A — who was the one meant to be receiving psychological support.

Care of daughter

Ms C recalled a time when Mr A came to her home for assistance with his daughter, Ms D, who was intoxicated. Ms C initially submitted to HDC that she "had to explain to [Mr A] that [she] could not provide help for his daughter, but [she] could direct them to the appropriate services".¹⁶ However, Ms C's response differed markedly when she was interviewed by HDC two weeks later. During the interview, Ms C

¹⁵ Letter to the DHB of 7 February 2008.

¹⁶ Statement to HDC of 20 October 2008.

provided details of the care she provided, including giving Mr A's daughter a cold compress, some pain relief, and a place to lie down for 20 minutes. Again, Ms C has provided inconsistent responses, with her first response minimising her involvement with Mr A and his family.

The Club

Ms C's attendance at the Club with Mr A on the evening, night and early morning of 22–23 March 2008 is of considerable concern, as is her response when evidence of this incident was put to her. I am satisfied that it was inappropriate for Ms C to attend a family social event as Mr A's guest. To do so in any context would be inappropriate. To compound her unprofessional behaviour, Ms C attempted to mislead the HDC Investigator in her response, and in her subsequent statement she has attempted to excuse and minimise her behaviour.

While Ms C stated that she was "persuaded" by Mr A to go to the club with him, this is not fully supported by the evidence. Notably, Ms D recalls that her father asked before the occasion if he could bring his "girlfriend". In my view, it is also relevant that Ms C was present at the Club from before 10pm until 3–4am the following day,¹⁷ which is not compatible with her being there against her wishes. Furthermore, Ms C appears to be enjoying herself in the photographs, and her home and the Club are relatively close together; had she wished to go home, she did not have far to travel. Ms C also described the event as a "private function" in an apparent attempt to minimise her attendance, yet this was not accurate. While Ms D stated that her employer had put some money aside for her and her guests to have free drinks, this was an otherwise normal night at the Club.

Ms C submitted that her presence at a strip club was particularly embarrassing as she is a practising Catholic, and her embarrassment explains her lack of candour with HDC. While I can well understand that Ms C would feel embarrassed if it became known that, as a "practising Catholic", she was at a strip club until the early hours of Easter Sunday morning,¹⁸ this does not excuse her behaviour in any way.

To summarise this incident, it is highly unprofessional for a psychologist to attend a family social event as the guest of a former client, and equally unprofessional to attempt to mislead a formal investigation.

The Pub — April/May 2008

Ms D described her father and Ms C coming together to the Pub a number of times. Ms C, in contrast, gave her account of what she claimed was a single coincidental meeting with Mr A at the Pub in April 2008, when she was "introduced" to Ms D. However, Ms C's evidence on this point is not convincing.

By her own admission, Ms C was present at the Club on 22–23 March to attend Ms D's leaving party. It is therefore inconsistent to claim that, on this *subsequent* meeting

¹⁷ According to Mr J.

¹⁸ 23 March 2008 was Easter Sunday.

at the Pub, Ms C was “introduced” to Mr A’s daughter. Ms C’s position is further contradicted by the evidence given by Ms D and Mr J, who stated that they went to Ms B’s house in late February or early March 2008 to announce their engagement, and met Ms C then. Quite simply, Ms C could not have been “introduced” to Ms D at the Pub in April 2008, as they had met at least once before, certainly at the Club in March 2008.

In my view, the account given by Ms D is more believable: that Ms C arrived at the Pub with Mr A. I am also inclined to believe Ms D’s evidence that Ms C and Mr A had been together at the Pub on a number of occasions previously, which is supported by Mr J’s recollection that he and his partner had been joined by Ms C and Mr A for a drink at the Pub, and considered them a couple.

Websites

Ms C and Mr A registered websites only a few months apart with the same internet technical support company. The addresses and telephone numbers they gave to the company were identical: Ms C’s.

Ms C may submit that she had no influence over, or knowledge of, Mr A’s selection of her address and telephone number as his contact details, or his choice of internet technical support company. However, in my opinion this is yet another piece of evidence that indicates the likelihood of an intimate relationship having developed between Ms C and Mr A.

Other evidence of contact

Other evidence of Mr A and Ms C being seen together has been provided by: Ms B; Ms E; Mr J and Ms D; and Mr F, Ms D’s former husband and Mr A’s former son-in-law.

Terms of suspension

On 14 January 2008, Ms C was suspended by her employer and advised not to have contact with Mr A. There is much evidence that Ms C did not heed this condition of her suspension.

Summary

Having considered the available evidence, I am satisfied on the balance of probabilities that an intimate and sexual relationship developed between Ms C and Mr A. While there is evidence of a relationship that, if seen in isolation, is not evidence of a *sexual* relationship (e.g., assisting Ms D when she was intoxicated, travelling to buy a car, payment in kind for parking of vehicles), I am satisfied by the weight of the following evidence that the relationship was intimate and sexual: Ms B’s evidence that she saw her husband leave Ms C’s driveway on two occasions early in the morning, and that Ms B understood her husband was living with Ms C; Ms D’s evidence that her father referred to Ms C as his “girlfriend”, their frequent visits together to the Pub, and Ms C’s presence at Ms B’s house (for a sauna) in February or March 2008; Mr J’s evidence that Ms C and Mr A were a “couple”; Mr A’s recorded

discussions with Mr H on 5 February 2008, describing Ms C as his partner; and the events of 22–23 March 2008 at the Club.

In her response to the provisional opinion, Ms C stated that Ms B had lied to HDC “to get back at her ex-husband”. However, this does not adequately explain the evidence from others who gave statements that Ms C and Mr A were in an intimate relationship, nor other evidence, including the photographic evidence from the Club, and the matching addresses given to the internet company. Ms C claimed to have been “railroaded” during the investigation, but provided no evidence. She also submitted that she felt “disbelieved”, yet in that respect she is correct; I have not found Ms C to have been a reliable witness.

Professional standards

There have been previous cases investigated by HDC in which psychologists developed intimate relationships with their clients.¹⁹ In her interview with HDC, Ms C stated her belief that the Code of Ethics for Psychologists Working In Aotearoa/New Zealand (2002) relating to registered psychologists is “unclear” in relation to former clients. She stated:

“I know other people have friendships develop from clients once they’ve finished working with them. Their suggestion is that it should be more than a year. Other people say you shouldn’t have a friendship at all.”

However, as I am satisfied on the evidence that an intimate relationship developed between Ms C and Mr A, Principle 2.1.10 of the Code of Ethics is clear:

“Psychologists do not encourage or engage in sexual intimacy, either during the time of that professional relationship, or for that period of time following during which the power relationship could be expected to influence personal decision making.”

As was stated in Opinion 07HDC08103:²⁰

“In the context of a psychologist–client relationship, there is an inherent power imbalance between the psychologist and the client, as the client’s emotional vulnerability is exposed during therapy. Accordingly, principle 3.3.2 of the Code of Ethics requires psychologists to ‘maintain appropriate boundaries with those with whom they work and carefully consider their actions in order to maintain their role’. That [the client] was ... no longer formally a client of [the psychologist] does not remove from her the responsibility to act in accordance with professional standards.”

¹⁹ See <http://www.hdc.org.nz/files/hdc/opinions/05hdc16909psychologist.pdf> (22 November 2006), and <http://www.hdc.org.nz/files/hdc/opinions/07hdc08103psychologist.pdf> (9 November 2007).

²⁰ See second reference in footnote 19.

The Commissioner also stressed in another case (involving a counsellor) the importance of maintaining professional boundaries. He stated:²¹

“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 A], 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.”

This opinion was endorsed in a more recent HDC case about a psychologist having an inappropriate relationship with a former client:²²

“Similar principles apply in the context of a professional relationship between a psychologist and a client. It is incumbent on the psychologist to set and maintain boundaries, both during the relationship and after.”

The above case was referred to the Health Practitioners Disciplinary Tribunal. As part of its decision, the Tribunal stated:

“The Tribunal is of the clear view that there was a very significant departure from acceptable standards by the instituting of the intimate relationship, amounting to malpractice and the bringing of discredit to the practitioner’s profession.”

I also note in passing that by accepting payment in kind for allowing Mr A to keep his vehicles at her house, Ms C is also in contravention of principle 3.4.3 of the Code of Ethics, which states that she must not “exploit any work relationship to further [her] own personal or business interests”. In my view, accepting payment from a former client for any services is inappropriate. I also note that there is evidence that Mr A’s motorbike was seen in Ms C’s garage as far back as April 2008; at that time she was suspended, but on full pay.

Summary of Opinion

Inappropriate relationship

As stated above, I am satisfied on the balance of probabilities that an intimate and sexual relationship developed between Ms C and Mr A. I am also satisfied that, due to the counselling relationship, there was an inherent power imbalance between Ms C and Mr A, as his emotional vulnerability was exposed during therapy.

It is incumbent on the psychologist to set and maintain boundaries, both during the relationship and after, and in this case Ms C failed to satisfy her responsibilities. In my opinion, Ms C breached Right 4(2) of the Code.

²¹ See <http://www.hdc.org.nz/files/hdc/opinions/03hdc06499counsellor.pdf> (11 February 2004).

²² See <http://www.hdc.org.nz/files/hdc/opinions/05hdc16909psychologist.pdf> (22 November 2006).

Co-operation with investigation

I have grave reservations about Ms C continuing to work as a psychologist, as I have little faith that she understands the importance of behaving ethically and professionally, as demonstrated by her dealings with this Office. In my opinion, Ms C has not co-operated with this investigation as she has failed to provide honest and full responses to questions from HDC, contrary to her professional requirements.

Having been shown the photographs taken at the Club (supported by witness statements), Ms C attempted to mislead this investigation. Ms C also provided challengeable or conflicting statements in relation to: the incident at the Pub with Ms B; Mr A keeping property at her house; Mr A's visit to her house on 5 February 2008; her son's first meeting with Mr A; and the incident with Mr A's intoxicated daughter.

Investigations should not be compromised by health providers seeking to avoid responsibility for their actions through dishonest responses to legitimate queries. This point is emphasised in Opinion 03HDC11066²³ and the Health Practitioners Disciplinary Tribunal's subsequent decision.²⁴ On appeal to the High Court, Courtney J stated:²⁵

“The word of a professional person must be reliable. ... Those undertaking statutory functions for the protection of the community's interests such as the HDC must be able to rely on the information they are given.”

Section 3.1 of the Code of Ethics sets out the requirement for psychologists to be honest,²⁶ and in this regard Ms C fell short. Accordingly, she breached Right 4(2) of the Code.

Follow-up actions

- Ms C will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.
- A copy of this report will be sent to the New Zealand Psychologists Board and the DHB.

²³ <http://www.hdc.org.nz/files/hdc/opinions/03hdc11066gp.pdf> (6 July 2005).

²⁴ Health Practitioners Disciplinary Tribunal, 58-Med05-15D (31 August 2006).

²⁵ *Martin v Director of Proceedings* (High Court Auckland, 2 July 2008, Courtney J), paragraph 117.

²⁶ Section 3.1 of the Code of Ethics :

“Psychologists recognise that integrity implies honesty in relationships. Honesty requires psychologists to be accurate, complete and comprehensible in all aspects of their work.”

- A copy of this report with details identifying the parties removed will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
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Addendum

The Director of Proceedings considered the matter and decided to lay a charge of professional misconduct against the psychologist before the Health Practitioners Disciplinary Tribunal, which heard the matter in December 2009.

In a decision dated 11 December 2009 the Tribunal found the psychologist guilty of professional misconduct and subsequently imposed the following penalties:

- (a) Cancellation of her registration as a psychologist;
- (b) The condition that before she may apply for registration again she must undertake to the satisfaction of the Psychologists' Board education on the importance of maintaining appropriate professional boundaries, the dynamics of violent relationships, the Code of Ethics and the need for supervision and candour in supervision;
- (c) Censure;
- (d) A fine of \$5,000; and
- (e) Costs totaling \$18,000.

The Director decided not to instigate a proceeding in the Human Rights Review Tribunal.