

**A Decision by the
Deputy Health and Disability Commissioner
(Case 23HDC02457)**

Introduction

1. This report is the opinion of Ms Rose Wall, Deputy Health and Disability Commissioner, and is made in accordance with the power delegated to her by the Commissioner. The report discusses the care provided to Ms A by a support worker, and the complaints management process at a residential disability services provider.

Background

The complaints

2. On 2 June 2023 this Office received a complaint from Ms B about the care provided to Ms A by Ms B's mother, support worker Ms C, and the provider. The complaint concerns allegations that Ms C took photos¹ of Ms A and a video² of Ms A without consent and shared these inappropriately with Ms B's family. Further concerns were raised about Ms C taunting Ms A, as seen and heard in the submitted video, and that Ms C used disrespectful and demeaning language when describing Ms A in text messages.³ When Ms B approached Mrs D, a manager with the provider, with her concerns, Ms B alleged that she was laughed at and told to go to the Police instead.
3. In response to the complaint, HDC arranged for an advocate from the Nationwide Health and Disability Advocacy Service to meet with Ms A on 10 October 2023. In the meeting, Ms A consented to the complaint being investigated and alleged that Ms C had on a previous occasion been verbally abusive, had attempted to restrain her, and had pulled her hair and filmed the incident on her phone.

Ms A

4. Ms A has a history of challenging behaviour. She has been diagnosed with mild intellectual disability, with comorbid mental health conditions, which are further impacted by complex trauma. She has a criminal history including wilful damage, threatening language, and assault. Ms A entered the residential service in 2021.

¹ Currently the date on which the photos were taken and shared is unknown. The complaint was lodged on 2 June 2023, and it appears that the photos were taken and shared between 12 January and 2 June 2023.

² The video is undated.

³ The text messages are dated October 2021 to May 2023.

Information shared with Ms C's family

5. The screenshot submitted by Ms B in her complaint indicates that the photo of Ms A was shared with her. The screenshot also shows multiple text messages sent to Ms B that contain profane language, such as calling Ms A a 'c--t' and other personal information related to Ms A's life. According to Ms A, the video submitted to HDC was filmed without her knowledge, and therefore without her consent. The video shows Ms C verbally taunting Ms A, including threatening her that she was no longer her friend and that she was going to show the video to Ms B, who would be 'disgusted'.

Provider's response

6. The provider responded that it is unaware of when the photo and video were recorded and shared. The provider stated:

'[T]he sharing of photographs and recordings of [clients] without their knowledge or consent is unacceptable. This practice goes against our privacy and confidentiality obligations within our Code of Conduct, Privacy and information Management Policy, and Informed Consent policies and processes. It was concerning, and evident, that [Ms C] has shared this [image] and recordings of [clients] with people outside of our organisation. As such, upon receipt of [Ms B's] complaint, [Ms C] was subject to an investigation.'

7. As an outcome of the provider's investigation process, Ms C is no longer employed by the provider.
8. The provider stated that it has been unable to find any documentation relating to the alleged incident involving Ms A and Ms C, as described by Ms A to the advocate.
9. The provider acknowledged that according to the video recording submitted, Ms A's behaviour was escalating, and the staff did not use de-escalation techniques, as they should have. The provider stated:

'There is room for improvement with the communication and behaviour of [staff] toward [Ms A] in the recording provided. In the recording, it appears [Ms A's] behaviours were escalating. In line with her support plan and the training provided to [employees], we would expect de-escalation techniques to be employed such as positive redirection to other activities, or initiating breathing techniques alongside [Ms A]. These techniques were not employed by the [staff] present when the recording was taken. Of particular concern within the video provided were the actions by [Ms C]. [Ms C] made inappropriate, threatening-like comments to [Ms A] around people not being friends with her any longer. It appears [Ms C] also filmed and later shared that video recording. All these actions were against our policies.'

10. In response to the allegation that Mrs D laughed at Ms B and told her to go to the Police when she raised her concerns, the provider stated that the manager concerned denied having laughed at Ms B but acknowledged that she had told her to contact the Police. The provider acknowledged that Mrs D did not follow its standard complaints resolution process,

which states that any staff member who receives a complaint must document it and send it to the provider's designated destination. The provider stated that Mrs D was aware of the significant breakdown in relationship between Ms B and her mother, Ms C. At the time Ms B approached Ms C, Mrs D did not view the video, and therefore did not treat the complaint with the seriousness that was warranted, leading her to perceive the complaint as vexatious.

Previous complaint

11. This Office received another complaint involving Ms A and other former staff members⁴ relating to a similar period⁵ and raising similar concerns. HDC investigated whether the provider had provided services in accordance with the Code of Health and Disability Services Consumers' Rights (the Code). HDC found that the provider 'had comprehensive policies and procedures in place' and that the provider's 'expectations of staff behaviour [was] clearly set out in these documents', and that the provider had not breached the Code.

Contact with Ms C

12. As is HDC's usual process when receiving a complaint, several attempts were made to contact the individual provider, in this case Ms C. The attempts included emails that were not responded to, phone calls that resulted in an automated voice message stating that the phone had been disconnected temporarily, and a letter couriered to Ms C's address, which had been undeliverable. On 21 November 2024 this Office contracted a process service to 'trace and track' Ms C, which was successful. On 25 November Ms C received the notification letter containing all the information about the complaint and the request for additional information. A cover letter added to the notification letter asked that Ms C provide the requested information within 15 working days of receipt of the letter and indicated that if Ms C did not respond, I would prepare the provisional report based on the information gathered to date. No communication from Ms C has been received to date.

Relevant provider policies

Abuse and Neglect Policy

13. The Abuse and Neglect Policy states that the purpose is to ensure that service users are protected against all forms of abuse and neglect, including bullying, maltreatment, coercion, harassment, and/or exploitation.
14. The Abuse and Neglect Policy states that the provider maintains zero tolerance for any type of abuse, neglect, or harm against service users or staff, and this applies to all staff. The policy defines verbal abuse as swearing or using disrespectful, derogatory, or demeaning language, either about or in conversation with clients.

Code of Conduct

15. The Code of Conduct⁶ provides specific guidance on the standard of personal and professional conduct and behaviour expected of everyone who works at the service. The

⁴ Previous complaint 23HDC00878.

⁵ Events that occurred on 12 December 2022. The current complaint was made in June 2023.

⁶ Reviewed in April 2022.

provider expects its staff to adhere to, and conduct themselves in accordance with, the provider's values, to treat clients with courtesy and respect, and to maintain a zero-harm work environment free from harassment, threats, abuse, discrimination, bullying, and violence. Staff should maintain confidentiality of all at the service, including the clients, the employees, and other parties from whom information has been gained through working at the service.

16. The Code of Conduct states that the safety of service users and staff is taken seriously, and that the provider will not tolerate any form of abuse, including verbal abuse.

Privacy and Information Management Policy (sharing and disclosure of information)

17. The provider's policy states:

'Information should only be shared with people who are required to have access to it for the purpose for which it is collected and/or where there is specific consent provided by the person to share their information with a particular person/agency.'

Complaints Management Policy and Complaints Resolution Process

18. The provider's Complaints Management Policy⁷ and Complaints Resolution Process⁸ define a complaint as an expression of dissatisfaction (made verbally or in writing) regarding the quality of service provided to service users.
19. The Complaints Management Policy states that all staff members are responsible for ensuring that any complaints received are recorded and reported, in line with the Complaints Resolution Process. The Complaints Management Policy states that the ultimate responsibility of resolving a complaint lies with the respective service manager for all complaints related to services within their area.

Responses to provisional opinion

20. The provider, Ms C, and Mrs D were given the opportunity to respond to relevant parts of the provisional opinion.
21. Mrs D stated that the provider would issue a statement for her.
22. The provider responded that it welcomed HDC's findings, particularly that any shortcomings were due to individual employees and did not indicate broader issues at the service. It also agreed with the proposed recommendations and suggested follow-up actions.
23. Ms C did not respond or provide any comments.

⁷ Reviewed in May 2022.

⁸ Reviewed in May 2022.

Opinion: Ms C — breach

24. This complaint is serious, as it raises concerns about a support worker's verbal maltreatment of a vulnerable consumer with dual disabilities and a history of challenging behaviour. In addition, the complaint raises concerns about Ms C inappropriately sharing confidential information, such as a photo and a video recording, with her family.
25. Given that Ms C has chosen not to provide any information to this Office, this opinion is based on the information provided by the provider and by Ms B, such as the photo, text messages, and the video. Ms C's lack of engagement with this investigation process does not exonerate her from being held to account for her actions.
26. As a support worker, Ms C had a duty to provide vulnerable consumers with an appropriate standard of care. This included complying with the provider's Abuse and Neglect Policy, Code of Conduct, Privacy and Information Management Policy, and the Code.
27. Ms C was required to adhere to the above-mentioned policies and the Code. Right 4(2) of the Code states that '[e]very consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards'. Right 1(1) of the Code states that '[e]very consumer has the right to be treated with respect'. Accordingly, Ms C was required to treat Ms A with respect and provide services in a manner that respected her dignity.

Information shared with Ms C's whānau

28. I am critical that Ms C shared the photo and video of Ms A with Ms B. In my opinion, in doing so Ms C not only breached Ms A's privacy, but also breached the provider's Privacy and Information Management Policy, which states that information should be shared only with people who are required to have access to it or when consent has been obtained to do this.

Text messages and video

29. I am critical that the multiple text messages sent by Ms C to Ms B in 2022 contained profane language, such as calling Ms A a 'c--t', and personal information about Ms A. I am also critical that the video included Ms C taunting Ms A, including threatening her that she was no longer her friend and that she was going to show the video to Ms B, who would be 'disgusted'. According to the provider, who acknowledged that the video showed that Ms A's behaviour was escalating, Ms C did not use de-escalation techniques as she should have, and did not utilise Ms A's behaviour support plan strategies, such as redirecting her to other activities or initiating breathing techniques.
30. The provider's Abuse and Neglect Policy states that the purpose of the policy is to protect service users against all forms of abuse, including verbal abuse, which is defined as 'swearing or using disrespectful, derogatory or demeaning language, either about or in conversation with [clients]'. The provider's Code of Conduct states that the safety of service users and staff is taken seriously, and that the provider will not tolerate any form of abuse, including verbal abuse.

Conclusion

31. By sharing Ms A's personal information with her family, including her photo and a video, without consent, Ms C breached the provider's Information Management Policy. Ms C also failed to provide services to Ms A in accordance with professional standards, in breach of Right 4(2) of the Code. It is clear from the video recording that Ms C taunted and threatened Ms A and did not utilise Ms A's behaviour support plan strategies to de-escalate the situation. I consider that Ms C's conduct amounted to verbal abuse, as defined by the provider's Abuse and Neglect Policy. Therefore, I find that Ms C failed to treat Ms A with respect, in breach of Right 1(1) of the Code.

Additional allegations from Ms A — no finding

32. The incident of alleged abuse by Ms C as described by Ms A during the visit from the Nationwide Advocacy Service could not be corroborated. The provider stated that it has no record of any such incident involving Ms A and Ms C. It is possible that the alleged incident refers to the one filmed by Ms C, which is part of the main complaint. However, as Ms C chose not to engage in the investigation process, currently there is insufficient information to make an informed decision as to whether this incident occurred or whether the Code was breached. Accordingly, I have not found Ms C in breach of the Code on this matter.

Opinion: Mrs D — adverse comment

33. As a manager for the provider, Mrs D had a duty to protect vulnerable consumers, including Ms A. This included complying with the provider's Complaints Management Policy, the Complaints Resolution Process, and the Code.
34. The provider's Complaints Management Policy states that all staff members are responsible for ensuring that any complaints received are recorded and reported. I am concerned that Mrs D did not comply with the policy and process, by telling Ms B to go to the Police instead of accepting and processing the complaint. Mrs D denied having laughed at Ms B, of which I would be critical had this occurred.
35. I acknowledge that when Ms B raised her complaint, Mrs D was aware of the breakdown in relationship between Ms C and Ms B and thus felt that the complaint was vexatious. In my view, the reason for a complaint should not mean it is not taken seriously. A complaint must be considered on its own merit, and it was Mrs D's responsibility to ensure that the complaint was recorded and reported. However, given the circumstances, I have not found Mrs D in breach of the Code on this matter. I suggest that Mrs D reflect on the manner in which she dealt with the complaint, and I recommend that in future she record and report all complaints, regardless of whether or not she perceives them to be vexatious.

Opinion: The provider — no breach

36. As a disability services provider, the provider has a legal and contractual duty of care to ensure the protection of the vulnerable disability services consumers in its care. In addition, the provider is responsible for providing services of an appropriate standard and in accordance with the Code. At the time of the events, the provider safeguarded this duty of

care by having in place comprehensive policies and standard operating procedures that set out the provider's expectations of staff behaviour and actions.

37. As discussed earlier in this report, on 24 May 2024 a full investigation was completed regarding the provider's policies, procedures, and overall care of Ms A. The investigation found that the provider did not breach the Code.
38. I am satisfied that the provider had in place appropriate guidance for Ms C to work safely with Ms A. There is no evidence to suggest that the provider is at fault in respect of the interaction between Ms C and Ms A, or in Ms C sharing confidential information with her whānau, as appropriate policies were in place in respect of this. It is my opinion that the provider was entitled to rely on Ms C, as an experienced support worker, to adhere to the provider's Abuse and Neglect Policy, its Code of Conduct, and its Privacy and Information Management Policy, and the Code. I am satisfied that Mrs D was aware of the provider's Complaints Management Policy, the Complaints Resolution Process, and the Code.
39. In this case, I consider that the failures were individual failures on the part of Ms C and to a lesser extent Mrs D, rather than deficient guidance or training, and therefore were not indicative of broader systems or organisational issues at the service. Accordingly, I find that the provider did not breach the Code.

Recommendations

40. I recommend that Ms C provide a formal written apology to Ms A for the deficiencies in care outlined in this report. The apology is to be sent to HDC, for forwarding to Ms A, within three weeks of the date of this report.
41. I recommend that Ms C refamiliarise herself with the Code by reviewing it on the HDC website.⁹ In particular, Ms C should review Right 1(1) and Right 4(2), which relate to consumers being treated with respect and dignity and the right to have services provided that comply with relevant standards. Confirmation that she has done so should be provided to HDC within three months of the date of this report.

Follow-up actions

A copy of this report with details identifying the parties removed will be sent to the Ministry of Social Development and HealthCERT and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

⁹ See: www.hdc.org.nz