

- (1) ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF THE AGGRIEVED PERSON
- (2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE CHAIRPERSON OR OF THE TRIBUNAL

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2022] NZHRRT 25

I TE TARAIPUNARA MANA TANGATA

Reference No. HRRT 015/2022

UNDER

THE HEALTH AND DISABILITY
COMMISSIONER ACT 1994

BETWEEN

DIRECTOR OF PROCEEDINGS

PLAINTIFF

AND

DAVID MATTEW RAMSDEN

DEFENDANT

AT WELLINGTON

BEFORE:

Ms GJ Goodwin, Deputy Chairperson

Dr SJ Hickey MNZM, Member

Ms S Stewart, Member

REPRESENTATION:

Ms K Eckersley Director of Proceedings

Mr S Brennan and Ms O Lund for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 27 July 2022

(REDACTED) DECISION OF TRIBUNAL¹

¹ [This decision is to be cited as *Director of Proceedings v Ramsden* [2022] NZHRRT 25. Note publication restrictions.]

[1] These proceedings under the Health and Disability Commissioner Act 1994 were filed on 3 May 2022.

[2] Prior to the filing of the proceedings the parties resolved all matters in issue and the Tribunal is asked to make a consent declaration. The parties have filed:

[2.1] A statement of claim dated 3 May 2022.

[2.2] A consent memorandum dated 29 March 2022.

[2.3] An Agreed Summary of Facts, a copy of which is annexed and marked 'A'.

[3] In the Consent Memorandum dated 29 March 2022 the parties request that the Tribunal exercises its jurisdiction and issues:

2(a) A declaration pursuant to section 54(1)(a) of the Health and Disability Commissioner Act 1994 ("the Act") that the defendant has breached the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 ("the Code") in respect of Right 4(2) by failing to provide services to the aggrieved person that comply with legal, professional, ethical, and other relevant standards; and

2(b) A final order pursuant to s 107(3)(b) of the Human Rights Act 1993 prohibiting publication of the name and identifying details of the aggrieved person in this matter (Mr A).

[4] Having considered the Agreed Summary of Facts the Tribunal is satisfied on the balance of probabilities that actions of the defendant breached the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 and that a declaration should be made in the terms sought by the parties in paragraph 2(a) of the Consent Memorandum.

[5] The Tribunal is also satisfied that it is desirable to make a final order prohibiting publication of the name and identifying details of the aggrieved person, for the following reasons.

[6] The Tribunal may order final name suppression under s 107(3) of the Human Rights Act 1993 if it is "satisfied it is desirable to do so". In this context, "desirable" is considered from the point of view of the proper administration of justice; a phrase that must be construed broadly to accommodate the particular circumstances of individual cases as well as broader public interests. Any name suppression order should do no more than is necessary to achieve the proper administration of justice. For an order there must be some material before the Tribunal to show specific adverse consequences that are sufficient to justify an exception to the fundamental rule of open justice; see *Waxman v Pal (Application for Non-Publication Orders)* [2017] NZHRRT 4 and *Director of Proceedings v Smith (Application for Final Non-Publication Orders)* [2019] NZHRRT 32.

[7] Mr A was the consumer of the health services provided by Mr Ramsden. Mr Ramsden has acknowledged his failure to provide services to Mr A which complied with legal, professional, ethical, and other relevant standards.

[8] There is public interest in the details of Mr Ramsden's failures being published, as set out in the detailed Agreed Summary of Facts. This, however, involves Mr A's sensitive private health information. There is little or no interest in the publication of Mr A's name, nor in him being identified in connection with this case.

[9] Mr A's preference is that his name be suppressed, as publication of his name and identifying details would cause him significant distress. Mr A has a young child who would also be identified by publication of Mr A's name. In the circumstances, the privacy interests of Mr A and his young child outweigh any public interest in knowing his name.

[10] The presumption of open justice is satisfied by publication of the Tribunal's decision and the very detailed Agreed Summary of Facts, with Mr A's name and identifying details redacted.

[11] Accordingly, the Tribunal is satisfied the order sought by the parties in paragraph 2(b) of the Consent Memorandum should be made.

DECISION

[12] The decision of the Tribunal is that:

[12.1] A declaration is made pursuant to s 54(1)(a) of the Health and Disability Commissioner Act 1994 that the defendant breached the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 in respect of Right 4(2) by failing to provide services to the aggrieved person that comply with legal, professional, ethical, and other relevant standards.

[12.2] A final order is made prohibiting publication of the name and of any other details which might lead to the identification of the aggrieved person, Mr A.

[12.3] There is to be no search of the Tribunal file without leave of the Tribunal or of the Chairperson.

.....
Ms GJ Goodwin
Deputy Chairperson

.....
Dr SJ Hickey MNZM
Member

.....
Ms S Stewart
Member

"A"

This is the Agreed Summary of Facts marked with the letter 'A' referred to in the annexed decision of the Tribunal delivered on 27 July 2022

**BEFORE THE HUMAN RIGHTS REVIEW TRIBUNAL
I TE TARAIPUNARA MANA TANGATA**

HRRT /22

UNDER Section 50 of the Health and Disability Commissioner Act 1994

BETWEEN THE DIRECTOR OF PROCEEDINGS

Plaintiff

AND DAVID MATTHEW RAMSDEN of Wellington, Social Worker

Defendant

REDACTED AGREED SUMMARY OF FACTS



Level 11, 86 Victoria Street, Wellington 6011
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Kerrin Eckersley – Director of Proceedings

REDACTED AGREED SUMMARY OF FACTS**INTRODUCTION:**

1. The plaintiff is the Director of Proceedings exercising statutory functions under sections 15 and 49 of the Health and Disability Commissioner Act 1994 (“the Act”).
2. The “aggrieved person” in these proceedings is Mr A. At all material times Mr A was a consumer of health services.
3. At all material times the defendant, Mr David Ramsden, was a registered social worker employed by a primary health organisation as a mental health practitioner where Mr A was a client.
4. At all material times Mr Ramsden was a health care provider within the meaning of s 3 of the Act, and was providing health services to Mr A within the meaning of s 2 of the Act.
5. On 18 October 2019 Mr A complained to the Health and Disability Commissioner about services provided to him by Mr Ramsden.
6. On 22 June 2021 the Health and Disability Commissioner (appointed under s 8 of the Act) finalised her opinion that Mr Ramsden had breached Mr A’s rights under the Health and Disability Commissioner (Code of Health and Disability Services Consumers’ Rights) Regulations 1996 (“the Code”) and in accordance with s 45(2)(f) of the Act, referred Mr Ramsden to the plaintiff.

Background

The aggrieved person

7. At the time of the events in question Mr A was in his fifties, had a long history of depression and anxiety, and was taking medication for these issues.

The defendant

8. At the time of the events in question Mr Ramsden was an experienced registered social worker. Mr Ramsden has practised social work for over 30 years and holds a Master's degree in social work.
9. At the time of these events, Mr Ramsden had been employed by a Primary Health Organisation ("PHO") as a mental health practitioner for six years. His role was to facilitate a stepped care approach for patients to obtain mental health services. This involved conducting initial clinical assessments of patients referred to the PHO, determining the level of mental health care needed, and facilitating the provision of brief interventions, for example counselling sessions provided either by external counsellors or by Mr Ramsden himself.

Referral and assessment

10. Mr A was referred to the PHO by his general practitioner ("GP"). He was booked with Mr Ramsden for the purpose of Mr Ramsden undertaking an initial clinical assessment of Mr A with a view to formulating an appropriate mental health care plan, if required.
11. On 22 August 2019 Mr A met with Mr Ramsden.

12. Mr Ramsden's consultation note records that Mr A had recently resigned from his job and that workplace issues had triggered his current depressive episode. The consultation note records that Mr A reported one of the main stresses in his life at the time was financial insecurity as he was using savings and running out. Mr Ramsden noted Mr A was a tradesperson by background and had been doing a variety of casual work of this nature, but was looking for full-time employment in other areas of work.
13. Mr Ramsden's consultation note records that Mr A had severe depression based on his PHQ-9 score of 24.¹
14. Mr Ramsden recorded a care plan for Mr A which included approving counselling sessions for Mr A with one of the PHO's contracted external counsellors, and approving funding for extra GP consultations.
15. Mr A advised the Health and Disability Commissioner ("HDC") that during the consultation on 22 August 2019 he discussed his work history with Mr Ramsden, which included his background in other vocational areas as well as his trade work. Mr A recalls that toward the end of the consultation Mr Ramsden invited Mr A to do some private trade work for cash at Mr Ramsden's home. Mr A suggested to Mr Ramsden that he would give him a quote for the whole job after he looked at the work required. Mr A recalls Mr Ramsden told him that he would pay cash for each hour Mr A worked, and that Mr Ramsden would obtain the materials required.
16. In contrast, Mr Ramsden advised HDC that he did not raise with Mr A the possibility of undertaking private trade work for him during the

initial assessment on 22 August 2019, but during a separate telephone conversation on 3 September 2019. Mr Ramsden recollects that he did not raise the prospect until after he had arranged Mr A's referral to an external counsellor, and at this point Mr Ramsden considered his professional relationship with Mr A to have ended.

17. On Tuesday 3 September 2019 at 1.08pm Mr Ramsden sent Mr A the following text message:

"Hi [Mr A]. David Ramsden here. can u give me a call please. or txt me times I can call you. David."

18. At 2.22pm that same day Mr Ramsden sent Mr A a further text message:

"Even better thought. Can u look at [private trade work needed] with me Friday am any time between 8.30 and 9.30.... We can discuss job and related directly. ... I have emailed [external counsellor] His business name is [name] if u wanted to Google him."

19. Two minutes later at 2.24pm Mr Ramsden sent an email to an external counsellor referring Mr A for counselling sessions.

20. At 2.24pm Mr A sent a text message response to Mr Ramsden saying he could meet Mr Ramsden at his place at 8.30am for a quick look as he had another commitment from 8.50am on Friday.

21. At 3.36pm Mr Ramsden emailed the external counsellor asking him to let Mr Ramsden know when he had set the first appointment to see Mr A.

22. Mr Ramsden emailed the external counsellor again at 3.40pm asking what date the external counsellor would be seeing Mr A, so that Mr

¹ The 'Patient Health Questionnaire 9' is a tool used to screen for the presence and severity of depression. The PHQ-9 total score for the nine items ranges from 0 to 27. Scores of 5, 10, 15, and 20 represent cut

Ramsden could ensure the information and package of care was there beforehand.

23. On Wednesday 4 September 2019 Mr Ramsden and Mr A exchanged text messages in the morning confirming a time to meet at Mr Ramsden's house.
24. At 1.59pm Mr A forwarded a text message to Mr Ramsden that he received from his GP about an overdue account to pay, noting he has received multiple requests from the GP for payment.
25. At 2.59pm Mr Ramsden responded with a text message to say:

"Just ignore it. I have approved the funding and spoke with GP yesterday. It's the computer is generating this not an individual. They will get the funding through soon."
26. Mr Ramsden contacted Mr A using both his professional and personal mobile telephones. Mr Ramsden was able to contact Mr A via text message and phone calls, as he had Mr A's phone number as part of the referral, which he had used to book their assessment appointment and to discuss referral arrangements. Mr Ramsden acknowledges it was inappropriate to contact Mr A on his personal telephone for private purposes.
27. On Friday 6 September 2019, Mr A visited Mr Ramsden's home to review the work needed. Mr A suggested an hourly rate of \$30 per hour, which Mr Ramsden accepted. Mr Ramsden offered to top it up once the work was completed. Mr A accepted the offer of private trade work.

28. Mr Ramsden told Mr A that the arrangement in relation to the private trade work would be kept just between the two of them, and Mr Ramsden's wife was not to know that Mr A was Mr Ramsden's patient. Mr Ramsden advised HDC that this was to protect Mr A's patient confidentiality.
29. On 18 September 2019 Mr A began doing private trade work at Mr Ramsden's home. Mr A completed 11-14 hours a week for a couple of weeks.
30. On 24 September 2019 Mr A began counselling sessions with the external counsellor.

Visit to Mr A's home

31. On about 11 October 2019 Mr Ramsden went to Mr A's house to provide him with payment for the trade work Mr A had completed. Mr Ramsden had deduced where Mr A lived from comments Mr A had made during a previous conversation they had had. Mr Ramsden did not first inform Mr A that he intended to visit Mr A's house, or confirm with him that he agreed that Mr Ramsden could come to his house.
32. Mr A told HDC that the visit was totally unexpected and disconcerting. Mr A did not respond to Mr Ramsden knocking on his door. Mr Ramsden then called out Mr A's name, while continuing to knock, and when Mr A came to the door, Mr Ramsden handed him an envelope with cash in it and asked Mr A how the counselling was going with the counsellor he had introduced him to. Mr A told Mr Ramsden that the first session had been very short, about 30 minutes, and Mr Ramsden asked Mr A to let him know if any further sessions were not around 50

minutes as expected, to which Mr A said he would, and that the counsellor had been helpful.

33. Mr Ramsden told HDC it was a spontaneous decision to visit Mr A's home, as Mr A's house was located on a regular walking route, and Mr Ramsden thought he was being helpful in dropping off the payment in person. He now regrets doing so, as he appreciates that it was not appropriate and it made Mr A uncomfortable.
34. On 14 October 2019 Mr A sent a text message to Mr Ramsden saying he would complete the work initially agreed to, and that he would either get the money from Mr Ramsden later in the week, or Mr Ramsden could leave it with his wife. He asked Mr Ramsden not to come to his home again.

Verbal exchange

35. On 18 October 2019 Mr A was working at Mr Ramsden's property when Mr Ramsden came home unexpectedly and asked him how it was going. Mr A replied that he was upset that Mr Ramsden had gone to his home (on 11 October 2019), and had not acknowledged that it was inappropriate and unprofessional. Mr Ramsden became defensive and engaged in a verbal exchange with Mr A during which both Mr A and Mr Ramsden were acrimonious.
36. During the verbal exchange, Mr Ramsden told Mr A that he had outstanding resentment issues, which might be good for Mr A to resolve. Mr Ramsden further commented that he was doing Mr A a favour and providing an income for him by employing him to do work at his property. Mr A found the exchange uncomfortable and distressing. Mr A

told Mr Ramsden he was going to leave the property and asked Mr Ramsden to go inside.

37. Mr A packed up his tools and by the time Mr Ramsden came back outside, Mr Ramsden had calmed down and suggested meeting with Mr A another day to talk things through. Mr A told Mr Ramsden that he did not wish to talk to him further, but would text him the hours that he had worked and for which payment was owed. Mr A says Mr Ramsden asked for guidance on how the work could be completed. Mr Ramsden does not recall this. Mr A says he left the property in a distressed state.

Subsequent events

38. Mr Ramsden did not advise his employer or external professional supervisor that he had entered into a private work arrangement with Mr A at the time the arrangement was entered. Mr Ramsden says this was because it had not occurred to him at the time that there was a need to. However, on 21 October 2019 Mr Ramsden made his employer fully aware of the events, before Mr A had made a formal complaint. On 4 November 2019 Mr Ramsden told his external professional supervisor about the events, also before Mr A made a formal complaint.
39. Mr Ramsden has acknowledged that irrespective of the referral to an external counsellor, Mr A remained a client of Mr Ramsden's employer PHO, and Mr Ramsden had continued interactions with Mr A suggestive of an ongoing professional relationship, or at the least, which had the effect of creating that impression for Mr A.
40. On 18 February 2020 Mr A completed his last counselling session. His external counsellor completed the PHO's "End of Care Report" on 18

February 2020. The report records that Mr Ramsden was the service coordinator during the counselling period.

Relevant professional standards

41. All registered social workers must comply with the professional standards set by their registration authority, in particular the Social Workers Registration Board's Code of Conduct (the "Code of Conduct").²
42. The Code of Conduct sets out the minimum professional standards of integrity and conduct that are to apply to registered social workers, and to the social work profession in general.
43. The Code of Conduct states that Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the "Code of Rights")³ includes complying with the Board's Code of Conduct.⁴
44. The Code of Conduct's preamble notes that "[b]ecause they are in positions of trust and confidence [registered social workers] must also have high standards in their personal lives".⁵

Code of Conduct – relevant principles

Principle 1 – Act with integrity and honesty

45. Principle 1 states, amongst other things, that a social worker is "expected to act honestly and ethically in all personal and professional behaviour" and not work in a situation where there is a conflict of interest. The guidance notes identify an area of potential risk for conflict of interest as

² Issued by the Board pursuant to s105 of the Social Workers Registration Act (March 2016 version).

³ Right 4(2) states: "Every consumer has the right to have services that comply with legal, professional, ethical and other relevant standards."

⁴ Code of Conduct preamble.

including “exploiting the relationship of trust and confidence that exists between [a social worker] and a client for [the social worker’s] personal benefit”.

Principle 4 – Be competent and responsible for professional development

46. All registered social workers are required to undertake continued professional development (“CPD”) which includes actively engaging in regular (at least monthly) professional supervision, and reflecting critically and honestly on their practice. Social workers are expected to bring any potential or actual conflicts of interest to the attention of their professional supervisor or employer and seek guidance where necessary.⁶

Principle 5 – Protect the rights and promote the interests of clients

47. Principle 5.4 states that social workers are expected to “recognise and use responsibly the power that comes from any social work role, keeping the dignity of the client front of mind.”
48. Principle 5.7 states that social workers must “never abuse, neglect, harm, or exploit clients in any way.”
49. Principle 5.8 states that social workers must “maintain personal and professional boundaries and not form inappropriate relationships with clients ...” The guidance notes state that there is almost always an imbalance of power due to a social worker’s authority, specialised knowledge, ability to access privileged information, and influence as a social worker. The power imbalance is increased when the client is particularly vulnerable. Social workers need to take care to ensure their

⁵ See also the guidance notes for Principle 9 of the Code of Conduct.

⁶ Code of Conduct Principles 1.7 and 4.8, 4.10.

own personal or financial needs are not influencing interactions between themselves and the client.

Principle 6 – Maintain trust and confidence of clients

50. Principle 6 expects social workers to treat clients with respect and dignity, behave in a professional manner, and never abuse the client's trust. The guidance notes state that "trust is fundamental to the social worker/client relationship. If this trust is broken it affects both that specific relationship and how the public perceives the social work profession as a whole."

Principle 7 – Respect client's privacy and confidentiality

51. Principle 6 expects social workers to protect the privacy of the client's personal information, and treat information gained in the course of the professional relationship as confidential and use it for professional purposes only.

Principle 9 – Maintain public trust and confidence

52. Principle 9 expects social workers to maintain a high standard of professional and personal behaviour, avoid activities (both inside and outside of work) that may bring the social work profession into disrepute, and refrain from acting in ways that can be interpreted as or actually result in gaining personal benefit from the social work position.

Principle 10 – Keep accurate records and use technology effectively and safely

53. Principle 10 states it is the social worker's responsibility to set and maintain clear and appropriate personal and professional boundaries in all forms of communication, including text messages.

ANZASW Code of Ethics

54. The Code of Conduct complements other relevant applicable standards and guidelines including the Code of Ethics and practice standards published by Aotearoa New Zealand Association of Social Workers (“ANZASW”).

55. The ANZASW Code of Ethics (1 August 2019) provides:

“Members have power and authority that derives from their status, role and professional skills and attributes. Some have additional powers that derive from legislation. Social workers work in a variety of private, voluntary and statutory agencies that have more or less explicit social control functions. This power, however derived, and the consequential ambiguity of client empowerment and social control, needs careful management and is a key reason why social work practice is always subject to professional supervision.”

BREACH OF THE CODE

56. Mr Ramsden accepts that he blurred professional and personal boundaries in his relationship with his client by:

- a. offering and engaging Mr A to undertake private trade work on Mr Ramsden’s property while he had an ongoing professional relationship with Mr A or at an inappropriately proximate time to the professional relationship;
- b. going to Mr A’s home without prior agreement, and not acknowledging the effect this had on Mr A or providing sufficient reassurance to Mr A that it would not happen again;

- c. responding inappropriately when the private relationship deteriorated, resulting in an acrimonious exchange; and
 - d. misusing the knowledge Mr Ramsden had gained about Mr A in a clinical context for personal gain (by using Mr A's contact details to contact him in a private capacity via text messages and telephone calls, and by misusing Mr A's clinical information, including information about his financial insecurity).
57. In doing so Mr Ramsden accepts he failed to comply with the Code of Conduct for registered social workers, and therefore breached Right 4(2) of the Code of Rights, which states: "Every consumer has the right to have services that comply with legal, professional, ethical and other relevant standards."
58. In response to these events, Mr Ramsden has undertaken remedial steps, including completing additional professional supervision sessions specifically to review the events, the issues arising, and the learning opportunities for his future practice. Mr Ramsden's supervisor also took Mr Ramsden through a training module on professional boundaries and transference/counter transference. Mr Ramsden has since engaged a new supervisor who will continue to include boundaries, therapeutic relationship issues, and transference as an integral part of Mr Ramsden's regular supervision.
59. Mr Ramsden has also provided a written apology to Mr A.

Kerrin Eckersley
Director of Proceedings

Date:

I, David Ramsden, agree that the facts set out in this Summary of Facts are true and correct.

David Ramsden

Date: