

Website Version

***Convenor's Determination of a complaint about the practice of a Member,
managed according to the Standing Orders relating to the Complaint
Procedures of the Aotearoa New Zealand Association of Social Workers, 20
April 2013***

Complainant

The mother of the Member's client

Member

A Counsellor in a Tertiary Institution Student Health Service

Convenor

Under contract to ANZASW as Complaint Convenor pursuant to the Standing
Orders relating to ANZASW Complaint Procedures

Date of Determination

03 April 2014

The Complaint Convenor
ANZASW National Office
DX Box: WX 33484
CHRISTCHURCH

The Member

The Member is aged 61 years and is a pakeha New Zealander. He has had an unblemished record of professional practice while a Member of the Association and achieved competency recertification in 2013. Until recently, he was a Counsellor in a Student Health Service. He resigned this position just before Christmas 2013 and moved to another city. He is not a Registered Social Worker. He is an ordained Anglican Minister of Religion but has not been in active Ministry since 1987.

The Complainant

The Complainant is the mother of a 20-year male client of the Member at the Student Health Service where the Member worked. She is a Counsellor and a member of the New Zealand Association of Counsellors (NZAC).

The Complaint

The Complainant's son had had counselling sessions with the Member over a number of months in 2013, appeared to have made a strong therapeutic connection with the Member and had told the Complainant that he saw the Member as a father figure. In his final clinical session with his client before leaving the job, the Member invited the client to visit and stay with him at his home in another province over the Christmas holiday period, bringing any friends he might wish. The Complainant became aware of this when discussing with her son his final session with the Counsellor and alarm bells rang for her, although her son showed no evident concern at that point. The Complainant researched the Code of Conduct for registered social workers and had a further discussion with her son using the Code as a point of reference. In this discussion her son did disclose that he had felt uncomfortable at the Member's offer that he stay at his house.

The Complainant spoke by telephone with the Member on what was his last day of duty at the Student Health Service. She sought to:

1. Confirm that he had offered to have her son stay at his holiday home;
2. Ask what he was thinking when he asked her son to stay;

3. Confirm his association with a professional body;
4. Express her concern at such an offer being made.

The Complainant records this telephone conversation as follows:

When I asked him what he was thinking when he asked [my son] to stay, he said: "you must be concerned about boundaries" to which I replied "yes!" [The Member] told me that during his session with [my son] their discussions had moved into more 'theological conversations' and as he is a Minister of Religion he was happy to continue discussions with [my son] as he had done with other individuals. I expressed my alarm at this suggestion, as he had only made connection with [my son] as a counsellor, not as a Minister of Religion, so there was a power imbalance in the relationship, and he had not handled that imbalance ethically. [.....] He sounded very shaken and said that in the ANZASW Code of Ethics there is also restrictions with ongoing relationships with former clients. I highlighted to [the Member] that on reflection [my son] had felt uncomfortable, to which [the Member] said he was so very sorry for causing this for him. I said to [the Member] how wild I was, and suggested he needs to take his breach of boundaries to supervision. I also let [the Member] know I would be making a formal complaint to his professional body.

The Complainant's concerns can be summarised as follows:

- A breach of boundaries had occurred which had the potential to compromise her son's safety;
- This may not be an isolated event with this Member;
- The possible underlying motives that may exist in offering this type of ongoing relationship to a young man;
- The Member's use of his Minister of Religion status in proposing an ongoing relationship outside the clinical relationship;
- The Member's failure to facilitate a referral of her son to another appropriate professional or service provider on leaving his position.

The Member's first response to the complaint

On being notified of the complaint and before any questions were put to him, the Member responded as follows:

- The complaint is fair and he did breach the rules;
- He acknowledged an error of judgement;
- He reported the Complainant's phone call and the fact that a complaint was to be made, to his employer at the time;
- He is not currently in employment or under supervision;
- He would like to apologise to [his former client] for the suggestion they could continue talking at his home;
- He anticipated disciplinary action by the Association;
- He appreciated the directness of the Complainant's approach to him.

The Member advanced a reason for not facilitating a referral to another counsellor. He had, he says, a real lack of options for referring the client (and other theologically-minded students). He had hoped that another Minister who had applied for it might have won his job, but did not. The Member's view is that his client's presenting issues had been dealt with by the time he made the offer he did and while he was reluctant to speak for his client, believes the conclusion of this counselling was explicit and his client would have been quite clear about this and that the Complainant's son had asked to be able to continue to come and discuss Christian theology with the Member.

The Member's response, while commendable, did not address two issues raised by the complainant:

- (i) Had this offer of an ongoing relationship outside the clinical setting been made to other clients prior to this offer; and
- (ii) What motives may have underpinned an offer such as this.

An unspoken concern of this complaint is that the behaviour of the Member

could indicate the grooming of a client for intimacy and that this could have happened with others as well as the Complainant's son. The Complainant has acknowledged to me that this was her first instinct on hearing of the matter from her son. The Member has not addressed the issue of whether others had been invited to stay with him in his response to me but he alluded to the fact, that there were others whose therapy had morphed into theological discussion, in his telephone conversation with the complainant. I put these matters to the Member.

Member's subsequent responses to the complaint

With the same openness with which he addressed other aspects of the complaint, the Member responded as follows:

- He had made the same offer to two other students. All three offers had been made around the same time - as the Member was winding up his services at the Student Health Service. In all three cases, discussions had moved on to theological and philosophical issues, particularly philosophy that borders on the religious, and each had indicated a wish to continue the dialogues. Had he been remaining in the post, he would have scheduled those for the following academic year. He judged that working with them in private practice would be beyond the budget of the students and so he offered (he now realises, recklessly) his own free time, when he had plenty of it. The reflections he has undertaken as a result of this complaint have made him realise that a referral outside of the place where he worked would have been the prudent option. None of the students had taken up his offer;
- The Member did not see the theological discussion that occurred as unconnected to the presenting problem the client first brought to counselling. He saw it as: *what is sometimes known as a "thickening" of the new narrative (i.e. preferred view [the client] now held) over the problematic one which had brought him to counselling in the first place;*
- The Member maintains that his motives were honest. He says: *I realise these 3 invitations might certainly look like grooming, were this to be aired in a wider professional or public forum. I am confident all these students would dismiss this impression if asked [...].* He adds that if publicity were

the outcome of this case he would accept it: *I would not welcome this, but am prepared to be mistaken as someone who was grooming clients even though this was not my motive.*

The perspective of the Complainant's son

With the Complainant's agreement I met with her and her son to discuss some of the matters raised by the Member, as I wondered whether his perspective and that of the Complainant's son meshed. I think it is fair to say that the young man's perspective of the seriousness of what had happened has developed over time since the invitation was made and he does not think about the events now in quite the same way the Member may think he does. He says:

- He had not known about the same invitation being made to two other students;
- His initial referral to the Member had resulted in two counselling sessions and he was quite clear as to purpose and the nature of the involvement, including the use of Narrative Therapy;
- Some months later, the student made his own contact with the Member to request further talks and it was these talks that developed along more theological and philosophical lines and he was broadly comfortable with the direction they took;
- He wondered about the propriety of the invitation at the time it was made;
- The possibility that the Member had an unhealthy motivation in making the invitation had occurred to him;
- He believes the Member should have arranged a referral for him for further counselling in the event he might need it in the 2014 academic year;
- He would not be comfortable meeting with the Member again.

My considerations on significant aspects of the complaint

It seems to me that the root cause of the Member's current difficulty was his failure to establish clear boundaries between his clinical practice as a counsellor and his spiritual guidance practice as a Minister. Usually, such boundaries would

be evident in a worker's agency job description, but I understand from the Student Health Service Head that the job description to which the Member worked would not have precluded counselling moving in the way it did as client wishes are seen as being primary drivers of counselling content. It seems that there is less agency direction or concern about the nature of services in this campus setting than would be the case in most agencies. This is a pity as it allows role fusion to occur under unmonitored conditions and helps create the sort of vulnerability to which the Member has succumbed. I suggest few employers would endorse such a use of agency time, but even when they do, this does not abrogate a Member's obligation to ensure appropriate boundary management. This is the intent of Code of Ethics 3.7: *Members must fully inform clients of the services they offer and the nature of any proposed involvement* [my emphases].

I am satisfied Code of Ethics 3.7 was adequately met on the client's initial referral and for the two counselling sessions that occurred. I am not satisfied that a similar process occurred on the client's subsequent self-referral, nor did this development seem to have been referred to supervision or to agency leadership for any discussion as to appropriateness. The Member struggles to see any issue in using a secular clinical practice setting to engage a client or clients in matters of a religious, theological nature, in effect claiming that this was legitimate practice in respect of the narrative treatment modality employed and was practice allowed by the employer.

I view this as mistaken practice by the Member. It is the Member's responsibility to maintain appropriate boundaries between different specialities, even where an employer may not insist on this. The fact that a client may want this is irrelevant to the Member's obligation to ensure appropriate boundaries are in place and adhered to. The role fusion he adopted allowed an invitation to be made that *may* not have been entirely inappropriate in a religious or spiritual counselling relationship but was improper in a clinical one. The Member should have declined any request for extension of services once the need for counselling relating to the client's presenting issues was over. The Member should have

offered the client a referral to an appropriate church source to develop his theological interests once it became obvious this was the client's interest, but had to forgo any personal involvement himself. This might have elicited whether the client's request for theological dialogue derived from real interest or was a transference effect.

The Member has a long practice history and has been a member of the Association, and subject to its Code of Ethics, since 1997. It is doubtful he would have made such an invitation (to stay at his house) to any client not engaging in religious theological discussions. That he did so in this case may indicate some confusion on his part as to whether he is subject to the Code of Ethics when operating in ministerial mode. He should have had no doubt in this instance, given that he was working in a paid professional role. Further, the Member must understand that the Code of Ethics binds him whenever he engages in pastoral or counselling services, and in whatever setting he provides these, as long as he is a Member.

I did wonder about the Member's experience of supervision in his counselling role and asked him about this, including whether issues of transference and counter-transference were ever canvassed. The Member responded that he had had superb supervision and that professional limits (such as how to respond to a client's invitation to coffee) had been discussed, but *transference and counter-transference as such is not really [the supervisor's] particular idiom*. This is a concern as it lessens the likelihood that: the Member will take such issues to supervision on the one hand; or will have his practice in a therapeutic relationship challenged, on the other. This can render him and his client(s) vulnerable to the sort of practice error that occurred. Whether or not these concepts are within the Member's practice *idiom* may need to be explored.

While it may seem paradoxical, the confirmation that two other students had received the same offer during the same period for the same purposes lessens somewhat any anxiety I had about the Member's motives. I have therefore accepted that, though reckless as he admits, these offers were motivated in the

manner the Member claims and do not have the grooming motivation that this set of facts almost inevitably leads one to. The Member has acknowledged that even if there is no basis to it, his behaviour has left him vulnerable to such an interpretation being placed on it. I will talk with the Member outside the parameters of this complaint about how he might redress the situation in relation to the other two students.

Preliminary Determination

In relation to the components of the complaint, I find as follows:

- i. The Member was in error in allowing a counselling relationship for one purpose to become something else;
- ii. A breach of ethical boundaries did occur when he made the invitation he did, which had the potential to compromise the safety of the Member's client, but there is no evidence that the client's safety was actually compromised. Nonetheless, the Member's proposal of ongoing dialogue with his client outside the clinical relationship was improper;
- iii. The Member's behaviour, while reckless as he describes it, did not derive from improper motives;
- iv. The Member should have facilitated a referral of his client to another appropriate professional or service provider on leaving his position in the event his client may have needed assistance in the future.

I find that the Member is in breach of the Association's Code of Ethics, specifically:

- i. Code 3.1: *[.....] members always acknowledge that client interests and welfare are their first priority, and work accordingly.* The Member's interests (in theological and philosophical dialogue) influenced his practice and eventually overtook the concerns for which the client first entered therapy. The root cause of this code breach was the role fusion the Member had allowed to develop in his practice. The client's interests were not met in the Member's failure to ensure continuity for the client following the Member's resignation from his post. The client's somewhat negative perception of the services he received some months after the

event may also say something about whether his interests and welfare were the first priority in reality.

- ii. Code 3.5.1: *It always remains the responsibility of the Member [.....] to maintain appropriate boundaries.* The Member failed his client by allowing the blurring of the boundary between a professional relationship and something of a more personal nature. While the Member says he did not know the client regarded him as a father figure until informed of this by the Complainant, he must have known the client had positive regard for him, particularly as the client had sought him out for further discussions. It is clear that the Member also had positive regard for his client. This was a situation that needed careful management by the Member to ensure professional boundaries were recognised and maintained.
- iii. Code 7.1: *Member's act [.....] in the knowledge that their standards of behaviour reflect also on the Association and the profession of social work.* The Member's error of judgement, which he acknowledges, is serious and has the potential to bring the profession into disrepute.

Accordingly, on the facts agreed by the Member, his behaviour constitutes professional misconduct (Standing Orders, paragraph 5(i)) and is of sufficient substance to proceed (Standing Orders 14 (ii)). While any breach of ethics is serious, I do not believe that in this instance, the behaviour constitutes serious or gross professional misconduct, as defined in the Standing Orders.

Complaint resolution pathway

The Association's Standing Orders for the management of complaints seek resolution at the earliest possible stage and with the least intervention or compulsion. Two informal resolution options are provided before there is recourse to a formal Disciplinary Hearing. There is no provision for any other pathway towards resolution, apart from those occasions where the Chief Executive makes a complaint (Paragraph 13 of the SO) when a Disciplinary Hearing must be convened.

Accordingly, in the first instance I was required to seek an Early Resolution through any process I think fit (Standing Orders 16). I proposed to the Complainant and the Member that I mediate an agreement between them that is acceptable to them both and to the Association and issue a final Determination of the complaint, incorporating any agreement reached. The meeting took place on 03 April 2014.

Early Resolution Outcome

The complaint has been resolved by agreement of the Member, the Complainant and the Association, in the following manner:

1. The Member will undertake 4 to 6 sessions of training/supervision at his own expense, with a Supervisor appointed by the Convenor, to explore and understand all aspects of his practice that led to this complaint. The Member and the Supervisor will provide a joint report to the Convenor by 31 July 2014 (after 4 sessions) and by 31 August 2014 (where a further 2 sessions are deemed necessary);
2. The Convenor will provide the Complainant with a copy of the Training/supervision report(s);
3. The Member will write a letter of acknowledgment of his practice error to the Complainant's son following his training/supervision, and no later than 31 August 2014;
4. The Member undertakes to inform any future potential human services employer of this complaint and its resolution;
5. The Member undertakes to inform his Anglican Bishop of this complaint and its resolution and advise the Convenor when this has been done;
6. The Convenor will place an anonymised version of this Determination on the Association's website (www.anzasw.org.nz) to enable the Member to refer to it, those persons he informs of the complaint pursuant to 4 and 5 above;
7. The Member will contribute \$500.00 towards the costs of the Association before 31 August 2014;
8. The Determination will be discharged on or before 30 September 2014, subject to completion of all aspects of the resolution agreement.

A handwritten signature in black ink, appearing to read 'F. Green'.

Complaint Convenor

03 April 2014