

Counsellor, Ms B

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

(Case 12HDC01512)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

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Executive summary

1. Mrs A first received counselling services from Ms B in October 2011. One of the reasons for engaging Ms B was for relationship counselling. At her individual session on 29 November 2011, Mrs A enquired about the possibility of attending joint sessions with her husband, Mr A. Ms B agreed to provide joint sessions. Mrs A approached Mr A and he agreed to attend.
2. Mrs A and Mr A attended four joint sessions between December and January 2012. By their fourth joint session on 20 January 2012, Mrs A and Mr A had made a decision to separate formally. Following this session, Mr A commenced individual sessions with Ms B, Mrs A continued to attend individual sessions, and Mr A and Mrs A also attended joint sessions with Ms B. Ms B did not consider there to be any conflict of interest in continuing to provide concurrent joint and individual counselling sessions to Mrs A and Mr A once they had agreed to separate.
3. Between June and September 2012, having had limited success communicating through their respective legal advisers, Mrs A and Mr A attended six further joint sessions with Ms B. During the course of these sessions, Mrs A and Mr A, together with assistance from Ms B, drafted a separation agreement. Ms B discussed, and provided advice on, financial and legal matters.
4. At a joint session on 16 September 2012, the relationship between Ms B and Mrs A broke down. This was the last counselling session Mrs A attended. Mrs A felt that Ms B had become biased towards Mr A. Thereafter, for a short period of time, Mrs A and Ms B continued to communicate by email. Ms B admits that she was disrespectful towards Mrs A in her communications.

Findings

5. Ms B failed to comply with ethical standards and breached Right 4(2)¹ of the Code of Health and Disability Services Consumers' Rights (the Code) by failing to recognise that providing services to Mr A would be in direct conflict with Mrs A's interests.
6. Ms B was disrespectful to Mrs A in her email communications and breached Right 1(1)² of the Code.
7. Adverse comment is made about Ms B's provision of financial and legal advice — areas outside her expertise and training — in the context of her counselling sessions, and her maintenance of professional boundaries and standard of documentation.

¹ Right 4(2) states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."

² Right 1(1) states: "Every consumer has the right to be treated with respect."

Complaint and investigation

8. The Commissioner received a complaint from Mrs A about the services provided by Ms B, a counsellor.

9. The issue identified for investigation was:

The appropriateness of the services provided by counsellor Ms B to Mrs A between October 2011 and September 2012.

10. This report is the opinion of Ms Theo Baker, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

11. The parties directly involved in the investigation were:

Mrs A	Consumer/complainant
Ms B	Provider

12. Information was also reviewed from Ms C, Ms B's supervisor.

13. Mr A, Mrs A's ex-husband, and Mr D, a financial adviser, are also mentioned in this report.

14. Independent expert advice was obtained from Ms Irene Paton, a psychologist (**Appendix A**). I acknowledge that Ms Paton is not strictly a peer of Ms B, as she is a registered psychologist. However, Ms Paton provides counselling services and, to the extent that her general comments about counselling are relied on, I consider her well able to comment on those aspects.

Information gathered during investigation

Ms B

15. Ms B is a counsellor. She has a bachelor's degree in counselling and a diploma in neuromuscular therapy. Ms B describes herself as a qualified counsellor, and a life coach, and that she actively works with psychotherapy to facilitate change and personal growth. She notes her areas of work as relationship concerns, anxiety and depression, problem solving, grief and loss, life skills, anger management, and inner child work.

Individual sessions with Mrs A

October–November 2011

16. On 21 October 2011, Mrs A attended her first individual counselling session with Ms B. Mrs A filled in a "Counselling Details" form, which included her personal details and a confidentiality provision.

17. Mrs A told HDC that she went to Ms B seeking help with personal development and emotional support. She was having trouble with her marriage, and also wanted assistance dealing with workplace issues, her mother's health, her own health, and past experiences. Ms B originally advised HDC that she could not recall, and had not specified in her client notes, the exact reason for Mrs A approaching her for counselling, but thought that it was for life skills. Ms B said that within half an hour of the first session, it became apparent that Mrs A's main concern was to work out whether to stay with her husband, Mr A.
18. However, in response to the provisional opinion, Ms B stated that Mrs A employed her services to "separate from her husband [Mr A], and to assist with reaching an amicable agreement re separation, when her dealings with both her lawyer and [Mr A's] lawyer broke down". Ms B advised that at no stage did Mrs A request counselling for other personal issues, which Ms B said "came to light" only during her individual counselling sessions.
19. Mrs A attended two further individual sessions on 13 and 29 November 2011. She discussed a number of her issues and concerns with Ms B during these sessions. Mrs A found the sessions to be "fantastic", and said that Ms B was "good to deal with" and "very helpful". Mrs A felt that she could trust Ms B with her inner secrets.

Possibility of joint sessions raised

20. At her individual session on 29 November, Mrs A enquired about the possibility of attending joint sessions with Mr A. Mrs A told HDC that Ms B confirmed that she was able to act impartially when counselling her, both individually and jointly with Mr A. In her interview with HDC, Ms B explained that had their situation been different, for example if their relationship had been abusive, then there would have been a conflict of interest, and she would not have been able to provide them both with her services.
21. Mrs A suggested to Mr A the idea of having joint counselling sessions. Mr A agreed to attend.

Joint sessions with Mrs A and Mr A

December 2011–January 2012

22. Mrs A and Mr A attended four joint sessions between December 2011 and January 2012.
23. On 1 December 2011, they attended their first joint session with Ms B. Mrs A and Mr A discussed their recent decision to end their marriage.
24. On 16 December 2011, they attended their second joint session. The client notes record that Mrs A and Mr A wanted assistance with "division of assets". The result of this session is also noted in the client notes: "Came to mutual agreement on 5 major points forward steps in sorting/dividing assets."
25. On 21 December 2011, they attended a further session. Mrs A and Mr A had decided to stay together and wanted tools to help them achieve this. However, by their joint

session on 20 January 2012, Mrs A and Mr A had made a decision to separate formally.

26. Mrs A did not book any individual or joint sessions with Ms B for three months. During this time, Mrs A and Mr A attempted to finalise their separation through their lawyers.
27. In her response to the provisional opinion, Ms B stated that Mrs A ceased to be her client after 20 January 2012 as “she had achieved what she set out to achieve, my services were no longer needed. [Mrs A] did not book any further sessions, nor state any intention to retain my services for the future.” Although Mrs A’s client notes for 20 January recorded that “[c]lients will rebook as needed”, Ms B advised that she did not expect to hear from Mrs A again because of her “indications”.

Concurrent individual sessions with Mrs A and Mr A

Individual sessions with Mr A commenced

28. Following the joint session on 20 January 2012, Mr A commenced individual sessions with Ms B. Ms B noted in her response to HDC that “[i]mmediately following the separation **20.1.12**, Mr A continued on as a solo client, receiving personal counselling ...”.
29. Ms B told HDC that she did not consider that providing Mr A with individual sessions was in conflict with Mrs A’s interests. In her response to the provisional opinion, Ms B stated that she did not consider retaining Mr A as a client to be in direct conflict. This was because Mr A and Mrs A had different purposes for coming to counselling and Ms B considered it to be possible to work with Mr A “without ever needing to know/discuss the direct cause of the issue...”.

Further individual sessions with Mrs A

30. On 21 March 2012, Mrs A attended an individual session with Ms B. Mrs A was having difficulty communicating with Mr A through their lawyers, and sought assistance from Ms B. Ms B noted in her response to the provisional opinion:

“You are correct in stating that [at this point] it was a conflict of interest — however; the conflict lies with [Mr A], not [Mrs A]. I did consider this and, as recorded within [Mrs A’s] note’s [sic], I advised her that I would seek [Mr A’s] permission to work with [Mrs A’s] request.

It was at this point I now realise that I should have refused [Mrs A’s] request, and denied her further contact with me.”

31. Ms B recorded in the client notes for 21 March:

“Not entirely sure as to why client wanted session ... Am thinking that purpose was to enlist my help in order of seeing ex & client for joint session — to finalise settlement, rather than go through lawyer. Agreed to approach ex & ask if he was interested.”

32. In response to the provisional opinion, Ms B stated that Mrs A made it clear that she did not require further counselling; rather, she requested help in communicating with Mr A for the sole purpose of the division of property. Ms B said further, “[Mrs A’s] request for help with achieving an amicable Separation Agreement, to be formalised by an official legal representative, did not seem out of line with my Life Coaching”.
33. As an addendum to the 21 March client notes, Ms B noted that Mr A refused to have any contact with Mrs A, and was not prepared to have any further joint sessions. He was “happy to continue with personal sessions”.
34. At the 21 March appointment, Ms B entered into an agreement with Mrs A whereby Mrs A would provide her with a home cooked meal in exchange for a 50 percent discount on one counselling session. Ms B told HDC that this was because of her sympathy for Mrs A’s dire financial situation. Ms B expected a cooked meal to be brought to her counselling room (which was connected to her home). However, Ms B was surprised when Mrs A brought ingredients to Ms B’s counselling room to prepare and cook a meal. Mrs A stayed and shared the meal with Ms B’s family. Both Ms B and Mrs A have described this as being an “uncomfortable” experience. Ms B did not offer the same arrangement again.
35. On 11 April 2012, Mrs A had a “general catch up” with Ms B. At this session, Ms B’s husband assisted Mrs A by trying to fix the problems she was having with her laptop computer. In response to the provisional opinion, Ms B stated that Mrs A’s computer broke down during the session and Mrs A was very anxious as she required daily access to the content on her computer. Ms B said further:

“As my husband is [experienced with computers] by trade, I offered to [Mrs A] his services/opinion as to him looking at the computer ... Had my husband not been [experienced with computers], and had [Mrs A’s] financial situation [not] been so dire, this offer would not have been made.”

Concurrent individual and joint sessions with Mrs A and Mr A

Separation agreement and financial plan

36. On 22 June 2012, Mrs A attended an individual session with Ms B. Mrs A was continuing to have difficulties communicating with Mr A about their separation agreement and wanted Ms B to assist them both by having further joint counselling sessions. The client notes record:

“Client wants a joint session to happen, so they can agree on finalising their separation affairs. Client wants me to ~~draft~~ negotiate meeting and draft of agreement ... Also worked together with composing draft — looking great ... Great session (4 hours) — client very pleased as lawyers have not yet been able to achieve this.”

37. At Mrs A’s request, Ms B contacted Mr A and scheduled a joint session for 26 June 2012. The client notes from this session record:

“F client was quite impatient with M client thought process, interrupting & tonality marginal. M Client is undergoing huge learning process, ‘getting his head

around' the complicated and basically convoluted financial mess in regards to how investment monies have been obtain [sic]. F client clearly defensive, totally unwilling to accept self-responsibility for state of finances.”

38. At the bottom of the client notes it is recorded that the next joint session was scheduled for “10/7/12 (financial plan)”. In her response to HDC, Ms B described her role at this stage as being “in equal parts mediator and counsellor — for both clients”.
39. Thereafter, Mrs A and Mr A, together with assistance from Ms B, drafted a separation agreement during the course of the joint sessions. Mrs A told HDC that it was “everyone’s idea” to draft a separation agreement during these sessions. This was because Mrs A and Mr A had made little progress over the last two to three months while communicating through their legal advisers. Ms B told HDC that Mrs A wrote the draft agreements and that her role was only to facilitate the discussions and to act as a “go-between”. Both Mrs A and Ms B agree that the intention was to have the agreement reviewed by a lawyer once it had been finalised.
40. In response to the provisional opinion, Ms B stated that the “sole focus” was to be working together to create a separation agreement and not to be discussing “the relationship and/or past issues”.
41. On 10 July 2012, Mrs A and Mr A attended two joint sessions with Ms B that day. The first was scheduled in the morning. The client notes from this session record:

“A lot of frustration expressed by F client — however, also a total lack of empathy for M clients feelings and financial position. M Client quietly firm in his point of view, whilst expressing empathy. Great to see his personal growth has been developing.”
42. Mrs A and Mr A returned that evening for a further session, and Ms B noted in the client notes that “settlement payout plan achieved”.
43. On 17 July 2012, Mrs A attended an individual session. This session was to discuss Mrs A’s new relationship.
44. On 30 July 2012, Mrs A and Mr A agreed on an amendment to their separation agreement during a joint session with Ms B. Ms B’s client notes record: “Clients have come a full circle, emotionally, physically, discarding lawyers edition of the original agreement drawn up by the 3 of us.” It is also noted that the new agreement would be witnessed by a Justice of the Peace at the Citizen’s Advice Bureau.
45. On 31 August 2012, Mrs A and Mr A attended a joint session. The purpose of the session was recorded in Ms B’s client notes as being “to clarify exactly what loans apply to each property, a realistic projection of loss or profit upon their sale, establish an agreement on debt to be paid, and finalise details of real estate listings”.
46. In response to the provisional opinion, Ms B stated that she would have liked to “back away” from the situation but felt a responsibility to both clients to continue to work with them for different reasons.

Financial advice — Mr A

47. Ms B told HDC that it was important for Mr A to understand his financial position prior to finalising a settlement agreement with Mrs A. Ms B described it as being a “difficult and convoluted banking system”. In her interview with HDC, Ms B said that she was conscious that Mrs A had been in control of her and Mr A’s finances throughout their marriage, and therefore Mrs A had an advantage over Mr A. Ms B recommended that Mr A seek advice from a financial adviser, Mr D. Mr A engaged Mr D’s services.
48. During her individual sessions with Mr A, Ms B assisted him to interpret and understand Mr D’s financial advice, as it was “like Chinese to him”. Ms B explained to HDC that she assisted his understanding by drawing a “family tree” to illustrate the account structure and how money was moving from one account to another.

Joint session 16 September 2012

49. On 16 September 2012, a further joint session was held. The client notes record:
- “Objective was to be finalising the amendment to the separation agreement ... Once again tried to establish a 50/50 share of the debt, rather than just a 50/50 share of the profit. To no avail ... Entire session wasted.”
50. In response to the provisional opinion Ms B stated: “The only legal matter that I provided ‘advice’ on was in stating the fact of a 50/50 division of asset/debt.”

51. The client notes for 16 September go on to say:

“Note to self to invoice F. Client for her fees due — my personal decision is that I will no longer work with this person, due to her manner and dishonest nature! My personal boundaries are such that no one gets to enter my workspace/home environments, and be so totally disrespectful and aggressive.

Client will be notified of termination of contract.

F. Client’s manner was so appalling that M. Client stayed on for quite an extended session — emotional damage control.”

52. No further joint sessions were held after 16 September. Mrs A did not attend any further individual sessions. However, Ms B continued to provide individual sessions to Mr A.

Breakdown of counselling relationship with Mrs A

53. Ms B told HDC that during the last third of the joint sessions, Mrs A became impatient, aggressive, and frustrated with Mr A. Ms B recalls that Mrs A’s tonality was not conducive to what was trying to be achieved.
54. Mrs A explained to HDC that at this time she felt that Ms B had changed her attitude towards her. Mrs A assumed this was because Ms B had been spending more time in her individual sessions with Mr A than with her. Mrs A thought that she was just being “paranoid” about the situation.

55. Mrs A said she felt that Ms B had developed a biased attitude towards Mr A. Mrs A told HDC that Ms B had suggested a “fair settlement” whereby Mr A would receive over \$100,000 in assets and she would receive \$20,000. In contrast, Ms B denied ever suggesting how their assets should be divided and told HDC that this was because there were no assets to divide. In her interview with HDC, Ms B stated that had she been biased towards Mr A, when he wanted to engage an investigator to find out where a lot of the couple’s money had gone, she would have encouraged him to do so.
56. Ms B stated in her response to the provisional opinion that she was not biased towards Mr A and said:

“... I was not biased against [Mrs A] ie. Working on weekends to accommodate [Mrs A’s] own work schedules, offering her a reduced fee, and indeed attempting to further reduce her expenses via the computer fixing and meal offer, by responding to her phone calls and emails [free of charge], and yes by working with [Mr A] not to bring legal proceedings against her ...”

57. Ms B stated further that her intentions “were pure within a genuine desire to help both [Mrs A] and [Mr A]”; however, Ms B also accepted that moving between her perceived roles of counsellor and life coach with two individual clients was not conducive to adhering to the Code.
58. In an earlier response to HDC, Ms B said that Mrs A assumed she had a biased attitude towards Mr A because she had to “thrice reprimand her for her tonality and aggression during the joint sessions”. Ms B further stated:

“I also have an ethical obligation to protect my clients from harm, particularly when in my care. Whilst I will not elaborate on [Mr A’s] mental health any further than I have in my first response, as a continued victim through [Mrs A] and [Mr A’s] relationship, I found it paramount to attempt to stop [Mrs A’s] aggression within the joint sessions.”

Email correspondence September 2012

59. On 19 and 23 September 2012, Mrs A received emails from Mr A concerning their jointly owned properties. Mrs A said that she was surprised by the content and tone of his emails. Mrs A told HDC that the wording used was unusual for Mr A, and she thinks that Ms B drafted the emails for him. Ms B denied that she drafted the emails for Mr A, but said that she would read Mr A’s emails to make sure that they “made sense”.
60. In her response to the provisional opinion, Ms B noted that her involvement amounted to “reading them from the point of view of asking him if this was what he truly wanted to convey...”.
61. On 23 September, Mrs A replied to Mr A and asked if he would like “to meet again via [Ms B] so we can talk”. Mrs A did not receive a reply.
62. Later that day, Mrs A forwarded both emails from Mr A and her reply to Ms B, with a request for Ms B’s advice. Mrs A did not receive a response from Ms B, and followed

up with a telephone call on 25 September. Mrs A left a voicemail message asking Ms B to call her. Ms B replied by email on 26 September. In her email she wrote:

“Unfortunately, this situation has come due to your expressed attitude during our last joint session. With your impatience, tonality and inflexibility, [Mr A] lost faith in the simple process that you two were trying to achieve. In short, [Mr A] felt very marginalised and has therefore declined any future joint sessions.”

63. On 27 September, Mrs A replied expressing her disappointment over the delay in receiving a reply from Ms B and explaining her frustrations about the last joint session. That same day Ms B replied and stated, amongst other things:

“I received your email this morning, & was interested in your absolute lack of respect & self-responsibility. No I did not respond to your prior email — there was no point, for your own behaviour has undone the great progress I have spent months working on. Our last joint session was not the only one in which you have behaved in this manner — this is a situation that you have created, I suggest you learn from that & choose not to carry this attitude with you in the future.

Also, I am not at your beck & call, to respond to every email or phone call — all unpaid for — & in light of the manner in which you also spoke to me, I have no such inclination to continue to repair the damage you create every time you choose to speak to people in such a derogatory tone. I have worked countless unpaid hours for you & [Mr A], I have worked on my weekends to accommodate you & [Mr A], & I have endeavoured to save you both thousands of wasted \$\$\$ lawyers fees — at this stage, I am not interested that ‘you feel disappointed’ that I did not respond to your email ...

... Clearly, the investment process was completely over-extended, hence the financial mess you both are in. Interesting to note is that you will leave this relationship with no debt & \$\$\$ in hand, a very different situation from when you entered it. [Mr A] now has less assets & huge debt — as he pointed out ‘due to this relationship’. As hard as that is to accept, [Mr A] has done so, & is working well to reclaim his sense of dignity & autonomy.”

64. In her response to HDC, Ms B said that she should not have sent this email, and that she had “reacted, rather than responded”. She further acknowledged that it was “disrespectful and unprofessional”. Ms B explained that at this time she was receiving “persistent and harassing phone calls” from Mrs A. When asked by HDC if she had the phone records available, Ms B stated that she did not.
65. Later that day, Mrs A replied and thanked Ms B for her past services. Mrs A further said that “there is no benefit in working together anymore”. In her complaint to HDC, Mrs A said that she felt “very upset and very alone at this point” and was “in shock that she [Ms B] would think so badly of me”.

Documentation

Significant issues missing

66. Mrs A obtained a copy of her notes from Ms B. Mrs A told HDC that a number of significant issues that she raised with Ms B during her individual sessions had not been recorded in her client notes. Mrs A explained that in one of her initial sessions she disclosed to Ms B a very traumatic event that happened to her when she was younger. This was not recorded by Ms B in her client notes.
67. Ms B explained that she did not record the event Mrs A referred to in the client notes because she did not believe Mrs A's account. She said she believed that if she had recorded this in the client notes, it could have had the potential to harm the other person involved.
68. In a subsequent email to HDC, Ms B stated:

“In regards to the [‘traumatic event’] not being documented, a large part of my decision not to record this was due to having in depth knowledge of how [Mrs A] goes about business ...”

69. In her response to the provisional opinion, Ms B stated that the discussion about the traumatic event was a “10 minute ‘aside’” with Mrs A “expressing no emotion beyond enquiry and requesting no counselling”. Ms B advised that she has now added an addendum to Mrs A's notes that refers to this issue.

Joint and individual notes together

70. In her complaint to HDC, Mrs A queried why the joint session notes were written in amongst her individual client notes. Mrs A also stated that the joint and individual session notes appeared to be written retrospectively or had been changed, because they were “incredibly biased”. Ms B denies that the joint or individual session notes were written retrospectively and/or were changed. Ms B further denies that there was any bias in her notes. Ms B explained that the reason the notes from the joint sessions were recorded in amongst Mrs A's individual notes, is that she handwrites the joint session notes into each individual client's file.

Supervision

71. On 3 March 2012, Ms B engaged Ms C as a supervisor. Ms B told HDC that she discussed Mr A and Mrs A with Ms C. Ms C wrote to HDC and confirmed that Ms B had discussed Mrs A and Mr A's situation with her on 11 June 2012 and 30 July 2012. The discussions were about Ms B's concern regarding non-payment for the sessions. Ms C had further sessions with Ms B to discuss Mrs A's complaint to HDC.
72. In her response to the provisional opinion, Ms B said that her discussion with Ms C also included “learnings” as to where she had gone wrong with the process she had followed, and what she could do to improve her business to ensure that she did not place herself in this position again. Ms B also advised that she did not discuss Mrs A and Mr A with Ms C previously as she had to choose which of her current clients' situations took precedence during her supervision sessions.

Counselling in a small geographic location

73. In her response to HDC, Ms B described the town as being a unique place for counsellors to work. Ms B told HDC that because of its geographical location, small size, and transient population, it operates in an entirely different manner from the rest of New Zealand. Therefore, counsellors in the town will go out of their way to help their clients, and this can cause difficulties with “professional distance outside of the therapy room”.

74. In her response to the provisional opinion, Ms B stated:

“[O]n a daily basis ... I will encounter at least one of my clients — all of whom greet me and enquire after my day. In larger cities that I have worked, distance and anonymity happen by sheer population. The desired six degrees of separation comes down to a mere one within this community.”

75. Ms B advised HDC that the locals “actively assist one another in any way possible” and are “fiercely loyal”. Following Mrs A and Mr A’s decision to separate formally, Ms B offered to store some boxes for Mrs A. Mrs A was to move into a new home that was much smaller than one she shared with Mr A, at short notice. Ms B told HDC that she knew Mrs A would not take her up on her offer. She said that when her clients feel they have an option available to them, and in this case a place (Ms B’s home) for Mrs A to store her boxes, they often can resolve the situation for themselves. Mrs A did not take up Ms B’s offer to store the boxes. In her interview with HDC, Ms B explained that she often stores items for her clients.³ In her response to the provisional opinion, Ms B advised that the items she had stored were passports for two separate clients, one with birth certificates and car keys.

Fees

76. Mrs A and Ms B had a dispute about the payment of the joint session fees. This matter was resolved at a Disputes Tribunal hearing.

Responses to provisional opinion

77. Responses to the provisional opinion were received from Mrs A and Ms B, and have been incorporated into the “information gathered” section where appropriate.

Opinion: Ms B

Introduction

78. Counsellors hold a privileged position in society. They provide guidance in solving personal and psychological problems to what is often a very vulnerable section of society. Clients put their trust and confidence into their counsellors and, because of this, counsellors must exercise a high standard of care when providing counselling services.

³ For example, passports or important documents.

79. This Office has previously stated:⁴

“The relationship between a client and counsellor is often described in terms of there being a fiduciary relationship. It is framed in this manner, as the client puts his or her trust in the counsellor. This results in an inherent power imbalance between the counsellor and the client, as the client entrusts the counsellor with his or her fears, vulnerabilities, and emotions.”

80. I consider that the general standards relied on in this report are fundamental to counselling, and apply to anyone who provides a counselling service.

Health care provider

81. Ms B describes herself as a qualified counsellor having a bachelor’s degree in counselling and a postgraduate diploma in neuromuscular therapy. Ms B offers a wide range of services, including assistance with relationship concerns, anxiety, and life skills. Section 2 of the Act provides that “health services” includes “counselling services”.

82. I consider Ms B to be a healthcare provider under section 3(k) of the Health and Disability Commissioner Act 1994 (the Act). A “health care provider” includes:

“any ... person who provides, or holds himself or herself out as providing, health services to the public or a section of the public, whether or not any charge is made for those services”.

83. I am satisfied that Ms B is a healthcare provider who provided health services in accordance with the Act.

The Code applies to unregistered healthcare providers

84. Ms B is not affiliated to the New Zealand Association of Counsellors (NZAC). Despite not being a member of a relevant association, Ms B is nonetheless bound by the (HDC) Code. In *Director of Proceedings v Mogridge*⁵ the Tribunal stated:

“The obligations of the Code apply to those who provide health services, whether or not they belong to any professional association or similar body, and whether or not they are aware of the standards set out in the Code.”

85. Mrs A was entitled to have services provided to her in accordance with her rights under the Code. This included the right to be treated with respect (Right 1(1)) and the right to have services provided that comply with legal, professional, ethical and other relevant standards (Right 4(2)). In my view, there are aspects of the services provided to Mrs A that were not delivered in accordance with her rights under the Code.

Ethical standards — Breach

86. Ms B advised that she had elected not to subscribe to a governing body organisation and had advised Mrs A of that. However, by holding herself out to be a counsellor,

⁴ See Opinion 09HDC01937 available at www.hdc.org.nz.

⁵ [2007] NZHRRT 27 (21 December 2007) at [102]. See also Opinion C10HDC00970 available at www.hdc.org.nz.

and by providing counselling services, I consider that she is required to meet the ethical standards of a reasonable counsellor in her circumstances. I agree with my expert advisor that the ethical principles set out in the NZAC Code provide a sound reference point in establishing the ethical standards that should apply in these circumstances.

Conflicts of interest — multiple relationships

87. Mrs A engaged Ms B's services to help her with a number of her life issues, in particular the trouble she was having with her marriage. As their relationship developed, Mrs A began to trust Ms B and felt that she could share her inner secrets. Ms B had a fiduciary duty to ensure that her counselling relationship with Mrs A was not compromised by providing services to another party that could be in conflict with Mrs A's interests.
88. Mrs A attended three individual sessions with Ms B, before discussing the possibility of attending joint sessions with Mr A. Ms B reassured Mrs A that she would be able to act impartially when counselling her, both individually and jointly with Mr A.
89. A counsellor must be impartial in his or her dealings with multiple parties. It is paramount that a counsellor is aware of situations where there could be an actual or perceived conflict of interests. If during counselling a conflict of interests emerges that may impact on his or her ability to act impartially, a counsellor must clarify, adjust, or withdraw from providing his or her services, as and when appropriate.
90. Mrs A attended a number of joint sessions with Mr A. On 20 January 2012, following the first four joint sessions, Mr A commenced individual sessions with Ms B. In Ms B's response to the provisional opinion, she stated that at that time, in her view, Mrs A had ceased to be her client and that she did not consider retaining Mr A as a client to be in direct conflict. This was because Mr A and Mrs A had different purposes for coming to counselling and Ms B considered it to be possible to work with Mr A "without ever needing to know/discuss the direct cause of the issue...".
91. However, between 20 January and 16 September 2012, Ms B concurrently provided individual counselling to Mrs A, individual counselling to Mr A, and joint counselling to Mrs A and Mr A. Ms B originally told HDC that she did not consider there to be any conflict of interests with this arrangement.
92. However, in her response to the provisional opinion Ms B stated that she considered the conflict of interest lay with Mr A. I understand her to mean that it was his interests that might be harmed rather than Mrs A's, by her agreeing to provide counselling to Mrs A.
93. In the course of the joint sessions, Mrs A felt that Ms B had become biased towards Mr A, and assumed it was because Ms B was spending more time with him in his individual sessions.
94. Ms B told HDC that Mrs A perceived a bias towards Mr A because she had to "thrice reprimand her for her tonality and aggression during joint sessions". Ms B further

stated in her response to the provisional opinion that she was not biased towards Mr A and said:

“... I was not biased against her [Mrs A] ie. Working on weekends to accommodate [Mrs A’s] own work schedules, offering her a reduced fee, and indeed attempting to further reduce her expenses via the computer fixing and meal offer, by responding to her phone calls and emails [free of charge], and yes by working with [Mr A] not to bring legal proceedings against her ...”

95. Following the last joint session on 16 September 2012, Ms B ceased to provide counselling to Mrs A but continued to counsel Mr A on an individual basis. At this time, Mrs A suspected that Ms B was assisting Mr A in drafting his emails to her. Ms B initially told HDC that she did not write Mr A’s emails but she would read them before they were sent to Mrs A. In her response to the provisional opinion, Ms B noted that her involvement amounted to “reading them from the point of view of asking him if this was what he truly wanted to convey...”.

96. In my view, providing individual and joint counselling sessions to Mrs A and Mr A at the same time, in these circumstances, impaired Ms B’s ability to be perceived as impartial. I agree with my expert that

“[h]aving already established a counselling relationship with [Mrs A], it appeared to have compromised her capacity to be seen as impartial and neutral. To attend to this, referring the couple ... to another counsellor would have kept the sanctity of the individual work with [Mrs A].”

97. I find Ms B’s lack of awareness and failure to recognise the initial conflict of interest to be alarming. First, Ms B did not recognise the potential for a conflict to arise. In her view, a conflict would be possible only if there had been an abusive relationship. However, in her response to the provisional opinion Ms B stated that she had considered there was a conflict, but in her view that “lay with [Mr A] not [Mrs A]”. I consider that Ms B’s responses do not reflect the necessary understanding of what a conflict of interest is. Second, even when Ms B considered that a conflict did arise, she continued to work with both clients. Her own description of the services she provided Mrs A, along with her notes, reveal that she promoted Mr A’s interests ahead of Mrs A’s, and treated Mrs A without respect. This is all the more concerning when Mrs A had been the first of the two to consult Ms B.

98. It is apparent that Ms B formed a negative view of Mrs A. I accept that occasionally a counsellor may find a client challenging. It is appropriate to discuss this issue at supervision and consider finding an alternative therapist for the client. In my view, Ms B’s opinion of Mrs A interfered with the duty of care she owed her client. That is a conflict of interest.

99. In her response to the provisional opinion, Ms B stated that her intentions “were pure within a genuine desire to help both [Mrs A] and [Mr A]”; however, Ms B also accepted that moving between her perceived roles of counsellor and life coach with two individual clients was not conducive to adhering to the Code.

Summary

100. I find that Ms B failed to comply with ethical standards and breached her fiduciary duty to Mrs A by failing to recognise that providing services to Mr A would be in direct conflict with Mrs A's interests. By supporting Mr A against Mrs A's interests as the relationship broke down, by turning against Mrs A, and by continuing to counsel Mr A, Ms B acted in breach of the trust placed in her, as well as not acting impartially and neutrally. Accordingly, I find that Ms B breached Right 4(2) of the Code.

Respect — Breach

101. As a healthcare provider, Ms B was required to communicate respectfully with Mrs A. Ms B failed to treat Mrs A with the respect to which she was entitled.
102. Following the last joint session, Mrs A wrote to Ms B seeking assistance responding to emails she had received from Mr A on 19 and 23 September 2012. Ms B responded on 26 and 27 September 2012. In her emails, Ms B's comments were judgmental, accusatory, and critical of Mrs A's behaviour. Ms B blamed Mrs A for the breakdown in the counselling relationship. I agree with my expert that this "does not show compassion for the client's distress and is therefore disrespectful and [compromised] a fundamental aspect of professional counselling".
103. Ms B accepts that her email to Mrs A on 27 September 2012 was "disrespectful and unprofessional". In my view, Ms B communicated to Mrs A in a disrespectful manner, and this amounted to a breach of Right 1(1) of the Code.

Practising outside area of expertise — Adverse comment

104. I acknowledge that Mrs A and Mr A had difficulty communicating effectively and productively with each other regarding their separation. They had attempted to finalise their property and financial division through their lawyers, but were unsuccessful. I also accept that Mrs A and Mr A wanted to discuss the details of their separation with Ms B during their joint counselling sessions so that she could help facilitate their discussions and keep them civil.
105. During the course of the joint counselling sessions, Ms B assisted Mrs A and Mr A to draft their separation agreement. Both parties agree that they intended to have the final separation agreement reviewed by their lawyers. I consider that Mrs A's recollection, and the records contained in Ms B's client notes, support the view that Ms B's role was not limited to a being "facilitator", "mediator" or a "go-between". I find that Ms B actively assisted Mrs A and Mr A with preparing a financial plan, interpreting financial advice, and suggesting what a fair division of assets would be.
106. My expert advised that "whilst it would be acceptable to provide a safe place for a couple to process the emotional aspects of separation and resolution of property, it is not appropriate for a counsellor to become involved in the content of the property settlement agreement". I agree.
107. Ms B provided legal and financial advice in the context of her counselling sessions, without any qualifications or apparent expertise in those fields. Mrs A and Ms B both agree that the intention was to have the agreement reviewed by a lawyer once it had

been finalised. However, Ms B's notes also record that she advised Mrs A and Mr A to have the property agreement witnessed by a Justice of Peace at the Citizen's Advice Bureau. Consultation with a lawyer would have revealed that that was not the correct position. By becoming involved in Mrs A and Mr A's financial and legal matters to the degree that Ms B did, Mrs A and Mr A would have assumed that Ms B was competent in those subjects and relied on her advice. Accordingly, in my view, it was unwise for Ms B to continue to provide services to Mrs A and Mr A when she became aware that rather than counselling, they wanted assistance with the financial and legal elements of their separation.

Professional boundaries — Adverse comment

108. Counsellors need to take great care to establish the boundaries of the relationship. Blurring the boundaries of a counselling relationship can have a detrimental effect on both the client and on the professional relationship.
109. This Office has previously stated:⁶

“When ... [any provider] has a professional relationship with a client ... he or she must take extreme care to establish and maintain the boundaries of that relationship. A breach of professional boundaries is a breach of trust and can result in physical and/or emotional harm to the client.”
110. I consider that the same standard applies to a provider such as Ms B.
111. Ms B told HDC that the town is a unique place for counsellors to work because of its geographical location, small size, and transient population. She said that counsellors in the town will go out of their way to help their clients, and that this can cause difficulties with “professional distance outside of the therapy room”.
112. I agree with my expert, Ms Paton, that providing counselling services in a rural community can pose difficulties in managing personal and professional boundaries, but that “counsellors have a responsibility to manage these boundaries in such a way that prioritises the integrity of the counselling profession”.
113. Ms B entered into an agreement with Mrs A whereby Mrs A would provide her with a home cooked meal in exchange for a 50 percent discount on one counselling session. However, instead of dropping off a pre-prepared meal, Mrs A brought ingredients to Ms B's counselling room (which was connected to her home) and prepared a meal. Mrs A stayed and shared the meal with Ms B's family.
114. After Mrs A formally separated from Mr A, Ms B also offered to store some boxes for Mrs A at her home. This was because Mrs A had to move at short notice into a new home, which was much smaller than the home she shared with Mr A. Ms B's husband also assisted Mrs A with the problems she was having with her laptop computer.
115. I consider that in the circumstances it was unwise for Ms B to arrange for Mrs A to provide a meal for her in lieu of full payment of one session. It was also unwise for Ms B to arrange for her husband to fix Mrs A's laptop computer, and to offer to store

⁶ See Opinion 04HDC05983 available at www.hdc.org.nz.

Mrs A's boxes at her home. I recommend that Ms B reflect on these comments and amend her future practice accordingly.

Documentation — Adverse comment

116. It is imperative that healthcare providers keep adequate notes and records. I note that this Office has previously stated that the importance of good record-keeping cannot be overstated.⁷ Ms B did not record in her client notes significant issues discussed during her sessions with Mrs A. Ms B did not record a traumatic event that Mrs A says happened to her when she was younger because Ms B did not believe Mrs A's account.
117. I find it surprising that a counsellor would not record being advised of such a serious and traumatic event regardless of whether or not the counsellor believed the client's account. In my view, it is important for counsellors to maintain an accurate record of the counselling services provided and to ensure that significant issues are recorded, regardless of whether or not their client's account appears to be accurate.

Recommendations

118. I recommend that Ms B:
- apologise in writing to Mrs A. The apology is to be sent to HDC for forwarding by **14 March 2014**;
 - review her practice in light of my expert's comments and report back to me on her learning by **14 March 2014**;
 - provide me with a progress report, including anonymised examples, on all changes made to her practice following this complaint, and the recommended learning, by **14 March 2014**;
 - identify and attend an appropriate course on communication with clients and report back to me by **15 April 2014**; and
 - identify and attend an appropriate course on ethics and professional boundaries and report back to me by **15 April 2014**.

Follow-up actions

119. • A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be sent to the district health board.
- A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be sent to the New Zealand Association of Counsellors and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

⁷ See Opinion 10HDC00610 at p10, available at www.hdc.org.nz.

Appendix A — Independent expert advice to the Commissioner

The following expert advice was obtained from Ms Irene Paton:

“Irene E.M. Paton

BA (Hons), Dip. Tchg., Mast. Couns., MNZAC, Registered Psychologist

30 April, 2013

Complaint: [Mrs A] against [Ms B]

Ref: C12HDC01512

Thank you for asking me to provide expert advice to the Commissioner regarding [Mrs A’s] complaint about the work of [Ms B].

In undertaking this work I have read and agree to follow the *Guidelines for Independent Advisors* in the *Enquiries and Complaints Manual*, provided by the office of the Health and Disability Commissioner.

Background of Assessor

Currently I work in private practice as a Registered Psychologist. From 1987 until May 1991, I worked in the Central Otago Area. Since 1991 I have continued to work in private practice in Christchurch. This involves providing counselling for the Ministry of Justice through the Family Court, private individuals and couples, Stratos (Auckland) and other Employee Assistance Programme providers which have nationwide contracts with large companies and the Accident Compensation Corporation. I also provide supervision for psychologists and counselors, as well as other professional people and work as a trainer and workshop facilitator for different organisations and groups. I have worked as an assessor for the Christchurch Institute of Technology, Diploma in Counselling, and Vision College Diploma in Counselling final assessments, as well as a consultant for the NZAC Journal Editorial Board and the Christchurch Institute of Technology Advisory Board. I also work as a Clinical Auditor for agencies throughout New Zealand. I undertake independent research and writing and review books for the NZAC and BAC Journals.

Of particular relevance for the role of Independent Assessor for the H, D & C is the work I do in providing counselling in private practice from an office based in a home and the work I have done for the New Zealand Association of Counsellors (NZAC) Ethics Committee. Since 2007, I have been the Regional Coordinator for Canterbury, Nelson Marlborough and have been on the Ethics Committee since 1995, Acting Convenor of the Ethics Committee in 2001 and on the Review of the Code of Ethics Committee from 2000–2002.

Instructions from the Commissioner:

I have been asked to consider the following:

1. Whether there are concerns about the care provided by [Ms B] which require further investigation.
2. Whether the care provided was reasonable in the circumstances.

3. Whether [Ms B] maintained appropriate professional boundaries.
4. Whether it was appropriate for [Ms B] to have drafted a property settlement and separation agreement between Mr [A] and [Mrs A].

Facts and Assumptions on which my opinion is based:

In providing the advice I have read the following:

- A. Letter (including emails) from [Mrs A], dated 20 October, 2012.
- B. Letter from [Ms B], including client notes for sessions starting 21/10/11 to 16/9/12.
- C. [Website for Ms B]

I did not use any examinations, tests, or other investigations in forming my opinion.

I have considered the material with regard to the accepted standards at the time the service was provided. I have assessed the conduct of [Ms B] by the appropriate standards of care the profession would expect from a practitioner providing the service in a private practice setting. I have considered whether [Ms B's] actions were reasonable in the circumstances, and whether they would be in compliance with the legal, professional and ethical standards.

I have been aware of the need to keep in mind that the 'outcome of the care or treatment is irrelevant' (*Enquiries and Complaints Manual* P.8) and it is the choices made by [Ms B] at the time of the counselling and her explanations following the complaint that are being considered.

My opinion and reasons for it:

I looked for a factual basis for the decisions and resolved differences in the evidence presented by both parties, which at times was contradictory.

I have used the NZAC Code of Ethics which is considered to be the foundational document for safe and ethical practice of a counsellor, as the basis for viewing the material submitted. I have stated the particular parts of the Code which are relevant (*in italics*), where appropriate I have identified the evidence provided in the complaint to support the potential compromising of the clauses of the Code, followed by my comments (**bold**).

With regard to the specific questions posed by the Commissioner, these are the facts and assumptions on which my opinion is based:

- A. Whether there are concerns about the care provided by [Ms B] which require further investigation.

The following are areas which I believe require further attention:

1. Multiple Relationships

NZAC Code of Ethics, Section 5.11 (d) When counsellors agree to provide counselling to two or more persons who have a relationship, counsellors shall

clarify which person or persons are clients and the nature of the relationship the counsellors will have with each person.

Based on the information provided by [Mrs A] and validated by [Ms B], the work provided began as individual work for [Mrs A] which moved to joint sessions interspersed with individual sessions for [Mrs A] and [Ms B] acknowledged [Mr A] continued as an individual client.

The reason for including this clause in the code is because of the complexities and difficulties that can be created by the provision of a number of potentially conflicting services. Awareness of the impact of being the provider of all of these services was not apparent by [Ms B].

2. Services Given

NZAC Code of Ethics Principle 4.8. Practice within the scope of their competence.

NZAC Code of Ethics Section 5.9. Maintaining Competent Practice

(c) Counsellors shall work within the limits of their knowledge, training and experience.

It was acknowledged that the joint sessions were a mixture of counselling and mediation ([Ms B], page 7) and ‘equal parts mediator and counsellor — for both clients’ ([Ms B], Page 2) and a place to explore the relationship and draw up a matrimonial property agreement.

[Mrs A] indicated [Ms B] got too involved in the legal and financial decisions. [Ms B] (page 3), mentions ‘creating a financial plan together’; ‘I reminded both clients that regardless of whom earned the most \$\$, it was joint property of equal division’ (Page 5) ‘assisting them in the drafting of their Separation Agreement and Property Settlement/Division’ (Page 7).

Email from [Ms B] to [Mrs A] (27 September 2013) ‘I have endeavoured to save you both thousands of wasted \$\$\$ in lawyers fees’.

These activities would appear to be about financial and legal matters, which are outside the boundaries of a counselling relationship.

There is no evidence on [Ms B’s] website to indicate that she offers or is trained in mediation, legal or financial service delivery. Therefore in working in this way with the [couple], she was practicing outside the limits of her training.

3. Fees

NZAC Code of Ethics Section 5.4. Clear Contracts, (a) The terms on which counselling is provided shall be clear and reasonable. Contracts negotiated between counsellors and clients may include matters to do with availability, fees, cancelled appointments, the degree of confidentiality offered, handling of documentation, complaint procedures and other significant matters.

There appeared to be some contractual matters which were confusing for [Mrs A]. [Ms B] did not refer to or provide a copy of the contract for the work, in the event that there was not a contract, this could have contributed to misunderstandings over payment for sessions. Were the longer sessions (3–4 hours) charged as a session or by the number of hours per session?

4. Notes

NZAC Code of Ethics Section 5.7. Documentation of Counselling, (a) Counsellors shall maintain records in sufficient detail to track the sequence and nature of professional services provided. Such records shall be maintained in a manner consistent with ethical practice taking into account statutory, regulatory, agency or institutional requirements.

[Mrs A] claims the notes not reflecting ‘significant issues which took up quite a bit of time in the sessions yet are not documented’. The notes do not clearly state who the sessions are with and there is evidence of information provided by [Ms B] in responding to the complaint that has not been included in the client’s notes.

Whilst Ludbrook (2012, p.58) states there is no overarching legal duty of counsellors to take notes, he identifies ‘how important it is for notes to clearly separate facts from opinions and the client’s statements from the counsellor’s views’ (Ludbrook, 2013, p 59). The notes submitted by [Ms B] have a mixture of both of these aspects of the case.

Based on both of these matters, the notes would not meet the standard required.

5. Supervision

NZAC Code of Ethics, Section 5.11 (b) Counsellors should consult with their supervisor(s) when dual or multiple relationships arise.

No evidence has been provided by [Ms B] about having consulted with her supervisor about this case, which was clearly complicated and challenging.

B. Whether the care provided was reasonable in the circumstances.

I believe there were a number of areas where the care provided would be considered unreasonable.

1. Multiple Relationships

NZAC Code of Ethics Section 5.11 (c) When dealing with more than one party, counsellors should be even handed when responding to the needs, concerns and interests of each party.

[Mrs A] identified [Ms B] ‘taking sides with the husband’. In refuting this, [Ms B] (page 9) states that ‘in her working with [Mr A], this action ([Mrs A] finding herself in front of a magistrate) was not taken’. There are also many references to criticizing [Mrs A] and referring to [Mr A] in a positive manner (See 3 below).

It would appear that [Ms B] was not being impartial and respectful of both parties and the complexity of the case and having both individual sessions for each party as well as joint sessions contributed to [Ms B] not being even handed.

2. Confidentiality

NZAC Code of Ethics Section 6.1. Extent of Confidentiality, (a) Counsellors shall treat all communication between counsellor and client as confidential and privileged information, unless the client gives consent to particular information being disclosed.

Breaching confidentiality by naming [Mrs A] as a client in an email to [someone else] (28/9/2012, 1.35 pm).

Breaching [Mr A's] confidentiality by stating in email (27 September, 2013) to [Mrs A] 'As hard as it is to accept, [Mr A] has done so, & is working well to reclaim his sense of dignity and autonomy'.

Whilst these are minor breaches, it is a corner stone of professional practice to maintain the boundaries and information provided from a counselling relationship.

3. Respect

The first right defined by the Code of Health and Disability Services Consumers' Rights 1996 is the right to be treated with respect.

One example of this is [Mrs A's] emails not being responded to for ten days. [Ms B] (page 4) 'Direct response breaks confidentiality, and an Ethical Codes of Conduct'.

There is a difference between acknowledging the receipt of an email and giving information about another person. It would have been useful to know what Ethical Code of Conduct [Ms B] was referring to.

NZAC Code of Ethics Section 5.8. Respectful Language, (a) Counsellors shall use appropriate and respectful language in all communications, verbal and written, to and about clients.

[Mrs A's] claims that [Ms B] responded critically in emails e.g. email to [Mrs A] (27 September, 2012, 8.52 a.m.) including 'your own behaviour has undone the great progress I have spent months working on'.

'Our last joint session was not the only one in which you have behaved in this manner — this is a situation you created, I suggest you learn from that and choose not to carry this attitude with you in the future.'

'I have no such inclination to continue to repair the damage you create every time you choose to speak to people in such a derogatory tone. I have worked countless unpaid hours for you & [Mr A], I have worked on my weekends to accommodate you and [Mr A], & I have endeavoured to save you both thousands of wasted \$\$\$

in lawyers' fees — at this stage, I am not interested that you “feel disappointed” that I did not respond to your email.’

In responding to the complaint [Ms B] gives further examples of not using respectful language and blaming [Mrs A] for the failure of the work e.g. (page 3) ‘It is largely due to the amateur and convoluted [sic] nature with which [Mrs A] handled the matrimonial finances, that these sessions were extended.’

‘As in two prior sessions, I had to once again reprimand [Mrs A] on her tonality and aggressive manner.’

[Ms B] (page 4) ‘[Mrs A’s] atrocious behaviour throughout the final joint session, undermined all the positive progress.’

[Ms B] (Page 9) ‘should [Mrs A] continue on in this vein, she will smartly find herself in court facing charges of Harassment and Slander’.

These examples of [Ms B’s] comments would be considered judgemental and not expected of a counsellor in describing another person, it does not show compassion for the client’s distress, and is therefore disrespectful and compromising a fundamental aspect of professional counselling.

Also, [Ms B] mentions in the client’s notes (page 1) of a brain injury. The responses made by [Ms B] would appear not to have taken into account the possible effects of head injury in the client’s reactions.

4. Fees

NZAC Code of Ethics Section, Fees, (a) Counsellors shall clarify fees and methods of payments with clients at the beginning of a counselling relationship.

With regard to the confusion about payment of fees, [Mrs A] was under the impression that her husband’s workplace was paying for the fee and was therefore surprised to receive an invoice for counselling and the notification of the use of a debt collection agency if unpaid by the following month (Email to [Mrs A] (29/9/2013, 9.28am).

[Ms B] (Page 2) states that she notified the clients of the change in 2012 from \$80 to \$120 (joint sessions only) however kept the cost at \$80 for the last session. Currently [Ms B’s] website indicates the fee is \$80.

This lack of clarity and confusion falls short of what is expected of a counsellor.

C. Whether [Ms B] maintained appropriate professional boundaries.

NZAC Code of Ethics Section 5.11 (a) Counsellors assume full responsibility for setting and monitoring the boundaries between a counselling relationship with a client and any other kind of relationship with that client and for making such boundaries as clear as possible to the client.

NZAC Code of Ethics Section 5.6. Fees, (c) Counsellors should be cautious about accepting goods or services from clients in lieu of payment. Counsellors who do accept goods or services from clients as payment for professional services are responsible for demonstrating that this arrangement will not be detrimental to the client or to the professional relationship.

[Ms B's] offer to store furniture for [Mrs A], which is validated by [Ms B] (page 7) when she also indicates that 'it is common practice for me ... to hold items safe'.

[Ms B] asking [Mrs A] to cook for [Ms B] and her family in exchange for professional services. [Ms B] (page 6) indicates that her 'own personal work ethics have me extending such offers (meals, attending to her trees) to my clients. [Ms B] also acknowledges (Page 6) '[Mrs A] did indeed share a meal with my family, as she had to cook it — this was a most uncomfortable experience for all involved, including [Mrs A], and the offer was never extended again.'

Clearly in choosing to store personal items and asking [Mrs A] to cook for her family, [Ms B] entered into an arrangement that was detrimental to the client and to the professional relationship.

D. Whether it was appropriate for [Ms B] to have drafted a property settlement and separation agreement between [Mr A] and [Mrs A].

As stated earlier in this report drafting a property settlement and separation agreement was outside her area of training and expertise, and was therefore inappropriate.

Conclusion:

I believe there are concerns about the care provided by [Ms B] which require further investigation in that she did not maintain appropriate professional boundaries, she drafted a property settlement and separation agreement between [Mr A] and [Mrs A] and behaved in a disrespectful manner towards [Mrs A].

[Redacted]

The behavior as reported by [Mrs A] and validated by the material provided by [Ms B] did not honor the *NZAC Code of Ethics Principle 4.2. Avoid doing harm in all their professional work.*

Although not part of the brief for this complaint, I did notice that 'Psychotherapy' is included in the 'Services Categories' on the website and to advertise offering this service it is necessary to be a Registered Psychotherapist.

After weighing up the written evidence, I believe [Ms B] did not meet the standards of clinical care required of a counsellor in the particular circumstances of providing counselling to a client at this time.

This departure from expected standards would be in the mild to moderate category."

Further advice

Ms Paton provided the following further advice on 25 July 2013:

“Thank you for asking me to provide further expert advice regarding [Mrs A’s] complaint about the work of [Ms B].

As stated in the letter of 30 April, 2013, in undertaking this work I have read and agree to follow the *Guidelines for Independent Advisors* in the *Enquiries and Complaints Manual*, provided by the office of the Health and Disability Commissioner.

Background of Assessor

In addition to the background information provided in the previous report, I have lived and worked in the [district where Mr and Mrs A live]. Whilst this was not in [their town], I did provide supervision for mental health workers who were working and living in that community. This and my experience of living and working in [another] very small community is particularly relevant to this case.

Instructions from the Legal Investigator:

1. Whether [Ms B] was conflicted in providing both joint and single sessions to [Mrs A] and her ex-husband. If so, what point do you consider a conflict arose and why?
2. To what extent do you consider it acceptable for [Ms B] to assist [Mrs A] and her ex-husband with their issues surrounding the property settlement agreement?
3. What action would you expect a counsellor to take when a client is asking for assistance with matters outside of their professional training, expertise, or scope of practice?
4. At what point, if any, should [Ms B] have ceased providing counselling services to [Mrs A] and/or her ex-husband. If so, why?
5. [Ms B’s] rationale for her note-taking.
6. [Ms B’s] comments with regard to the effect on the counselling relationship of working and living in [the district].

Facts and Assumptions on which my opinion is based:

In providing the advice I have read the following:

- a. HDC Notification letter date[d] 17 May 2012
- b. Letter from [Community Law Centre] date[d] 23 May, 2013
- c. [Ms B’s] response to notification dated 5 June, 2013
- d. Summary of Interview with [Mrs A] dated 2 July, 2013
- e. Summary of interview with [Ms B] dated 9 July
- f. Email from [HDC Investigator], dated 19 July, 2013 with additional comments from [Ms B]
- g. Disputes Tribunal judgment.
- h. Email message from [Ms C], dated 19/7/ 2013, 3.34 p.m.
- i. Email message from [Ms B], 25/7/2013.

I have considered the material with regard to the appropriate standards of care the profession would expect from a practitioner responding to a complaint as well as

providing the service in a private practice setting located in a smaller community. I have considered whether [Ms B's] responses and actions were reasonable in the circumstances, and whether they would be in compliance with the legal, professional and ethical standards.

My opinion and reasons for it:

I have stated in the 30 April, 2013 report the particular aspects of the NZAC Code which I believe to have been compromised by [Ms B]. I will not repeat the clauses in this report, however the comments made in this report need to be considered alongside the link to the ethical comments in the previous report.

I notice in the interview with [Ms B] (p. 60) that she completed a BA in three years and a neuromuscular diploma in three years. Depending on what the major of the BA was, I am unsure how these two qualifications would prepare a counsellor for providing a professional service. If [Ms B] had submitted her CV as requested by Theo Baker to [Ms B], in the letter dated 17 May, 2013, this might have provided more detailed information about this.

With regard to the specific questions posed by the Legal Investigator, I have commented using the following headings:

1. Whether [Ms B] was conflicted in providing both joint and single sessions to [Mrs A] and her ex-husband. If so, what point do you consider a conflict arose and why?

It would appear that there was considerable potential for [Ms B] to be conflicted in providing both joint and single sessions. The conflict appeared to surface more obviously when [Ms B] asked [Mrs A] for payment, although there appear to have been previous indicators that there were some potential pitfalls which had not been attended to adequately. Whilst it is possible to move from individual work to working with a couple, it needs to be carefully managed and contracted. The training of the counsellor, the length of time spent working individually and the particular needs of the couple ... are variables that can influence whether it is wise to transition from individual to couple work. In this case [Ms B] then moved to providing individual counselling for [Mrs A's] ex-husband. This choice has the potential for more confusion and compromising the previous work.

Having already established a counselling relationship with [Mrs A], it appeared to have compromised her capacity to be seen as impartial and neutral. To attend to this, referring the couple ... to another counsellor would have kept the sanctity of the individual work with [Mrs A].

2. To what extent do you consider it acceptable for [Ms B] to assist [Mrs A] and her ex-husband with their issues surrounding the property settlement agreement?

[Ms B] explained that her involvement in the process of assisting the couple with the property settlement was 'to be there as a go-between, the mediator to keep the conversations/discussions civil and productive' (p.50). Whilst it would be acceptable to provide a safe place for a couple to process the emotional aspects of separation and resolution of property, it is not appropriate

for a counsellor to become involved in the content of the property settlement agreement.

3. What action would you expect a counsellor to take when a client is asking for assistance with matters outside of their professional training, expertise, or scope of practice?

I would expect a counsellor to explore with the client exactly what their needs are and where these are outside their professional training, expertise, or scope of practice I would expect a counsellor to explore other avenues for the client to access the support they need.

4. At what point, if any, should [Ms B] have ceased providing counselling services to [Mrs A] and/or her ex-husband. If so, why?

Ideally [Ms B] should not have provided counselling to the couple, especially since according to [Mrs A] she indicated that this was in connection with resolving property settlement.

[Ms B] acknowledges on p 49 that [Mrs A] was treated with empathy and respect, and that this came unstuck during the course of the final session, where she reacted rather than responded. Given this acknowledgment, continuing to see [Mrs A's] ex-husband as an individual client, had the potential to cause difficulties.

[Ms B's] comments on page 55 that she has learnt that she should 'disengage and act with indifference when faced with a client for which I have lost respect'. At what point in the process did this happen? Does she mean terminate the counselling relationship when she has lost respect, or continue to do the work with a disengaged and indifferent attitude? These comments are concerning.

5. [Ms B's] rationale for her note-taking.

On page 50 [Ms B] acknowledges 'I well know what is expected of therapist note taking — I just do not agree with the expectations'. It would have been helpful for [Ms B] to identify what she believes her responsibilities are in note taking and the potential consequences of not agreeing with the expectations.

I also notice on page 51 that 'I have inherited several dyslexic qualities ... Often I find it easier to record just the basics ... Generally speaking, any written correspondence from me is clipped and at times abrupt.' Given the notes submitted by [Ms B] (page 9 to page 22) appear to be quite detailed, it remains unclear how to reconcile these notes of the client sessions with the comments above.

6. [Ms B's] comments with regard to the effect on the counselling relationship of working and living in [the town].

My understanding is that Codes of practice and conduct apply to practitioners, no matter what part of the country they are providing the service. Having lived and worked in a rural community I am aware of the potential difficulties that can arise in maintaining professional and personal boundaries. Whilst it provides an extra challenge in providing a counselling service, counsellors have a responsibility to manage these boundaries in such a way that prioritises the integrity of the counselling profession.

[Redacted]

Conclusion:

Responding to a complaint gives an opportunity for a counsellor to either demonstrate their awareness of the concerns raised, the impact of these on the counseling relationship and how they would behave differently in the future in order to behave in line with expected ethical and professional standards, or, to provide further evidence of the original behavior complained about. If a counselor responds with a genuine sense of having used the complaint as an opportunity to reflect in a meaningful way, then it is less likely they will repeat the behavior.

Whilst [Ms B] acknowledges there has been some valuable learning from the complaint process, the notes from the interview do not reflect the level of learning expected of a counsellor and do not give a sense of reassurance that she would make different choices in the future. This is for two reasons. One being the core values of counselling that appear to have been compromised which are: 3.1. Respect for human dignity, 3.4. Responsible caring and 3.5. Personal integrity. Secondly the ethical practices expected of a Counsellor appear not to have been honoured sufficiently by [Ms B], particularly in relation to: 4.1. Act with care and respect for individual and cultural differences and the diversity of human experience, 4.2. Avoid doing harm in all their professional work, 4.3. Actively support the principles embodied in the Treaty of Waitangi, 4.5. Promote the safety and well-being of individuals, families, communities, whanau, hapu and iwi, 4.7. Be honest and trustworthy in all their professional relationships, 4.8. Practice within the scope of their competence and 4.9. Treat colleagues and other professionals with respect.

Unfortunately in this case the material submitted by [Ms B] provide further evidence that the concerns raised in my original report are valid and concerns for her ability to provide an ethical and professional service has been further called into question.

After weighing up the additional material submitted for completing this report, I believe [Ms B's] behavior is a departure from expected standards required of a counsellor in the particular circumstances and would increase the level from the mild to moderate category as indicated in the 30 April, 2013 report to a strong moderate level.



Signed

Date 25/7/2013"