HEALTH & DISABILITY COMMISSIONER
TE TOIHAU HAUORA, HAUĀTANGA

Counsellor's failure to treat client with respect during relationship counselling session

Summary of events

1. On 8 May 2024, Ms A and her partner attended a relationship counselling session with counsellor Mr B at his counselling practice. Ms A told the Health and Disability Commissioner (HDC) that, throughout the session, Mr B did not offer a single solution that could assist her and her partner to resolve matters or understand each other (which was what they both stated in the session was their goal and reason for attending). Ms A said that she left the session feeling very confused, embarrassed, violated, bullied, and 'questioning her own reality'.

2. Ms A said that, during the session, when she was speaking with her partner, Mr B 'leant forward towards her and started clicking his fingers in her face like you would call a dog.' Later in the session, when she and her partner were having a disagreement, Mr B interrupted the discussion to ask her whether she had been sexually abused as a child. Ms A said that she was not given the option of choosing not to answer the question, and when she answered 'no', Mr B asked whether she was 'sure'. Ms A said that she found this questioning tactless, invasive, and unsafe.

3. Ms A said that, throughout the session, Mr B refused to address her and would address only her partner. She felt that the environment was unsafe and she was unable to express herself. She felt 'attacked, stonewalled with her concerns, under pressure, ignored … and bullied by how Mr B was operating.'

4. Ms A said that, when she got upset, Mr B began to attack her verbally and did not listen when she expressed how she was feeling. Mr B then 'aggressively flung the door open' and said: '[T]here is the door if you didn't know … it's now open for you to get out.' Ms A said that Mr B told her partner:

> '[T]his one is for you … the person who wants to end the counselling session early or leave the room is always at fault without fail and is the one that creates all of the conflict in the relationship.'

5. Ms A said that Mr B then said to her: '[Ms A] you came here to win, didn't you?'

6. Following the session, Ms A asked Mr B for her clinical notes and details of Mr B's qualifications,[1] both verbally and in writing. However, she has not received a response.

7. On 20 August 2024, HDC commenced a formal investigation into the care provided to Ms A by Mr B. Mr B was asked to provide a response to the complaint, a copy of all notes and records of consultations with Ms A, details of his membership of any professional

[1] Ms A said that she requested this information on three occasions.

association, whether he has considered making any changes to his practice as a result of the events, and evidence that recommendations made in previous complaints against him had been complied with. The information was due on 10 September 2024, but at the time of writing (despite follow-up[2]) Mr B has not provided the requisite information to HDC. On 5 December 2025, Mr B sent an email to HDC explaining that he would not be engaging with HDC's investigation process. He stated:

> '[P]eople from the public decide with malicious intent that they will use your office as an attempt to attack people like me without true justification. Your office and investigations are being used and weaponized as lawfare to attack.'

Responses to provisional opinion

8. Mr B was given the opportunity to comment on the provisional opinion. However, he did not respond to HDC. Ms A was also given the opportunity to comment on the provisional opinion. Ms A told HDC:

> 'I would like … to move forward to the [Director of Proceedings], based on Mr B's lack of response to me over the last year to date. And the short response I have had, he doesn't seem to think he has done anything wrong. In addition, based on his previous complaints, it seems a pattern of him not responding and so I cannot see anything further happening after making a recommendation to him to do various courses and offer an apology, etc.'

Opinion

9. As Mr B made it clear that he would not engage further with HDC's process, I have relied on Ms A's version of events, as contained in her complaint to this Office, in forming my opinion.

10. This Office has stated previously that despite not being a member of a relevant association, Mr B is nonetheless bound by the Code of Health and Disability Services Consumers' Rights (the Code). In *Director of Proceedings v Mogridge*,[3] the Human Rights Review 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.'

11. I consider that by holding himself out to be a counsellor and by providing counselling services for a fee, Mr B is required to meet the ethical standards of a professional counsellor and that the ethical principles set out in the New Zealand Association of Counsellors (NZAC) provide a sound reference point in establishing ethical standards that should apply in these circumstances. Accordingly, I consider the NZAC Code of Ethics to be an appropriate benchmark for the assessment of Mr B's practice.

12. Section 5.11c of the NZAC Code of Ethics stipulates that when dealing with more than one party, 'counsellors should be even handed when responding to the needs, concerns and

[2] 14 October 2024 (email sent advising of new due date for his response), 7 November 2024 (further email sent following up on overdue response), 5 December 2024 (unanswered phone call made).
[3] *Director of Proceedings v Mogridge* [2007] NZHRRT 27.

interests of each party.' In my view, by failing to address and listen to Ms A equally throughout the session, by telling Ms A's partner that the one 'who wants to end the counselling session early or leave the room is always at fault without fail and is the one that creates all of the conflict in the relationship', and by telling Ms A that she 'came [to the session] to win', Mr B failed to treat Ms A and her partner even handedly while facilitating a relationship counselling session. Mr B failed to respond to Ms A's needs, concerns, and interests equally, as expressed to HDC in her complaint.

13. Section 5.8(a) of the NZAC Code of Ethics states that counsellors shall use appropriate and respectful language in all communications, verbal and written, to and about clients. Ms A told HDC that Mr B made several disrespectful and inflammatory comments towards her during the relationship counselling session (detailed above). She described the impact of these comments, particularly that she felt attacked, stonewalled with her concerns, under pressure, ignored, and bullied. I am particularly concerned that Mr B asked Ms A whether she had been sexually abused as a child. This question was inappropriate, and the relevance of the question in the context of the relationship counselling session is unclear. Further, it was irresponsible and disrespectful for Mr B to ask this without ensuring that safeguards were in place for Ms A, and, given the nature of the relationship at the time, to ask in front of her partner.

14. I have also considered Mr B's email to HDC on 5 December 2024, in which he suggested that complainants are using HDC as a 'weapon' toward providers. I find this email to be disrespectful toward Ms A. Mr B failed to acknowledge Ms A's concerns about the service she received and instead indicated that she may have been using HDC as a tool to 'attack' him. Mr B had a responsibility as a counsellor to communicate respectfully with and about Ms A, and in failing to do so he failed to comply with section 5.8(a) of the NZAC Code of Ethics.

15. Section 5.7(d) of the NZAC Code of Ethics provides that counsellors shall inform clients of their right to access their documentation. Ms A said that she requested a copy of her clinical documentation, both verbally and in writing, but did not receive it. As a provider of healthcare services, Mr B is required to provide Ms A with a copy of her personal health information if requested. On the information available, I am not satisfied that Mr B informed Ms A of her right to access her notes, and therefore he failed to comply with section 5.7(d) of the NZAC Code of Ethics.

16. Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code) states that every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards. By failing to comply with three sections of the NZAC Code of Ethics, I find that Mr B breached Right 4(2) of the Code.

17. Right 10(3) of the Code states that every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints. In my view, by failing to provide a response to the complaint before him and the requisite information to assist in the resolution of this matter, and by advising HDC that he will not engage further, Mr B has frustrated the investigation process and has failed to facilitate the fair, simple, and speedy resolution of Ms A's complaint. As such, I find Mr B in breach of Right 10(3) of the Code.

Recommendations

18. I recommend that Mr B:

a) Provide a written apology to Ms A for the failings identified in this report. The apology is to be sent to HDC within three weeks of the date of this report.

b) Attend training on therapeutic communication, establishing rapport and trust with clients, and ethics and professional boundaries. Evidence of this training, along with a written reflection on his learnings, is to be provided to HDC within six months of the date of this report.

c) Review and reflect on his obligations as a healthcare provider under the Code, and provide HDC with a report on his learnings, within three months of the date of this report.

Follow-up actions

19. Mr B will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken. In making this decision, I have had regard to Mr B's persistent failure to provide information to facilitate the speedy and efficient resolution of this complaint. I have also considered Mr B's responsibility to provide information and facilitate complaint resolution in three separate complaints. His failure to engage with this Office to resolve Ms A's complaint has impeded her right to have her complaint investigated efficiently, and I am extremely concerned about Mr B's continued failure to engage with HDC.

20. Following the completion of the Director of Proceedings' process, a copy of this report with details of all parties removed will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.