

A Decision by the Deputy Health and Disability Commissioner

Unprofessional conduct by counsellor

(Case 23HDC01494)

Introduction

1. This report is the opinion of Dr Vanessa Caldwell, Deputy Health and Disability Commissioner, and is made in accordance with the power delegated to her by the Commissioner.
2. The report discusses the care provided to Mrs A by counsellor Mr B at his counselling practice.
3. Mrs A and her husband were attending marriage counselling with Mr B at his counselling practice. Mr and Mrs A also attended individual counselling sessions with Mr B. Mrs A raised concerns about Mr B's conduct during her individual counselling sessions. She also said that he had responded inappropriately to a public Google review she had left on his counselling practice business page.
4. The following issue was identified for investigation:
 - *Whether Mr B provided Mrs A with an appropriate standard of care between 20 May 2023 and 30 June 2023.*
5. The parties directly involved in the investigation were:

Mrs A	Consumer/complainant
Mr A	Consumer's husband
Mr B	Counsellor/provider

Events leading up to complaint

6. Mrs A told the Health and Disability Commissioner (HDC) that she and her husband were having issues in their marriage and that she had been unfaithful, so they decided to see a marriage counsellor. Mrs A said that she found Mr B's counselling clinic and 'the reviews looked ok', so she made a booking, and they attended their first appointment together on 20 May 2023.

First appointment — 20 May 2023

7. Mrs A said that the first appointment was an 'intake' where Mr B asked some questions about their relationship and 'what [they] want[ed] to work on'. Mrs A told HDC: '[Mr B]

seemed to be experienced and knowledgeable although [he] did tend to make a few assumptions about things, but it was [a] first appointment so [I] wasn't worried.'

Second appointment — 27 May 2023

8. On 27 May, Mrs A attended an individual counselling session with Mr B. She said that during the appointment, she explained to Mr B that she felt that Mr A 'enabled' her by not setting his own boundaries, and that 'it would be nice if [Mr A] had the ability to say no'. Mrs A said that Mr B told her that she was the 'problem' in the relationship, and that she 'ha[s] no sense of responsibility'. Mrs A stated that she felt 'a little picked on' but she agreed to continue attending appointments with Mr B after speaking to Mr A following the session. Mr A told HDC that, following this session, Mrs A mentioned to him that she had felt picked on during her session with Mr B and that she had been told by Mr B that she was to blame for the problems in their relationship.

Final appointment — 3 June 2023

9. On 3 June, Mrs A attended a third and final individual session with Mr B. She said that during this session, Mr B asked her what 'may be the cause of [her] being so disconnected from [her] husband'. Mrs A told HDC what she expressed to Mr B as one of the reasons:

'The first is that I am really big with consent and felt that my husband was crossing my boundaries a bit. I explained how in a past relationship I had been sexually assaulted and on one occasion [Mr A] had pushed my boundaries by not stopping a sexual act when I said no a couple of times. [Mr B] then used that as an example to prove his point that that was [Mr A] saying no to my no and [I] don[']t like being told no do [I].'

10. Mrs A said that Mr B's response made her cry, and she felt that he was insinuating that the behaviour (not respecting sexual boundaries/consent) was ok. Mrs A said that Mr B then denied having said the above altogether.
11. Mrs A told HDC that following this, Mr B continued to 'badger' her that she was selfish and 'not taking responsibility'. Mrs A said that she discussed with Mr B the idea of her and Mr A spending a night each at her brother's house so that they could have some time to themselves to process everything. She stated that in response: '[Mr B] told me that I was going to traumatise my child.'
12. Mr A told HDC that he was scheduled to attend an individual session with Mr B following Mrs A's appointment (discussed above). He said that Mrs A was upset when she came out of the room following her session. He told HDC:

'When I went in [to the room,] [Mr B] asked if [Mrs A] had said anything to me. I said that she had felt picked on, [and Mr B] said that wasn't the case. During the session I felt like when I brought up something that he had also talked to [Mrs A] about he talked about her reaction to it, he tried to say she was unwilling to change. I told him [that Mrs A] had been making changes and working on our relationship. I can't remember everything from that session but I was close to walking out because of how he was talking about [Mrs A].'

Google review — 6 June 2023

13. On 6 June 2023, Mrs A left a negative Google review¹ on Mr B's counselling practice business page (rating it one out of five stars) under her full name with a profile photo of her face. The review read:

'[Mr B] said he was there to help but twisted everything I said, was aggressive in his approach and showed no empathy. I felt bullied as opposed to supported. [He] [m]ade a lot of assumptions without fact.'

14. Mrs A told HDC that following this, Mr B responded to her review publicly. She stated:

'[He marked] my characteristics as a person including the fact that [I] was unfaithful which was told [to Mr B] in a confidential environment. He gave me a score for partnership, faithfulness, character, integrity, covert emotional manipulation, selfishness, commitment, sacrifice and power and control.'

15. Mr B's full response² (which was titled 'response from the owner') read:

'It's very common of people who are trying to control the counselling environment and manipulate their partner to leave reviews like this when they have been challenged to take responsibility for themselves and their part in their relationship. Since you have taken the time to leave a review in an attempt to gain a sense of power and control once again feeding your ego here is your review.

Partner — 1

Faithfulness — 1

Character — 1

Integrity — 1

Narc[i]ssism — 5

Covert Emotional Manipulation — 5

Selfishness — 5

Commitment — 1

Sacrifice — 1

Power & Control — 1

There is a clear warning on our website which states if [it] is your intention to use the counselling environment to manipulate your partner not to book in. Best not to choose [Mr B's business name] for relationship counselling unless you want to restore your relationship, take responsibility and be accountable.'

¹ Google reviews posted publicly contain a profile picture (if one has been uploaded) of the Google account user and the full name of that user.

² Mrs A provided a screenshot of this response as part of her complaint to HDC.

16. Mrs A told HDC:

‘Not only is that so incredibly harmful when [I] am already struggling mentally but he also outed my husband by mentioning that I am in marriage counselling when [I] never mentioned that in my review ([t]he clinic offers multiple different kinds of counselling). After I edited my review calling out his professionalism he removed the faithfulness comment but the rest is still there.’

17. As at 12 June 2023, the Google review showed Mr B’s response (the ‘response from the owner’) as reading the same as the one provided by Mrs A, but the reference to ‘faithfulness’ had been removed.

18. Mr A told HDC that after Mrs A left the Google review, Mr B telephoned him and said that he was just ‘checking up on me as he had seen [Mrs A’s] review’. Mr A said that he told Mr B that he was fine and that he and Mrs A would not be attending any further counselling sessions with him.

Attempts to contact Mr B19. On 4 July 2023, HDC sent a letter to Mr B under section 14(1)(m) of the Health and Disability Commissioner Act 1994 (the Act).³ Mr B was provided with a copy of Mrs A’s complaint, including the screenshot of the response from the owner to Mrs A’s Google review. The letter advised Mr B: ‘[Under the Act,] we gather information to assess complaints. Please respond to the issues raised in the complaint, including answers to the following questions.’ The letter asked Mr B to provide the following:

- His recollection of Mrs A’s sessions with him
- A response to Mrs A’s concerns
- Whether he recalls making certain comments to Mr A
- His rationale for responding to Mrs A’s Google review in the manner he did
- Any other comments he wished to provide to HDC.

20. The letter also requested a copy of Mrs A’s clinical notes, and any policies in place at Mr B’s counselling practice relating to complaints management, use of social media, conducting joint counselling sessions, and client confidentiality. Mr B was asked to provide the information by 25 July 2023.

³ Section 14(1)(m) of the Act stipulates that one of the functions of the Commissioner is to ‘gather such information as in the Commissioner’s opinion will assist the Commissioner in carrying out the Commissioner’s functions under this Act’. HDC has several statutory functions, including acting as the initial recipient of complaints and ensuring that each complaint is dealt with appropriately (s14(1)(da)) and investigating any action that is, or appears to be, in breach of the Code of Health and Disability Services Consumers’ Rights (s14(1)(e)).

21. Mr B confirmed receipt of the letter via email on 4 July. However, he did not respond to the letter by 25 July. On 31 July, HDC sent an email to Mr B advising that his response to the letter was overdue and asking him to advise when HDC could expect to receive his response.
22. On 8 August 2023, Mr B responded to HDC advising that he had been on leave. He said that he had some questions he would like answered prior to finalising his response. The email read:

‘Can you tell me what supporting evidence there is to prove the allegations made within the complaint other than what is alleged? Is there any written or recorded evidence to prove the verbal recollection alleged within the complaint? Is there any actual evidence of the Google review mentioned within? There is nothing within the attached screenshots that includes [Mr B’s counselling practice] and or [Mr B]. Can you tell me how the HDC verifies the integrity and authenticity of the digital images included within a complaint to ensure they have not been fabricated or digitally altered? Can you tell me if the [C]ommissioner of the Health and Disability Commission has any active experience as a counsellor, therapist or psychologist in either government or private practice? And if so, for how long? Can you tell me what steps, procedures and processes are in place by the HDC to ensure a practitioner is not being unfairly targeted by a person with intent to cause harm to the practitioner? Can you tell me what steps are in place to ensure the HDC is not being used as a tool for manipulation by clients of practitioners or practitioners themselves? Can you tell me what steps are in place to protect a practitioner who is or has been a victim of malicious intent or manipulation of a client? Can you please advise what your policy is if a client has engaged in either online bullying, hate speech, or defamation toward the practitioner? And in addition if there is a case where there has been online bullying, hate speech, or defamation toward the practitioner which could result in pending legal action, if you require the practitioner to provide you information before there has been due legal process before a court of law? Can the HDC please provide their understanding of the nature of relationship counselling when there is a person with malicious intent, narcissistic traits, manipulative intent or psychopathic traits within the relationship dynamic? Does the HDC conduct a verbal interview with the complainant to verify the integrity of the complaint and or the agenda of the person making a complaint? Can you tell me what mental health support the HDC provides to practitioners who receive a complaint lodged by the HDC? I will reply with my final response on receipt of answers to the above questions.’

23. HDC responded to Mr B’s email on 11 August 2023. The email read:

‘Thank you for advising that you are in the process of finalising your response to the section 14 request for information. I acknowledge that you have a number of questions about the complaints process. In order to answer some of your questions, please see the link to the HDC website: [What if a complaint is made about me? — Health and Disability Commissioner \(hdc.org.nz\)](https://www.hdc.org.nz/What-else-were-we-thinking/What-if-a-complaint-is-made-about-me) outlining this process in detail. In relation to the consideration of evidence, HDC will gather all relevant information from the parties

involved in the complaint (including yourself as the provider), consider the evidence and decide whether or not to commence a formal investigation.

The complaints assessment process is fair and impartial. This Office will consider the available evidence, and you will be given the opportunity to respond to it in line with the principles of natural justice. Any information that you have regarding online bullying or harassment, you can provide to HDC as part of your response to this complaint. I note that the role of this Office is to assess the adequacy of the care provided to consumers of health and disability services. However, if you have evidence that can be substantiated indicating you are being bullied or harassed which has relevance to our assessment into the adequacy of the care you provided, then it will be assessed and if required taken into account. Deputy Commissioner Dr Vanessa Caldwell is managing this complaint. You can find more information about Dr Caldwell on the Health and Disability Commissioner website, here: <https://www.hdc.org.nz/about-us/our-people/>. We encourage providers to seek collegial support throughout the complaints process. This can include any support that may be available to you through a professional body or association, a lawyer etc. I trust that this answers your questions. I look forward to receiving your response to HDC, [and] if you have any further questions or concerns, please don't hesitate to contact me.'

24. Mr B did not provide a response to the above email. On 21 August 2023, a telephone call was made to Mr B to follow up on his response to the section 14 request for information. A message was left on his voicemail to contact HDC in relation to the complaint. A further telephone call was made to Mr B on 4 September 2023, and a further message was left asking Mr B to contact HDC in relation to this complaint. Mr B did not respond to any of the attempts to contact him.

Relevant standards

New Zealand Association of Counsellors | Te Roopu Kaiwhiriwhiri o Aotearoa (NZAC)

25. Mr B is not a member of the NZAC. However, as this Office has established previously (discussed below), the NZAC Code of Ethics can be applied in this case as the industry standards and what can be reasonably expected of counsellors.
26. Section 4 of the NZAC Code of Ethics outlines the ethical principles of counselling.
27. Section 4.2 states that counsellors shall '[a]void doing harm in all their professional work'.
28. Section 4.4 of the NZAC Code of Ethics stipulates that counsellors shall 'respect the confidences with which they are entrusted'.
29. Section 5 of the NZAC Code of Ethics outlines the general guidelines for professional practice.
30. Section 5.8(a) of the NZAC Code of Ethics stipulates that '[c]ounsellors shall use appropriate and respectful language in all communications, verbal and written, to and about clients'.

31. Section 5.11(c) states that '[w]hen dealing with more than one party, counsellors should be even handed when responding to the needs, concerns and interests of each party'.
32. Section 6 outlines confidentiality obligations.
33. Section 6.1(a) states: 'Counsellors shall treat all communication between counsellor and client as confidential and privileged information, unless the client gives consent to particular information being disclosed.'
34. Section 7.3 outlines counsellors' responsibility to the profession.
35. Section 7.3(a) states: 'Counsellors shall uphold and foster the values, integrity and ethics of the profession.' The core values of counselling are listed in section 3 of the NZAC Code of Ethics as: respect for human dignity, partnership, autonomy, responsible caring, personal integrity, and social justice.

Response to provisional opinion

Mrs A

36. Mrs A was given the opportunity to comment on the 'events leading up to complaint' section of the provisional report, and her comments have been incorporated into this report where relevant.

Mr B

37. The provisional opinion was issued to Mr B via email on 2 February 2024, and he was asked to provide his comments by 28 February. On 28 February, Mr B emailed HDC and advised that his preferred contact was by mail and phone call and that he would be creating a filter on his webserver to 'automatically delete [any] emails from the HDC'. Mr B requested that the provisional opinion be re-sent to him via mail and that he be provided a copy of the complaint file (which was processed under the Official Information Act 1982/Privacy Act 2020). A copy of the provisional opinion was re-sent to Mr B via mail on 1 March, with a return signature courier bag for him to provide his response to HDC. He was advised that if he did not respond to the provisional opinion by 18 March, the opinion would be finalised. On 14 March, Mr B wrote to HDC advising that he was waiting for the information requested under the Official Information Act 1982 and the Privacy Act 2020 and that he would respond to the provisional opinion on receipt of that information. On 19 March, the information was sent to Mr B via mail and a phone call was made to his cell phone (and a voicemail message left) advising that the information had been sent and that the new due date for response to the provisional opinion was 26 March 2024. Further phone calls were made to Mr B's cellphone and work number, but both went to voicemail. Mr B did not respond to the provisional opinion or attempts to contact him.

Opinion: Mr B — breach

Introduction

38. The counselling profession in New Zealand is not regulated under the Health Practitioners Competence Assurance Act 2003, and there are no requirements for counsellors to register with any professional association. At the time of these events, Mr B was not associated with NZAC or any other counselling body.

39. As this Office has stated previously,⁴ 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*,⁵ 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.'

40. Further, as this Office has determined previously:

'[B]y holding himself out to be a counsellor, and by providing counselling services for a fee, he is required to meet the ethical standards of a professional counsellor, and ... the ethical principles set out in the NZAC Code of Ethics provide a sound reference point in establishing the 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 [a counsellor's] practice.'

41. Therefore, I consider the NZAC Code of Ethics to be an appropriate benchmark against which to assess Mr B's practice in these circumstances.

42. At the time of these events, Mr B was operating out of his clinic and providing counselling services to Mrs A and her husband, Mr A. As Mr B has been unwilling to provide a response to this Office, including a copy of Mrs A's clinical notes and documentation, in forming my opinion I have had to rely on Mrs A's version of events as contained in her complaint to this Office, additional evidence from Mr A, and screenshots of the Google review provided by Mrs A and obtained separately by this Office. In my view, this evidence supports Mrs A's version of events in that Mr A confirms that Mrs A had left her appointments upset and that Mr B had contacted Mr A about Mrs A's Google review; that Mr A recalled Mr B speaking negatively about Mrs A during his sessions with Mr B; and that the screenshot provided to this Office of Mr B's initial response to the negative Google review is identical to the screenshot obtained by this Office aside from the reference to 'faithfulness'.

⁴ See: <https://www.hdc.org.nz/decisions/search-decisions/2014/12hdc01512>.

⁵ *Director of Proceedings v Mogridge* [2007] NZHRR 27 at [103].

Professional conduct

43. Section 5.8(a) of the NZAC Code of Ethics stipulates that '[c]ounsellors shall use appropriate and respectful language in all communications, verbal and written, to and about clients'.

Communication during sessions

44. Mrs A and her husband saw Mr B for one joint counselling session on 20 May 2023, and Mrs A saw Mr B for two individual counselling sessions, on 27 May and 3 June 2023.
45. Mrs A told HDC that during her second appointment on 27 May, Mr B told her that she was the 'problem' in the relationship and that she has no sense of responsibility. She said that she felt 'picked on' by Mr B. Mr A also told HDC that Mrs A had told him about Mr B's treatment of her following this session.
46. On 3 June, Mrs A attended her third and final session with Mr B, which was also an individual counselling session. She said that when she told Mr B that her husband had pushed her boundaries during a sexual act, Mr B used this as an example to show that this was Mr A saying 'no' to Mrs A's 'no'. Mrs A told HDC that she began to cry, as she felt that this was Mr B insinuating that the behaviour (not respecting sexual/consent boundaries) was ok. Mrs A said that Mr B then denied having said that. She stated that Mr B continued the session by 'badgering' her that she was being 'selfish' and not taking responsibility, and he said that she was going to 'traumatise' her child.
47. HDC sought evidence from Mr A regarding the session on 3 June. He said that he was scheduled to attend an individual session with Mr B after Mrs A's session and that Mrs A was upset when she exited the room. Mr A said that during his session, Mr B said that Mrs A was unwilling to change. Mr A stated that he was close to walking out because of how Mr B was speaking about Mrs A.
48. In the absence of any detailed response from Mr B (aside from the questions asked of HDC, as discussed at paragraphs 51–52) or clinical records/documentation, it has been difficult to establish what exactly occurred during the consultations between Mr B and Mrs A. However, I have considered the available evidence carefully. I accept Mrs A's recollection that Mr B conveyed to her, during her individual sessions, that she was the problem in the relationship, she has no sense of responsibility, that she is selfish, and that she was going to traumatise her child. I also note the evidence provided to HDC by Mr A — Mr A recalls that Mrs A said she felt picked on by Mr B during her individual sessions; Mr A recalls Mr B telling him directly that Mrs A was unwilling to change; and Mr A said that he was close to walking out because of how Mr B spoke about Mrs A. I also note Mrs A's Google review, made three days after her final session, which shows that she felt that Mr B twisted everything she said, that he was aggressive and lacked empathy, that she felt bullied, and that he made assumptions about her. In my view, Mr B did not communicate with Mrs A appropriately during their individual sessions, and he made several disrespectful comments to Mrs A during her sessions. Therefore, I consider that Mr B failed to comply with the standard to use appropriate and respectful language in his communications to Mrs A.

49. Section 5.11(c) states that '[w]hen dealing with more than one party, counsellors should be even handed when responding to the needs, concerns and interests of each party'.
50. In addition to my finding above that Mr B did not communicate respectfully with Mrs A during their individual counselling sessions, I am concerned that it appears that Mr B was not even handed in managing his role as Mr and Mrs A's relationship counsellor. In my view, by making comments to Mr A that Mrs A was 'unwilling to change', and by discussing with Mr A during his individual session things that he had talked about with Mrs A (including Mrs A's reaction to matters that he had discussed with her), Mr B was not being impartial in his role as a relationship counsellor. In my view, by making negative comments about Mrs A to Mr A, Mr B failed to respond to Mrs A's interests in an even-handed way. Mr B, as a relationship counsellor for both Mr and Mrs A, should have taken into account their individual needs equally and engaged in an open-minded and neutral manner without taking sides. I am very concerned that he did not do so in this case.

Communication with HDC about Mrs A

51. Following Mr B's failure to respond to a section 14 request for information, HDC received an email from Mr B on 8 August 2023. He said that he had some questions he would like answered before providing the requisite information to HDC (see paragraph 22). In particular, he asked:
- 'Can you tell me what steps are in place to protect a practitioner who is or has been a victim of malicious intent or manipulation of a client?'
 - 'Can the HDC please provide their understanding of the nature of relationship counselling when there is a person with malicious intent, narcissistic traits, manipulative intent or psychopathic traits within the relationship dynamic?'
52. I am concerned that, in light of this, Mr B has chosen not to engage with this aspect of the complaint in his response to HDC, and instead has asked a number of questions of HDC in respect of Mrs A's credibility as a complainant. While Mr B did not name Mrs A in his correspondence to HDC, in my view his statements implied that he was a victim of Mrs A's 'malicious intent' and 'manipulation' and that Mrs A has narcissistic traits, manipulative intent, or psychopathic traits within the relationship dynamic. This is because the context of Mr B's statements was in response to Mrs A's complaint about him. In my view, Mr B intended the words to be about Mrs A, even if she was not named explicitly.
53. Section 5.8(a) of the NZAC Code of Ethics requires counsellors to use appropriate language in all communications to and about clients. I consider that the comments noted above, made by Mr B to HDC about Mrs A, are disrespectful and inappropriate and in breach of the NZAC Code of Ethics.

Response to Google review

54. On 6 June, Mrs A left a negative review on the Mr B's counselling practice business page. Mr B (the 'Response from the owner') responded to Mrs A publicly. Mrs A said that Mr B was 'marking [her] characteristics as a person including the fact that [she] was unfaithful which was told [to Mr B] in a confidential environment'. The screenshot of the response stated:

‘Since you have taken the time to leave a review in an attempt to gain a sense of power and control once again feeding your ego here is your review.’ The response ‘scored’ Mrs A’s character as a partner, her faithfulness, character, integrity, narcissism, covert emotional manipulation, selfishness, commitment, sacrifice, and power and control. I am satisfied that Mr B is the person who wrote the ‘Response from the owner’. I note that he was the person who received Mrs A’s initial booking and provided counselling. Further, Mr A recalled that Mr B telephoned him after the Google review was made and mentioned Mrs A’s review.

55. As at 12 June 2023, the review and Mr B’s response to it were the same as in the screenshot provided to HDC by Mrs A, except without the reference to ‘faithfulness’. I note Mr B’s question regarding the legitimacy of the screenshot provided by Mrs A, in particular that it could have been digitally ‘altered’ and that the screenshot does not contain the name of Mr B or his counselling practice. However, I also note that HDC visited the Google review page in the days following receipt of the complaint and found the same response from Mr B, except for the reference to ‘faithfulness’. Therefore, I am satisfied that the response was written by Mr B and that the image provided by Mrs A was not digitally altered, rather that the reference to ‘faithfulness’ was removed following the screenshot taken by Mrs A.
56. Section 4.4 of the NZAC Code of Ethics states that counsellors shall ‘[r]espect the confidences with which they are entrusted’, and section 6.1(a) stipulates that ‘[c]ounsellors shall treat all communication between counsellor and client as confidential and privileged information, unless the client gives consent to particular information being disclosed’.
57. During her counselling sessions, Mrs A told Mr B that she had been unfaithful to Mr A and that this was part of the reason for the couple seeking relationship counselling. This was confidential information disclosed to Mr B by Mrs A, and he had a responsibility to protect this information. I also note that Mrs A stated: ‘[Mr B] also outed my husband by mentioning that I am in marriage counselling when [I] never mentioned that in my review ([t]he clinic offers multiple different kinds of counselling)’. In my view, by disclosing on a publicly accessible web page that Mrs A and her husband were in relationship counselling, and by insinuating that Mrs A had been unfaithful (by giving her a ‘low’ score for ‘faithfulness’ and ‘commitment’), Mr B failed to respect Mrs A’s confidentiality.
58. I am very critical of Mr B in this regard and consider that his conduct in sharing this information on Google reviews was contrary to industry and ethical standards as set out in the NZAC Code of Ethics.⁶
59. Section 4.2 of the NZAC Code of Ethics states that counsellors shall ‘[a]void doing harm in all their professional work’.
60. Mrs A told HDC of the impact that these events had on her. She said that Mr B’s response was ‘so incredibly harmful when [she was] already struggling mentally’. In my view, Mr B’s actions of deliberately posting his ratings of Mrs A’s character traits in a public forum were mean, hurtful, and humiliating for Mrs A. This is emphasised by Mrs A’s comments to HDC about the effect of these events on her. In my view, Mr B’s behaviour was degrading and

⁶ In particular, sections 4.4 and section 6.1(a).

inexcusable, and he did not adhere to the obligation to avoid doing harm. This is particularly concerning given that people seeking counselling may already be vulnerable, and there is an inherent power imbalance between a counsellor (in the role of a healthcare professional) and a client (in the role of a patient).

61. Section 7.3(a) states that '[c]ounsellors shall uphold and foster the values, integrity and ethics of the profession'.
62. As a counsellor, Mr B is obligated to act in accordance with the industry standards. As above, I consider that the NZAC Code of Ethics is an appropriate benchmark in this case. It is reasonable to expect that this would include upholding the values of the profession, particularly in his conduct on a public forum such as Google reviews. In my view, by publicly posting a disrespectful response to Mrs A's Google review (as established above) and disclosing Mrs A's confidential information in that response, Mr B did not uphold and foster the values, integrity, and ethics of the profession. In particular, he failed to show respect for human dignity, he failed to act in partnership with Mrs A throughout her counselling journey, and he failed to show personal integrity. Accordingly, Mr B did not abide by section 7.3(a) of the Code of Ethics.

Conclusion

63. Right 4(2) of the Code of Health and Disability Services Consumers' Rights stipulates: 'Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.'
64. As discussed above, although Mr B was not a member of NZAC, I consider that the NZAC Code of Ethics reflects the ethical standards that can be reasonably expected of a counsellor in Mr B's circumstances.
65. As outlined above, Mr B failed to abide by relevant ethical standards, as reflected in the NZAC Code of Ethics,⁷ for the following reasons:
- He failed to communicate appropriately with Mrs A during their individual counselling sessions, in that he made several disrespectful comments to Mrs A during her sessions.
 - He was not impartial in his role as a relationship counsellor for Mr and Mrs A and failed to act ethically while seeing them both as clients, in that he spoke negatively about Mrs A to her husband during his individual counselling sessions.
 - He asked HDC several inflammatory questions about Mrs A's credibility as a complainant and client.
 - When he posted his response to Mrs A's Google review, he disclosed publicly that Mr and Mrs A were in marriage counselling and insinuated that Mrs A had been unfaithful to her husband.

⁷ Particularly sections 4.2, 4.4, 5.8(a) and 5.11(c) and 7.3(a).

- It is likely that he caused direct harm to Mrs A, which is particularly concerning given that people seeking counselling may already be vulnerable and there is an inherent power imbalance between a counsellor and a patient.
- By publicly posting a disrespectful response to Mrs A's Google review, he did not uphold and foster the values, integrity, and ethics of the counselling profession.

66. Accordingly, I consider that Mr B failed to act in accordance with ethical standards and breached Right 4(2) of the Code.

67. I have considered the seriousness of Mr B's actions, particularly his inexcusable response to Mrs A's Google review, and the impact that these actions have had on Mrs A. Right 1(1) of the Code of Health and Disability Services Consumers' Rights stipulates that '[e]very consumer has the right to be treated with respect'. As outlined above, there were several instances where Mr B failed to treat Mrs A with the respect to which she was entitled under the Code of Health and Disability Services Consumers' Rights and the NZAC Code of Ethics — in particular, during his individual sessions with Mrs A; in his communication with Mr A about Mrs A; in his communication with this Office about Mrs A; and in his response to Mrs A's Google review, in which he publicly disclosed personal information about her and rated her in a degrading manner. In my view, this conduct shows a failure to treat Mrs A with respect under Right 1(1) of the Code of Health and Disability Services Consumers' Rights. Accordingly, I also find that Mr B breached Right 1(1) of the Code.

Resolution of complaint

Engagement with HDC investigation

68. The role of HDC is to promote and protect the rights of consumers of health and disability services. The Rights are set out in the Code of Health and Disability Services Consumers' Rights (the Code), together with the obligations for providers. Right 10(3) of the Code requires providers to facilitate the fair, simple, speedy, and efficient resolution of complaints.

69. In her complaint to HDC, Mrs A outlined her concerns about the care provided to her by Mr B in May and June 2023. Despite attempts to contact Mr B to obtain a response and the requisite information, he has not provided this information to HDC.

70. On 4 July 2023, HDC sent a letter to Mr B under section 14(1)(m) of the Health and Disability Commissioner Act 1994. The letter asked Mr B to provide his recollection of Mrs A's sessions with him; a response to Mrs A's concerns; whether he recalls making certain comments to Mr A; his rationale for his response to Mrs A's Google review; and any other comments he wished to provide to HDC. The letter also requested a copy of Mrs A's clinical notes, and any policies in place at Mr B's counselling practice. Mr B was asked to provide this information by 25 July 2023.

71. Mr B did not respond, other than to ask HDC a series of questions. This email was responded to by HDC on 11 August, but no further response was received from Mr B and all subsequent attempts to contact him were unsuccessful.

72. In my view, this Office has made sufficient effort to contact Mr B throughout the course of the complaints assessment process and has used several methods of contact to attempt to reach him. Despite this, Mr B has failed to provide the information requested under section 14 of the Act.
73. I have also considered the strength of the evidence before me, including the screenshot of Mr B's response to the Google review and the further screenshot taken by this Office (without the reference to Mrs A's faithfulness). Despite Mr B's questions regarding the legitimacy of the screenshot provided by Mrs A, I accept this evidence to be accurate and therefore consider it reliable.
74. This investigation is an impartial and fair process. The correspondence sent to Mr B from HDC represented an opportunity for him to clarify and resolve the issues raised by Mrs A. Mr B did not take this opportunity. As such, he unnecessarily delayed Mrs A's right to have her complaint handled in a speedy, efficient, and simple manner. As a result of Mr B's failure to engage with HDC, the information available to me throughout this process has been only that provided by Mrs A and Mr A. Mr B has failed to correspond with this Office, other than to ask questions about the HDC process and questioning Mrs A's credibility. Mr B has not provided any information to HDC, including the contemporaneous clinical notes or his recollection of the events. Accordingly, Mr B's version of events is not known to HDC.

Resolution of Mrs A's complaint

75. As discussed in detail above, Mrs A left a negative Google review on Mr B's business page after she was disappointed in the care she received from him. However, Mr B did not take steps to resolve Mrs A's complaint, which he is obligated to do under section 10(3) of the Code. Instead, Mr B decided to respond to Mrs A's complaint by publicly rating her characteristics as a person. Clearly this response from Mr B did not facilitate the fair resolution of Mrs A's complaint and instead served only to upset and humiliate Mrs A. In my view, this is another example of Mr B's apparent disregard for his obligations under the Code, particularly Right 10(3).

Conclusion

76. Right 10(3) of the Code stipulates that every provider must facilitate the fair, simple, speedy, and efficient resolution of a complaint. In this case, Mr B has not provided the information that was crucial to the fair and simple investigation of the complaint, and, as a result, has not facilitated the speedy and efficient resolution of the complaint. Further, instead of contacting Mrs A to discuss her concerns with her following her negative Google review, he responded publicly to her concerns in a degrading manner. Accordingly, I find that Mr B has breached Right 10(3) of the Code.

Recommendations

77. I recommend that Mr B:
- a) Provide a written apology to Mrs A for the failings identified in this report. The apology is to be sent to HDC, for forwarding to Mrs A, within three weeks of the date of this report.
 - b) Attend training on therapeutic communication, establishing rapport and trust with clients, ethics and professional boundaries, patient confidentiality, and appropriate use of social media. Evidence of this training is to be provided to HDC within six months of the date of this report, and Mr B is to provide a summary of his learnings from the training.
 - c) Consider becoming a member of NZAC and advise HDC of the outcome of his consideration.
 - d) 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

78. 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 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 two separate complaints and the concerning similarities between his treatment of the consumers in those complaints and his treatment of Mrs A. His failure to engage with this Office to resolve Mrs A's complaint has unnecessarily impeded her right to have her complaint investigated efficiently. In addition, I hold a significant level of concern for Mr B's blatant disregard for ethical conduct and his obligations under the Code, which has been evident in his treatment of Mrs A, particularly in his public response to her review. Mr B continues to work as a counsellor out of his clinic.
79. Following the completion of the Director of Proceedings' process, a copy of this report with details identifying parties removed, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Addendum

80. Mr B did not complete any of the Deputy Commissioner's recommendations.