A Decision by the Deputy Health and Disability Commissioner

(Case 21HDC01976)

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 B by a counsellor, Mr C.

3. Mrs B complained that Mr C shared her personal health information with her husband during a joint counselling session, after she had specifically asked that the information be kept confidential. Mrs B also raised concerns that Mr C was unwilling to discuss her concerns with her and that he was hostile in his response to her correspondence. Mr C did not provide a response to Mrs B's complaint and was not forthcoming with information requested by this Office for a period of almost two years.

4. The following issue was identified for investigation:

- *Whether Mr C provided Mrs B with an appropriate standard of care in August 2021.*

Information gathered

Background

5. On 11 August 2021, Mrs B and her husband, Mr B, attended a joint counselling session with Mr C.[1]

6. Mrs B told the Health and Disability Commissioner (HDC) that she and her husband had also been attending individual counselling sessions with Mr C and that, during one of the sessions, Mr C suggested that she take a selective serotonin reuptake inhibitor (SSRI)[2] medication to help with anxiety. Mrs B told HDC:

> 'When I mentioned that my husband knowing [that she was taking medication] would further cause problems in our relationship[,] [Mr C] assured me this would be in confidence.'

7. Mr C provided HDC[3] with a copy of a letter dated 3 June 2021 recommending an SSRI for Mrs B. The letter states that Mrs B had been attending regular counselling sessions at Mr C's counselling practice since April 2021 and that '[i]n this time Mrs B ha[d] sought to gain psychological and emotional well-being while dealing with high levels of stress and overthinking resulting in severe anxiety.' The letter states that Mr C referred Mrs B for assessment and that he considered that Mrs B might benefit from an SSRI such as citalopram 'to assist with her anxiety and overall wellbeing.'

8. Although requested, Mr C did not provide HDC with the original contemporaneous clinical notes or copies of the clinical notes. In response to the provisional opinion, Mr C provided what he referred to as digital copies of his handwritten clinical notes[4] from a session with Mrs B on 2 August 2021. These notes are digital transcriptions of his handwritten notes. Mr C told HDC that this information provides context and evidence for the events that occurred. The notes templates contain four sections, including a 'patient progress report', 'assessment', and 'treatment' section.

9. In the 'patient progress report' section of the notes, Mr C documented:

> '[Mrs B] [t]old me she has continued to feel suicidal and it was getting worse. Referred her to her GP [general practitioner] again, also told her to call 111 i[f] she was worried about herself. Gave her the number for lifeline. Told her I would take her call if she was in immediate need of help also.'

10. However, Mr C did not organise a referral to Mrs B's GP or to another health provider.

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[1] Mr C is not a member of the New Zealand Association of Counsellors (NZAC). 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.

[2] A class of drugs that typically are used as antidepressants in the treatment of major depressive disorder, anxiety disorders and other psychological conditions.

[3] Mr C provided this information to HDC in response to the provisional opinion. The information had not been provided to HDC previously.

[4] Mr C did not provide HDC with photocopies or scans of the original handwritten notes.

11. Mr C's notes relating to the session on 2 August also document that Mrs B told him that she had been having an affair. Mr C documented that 'she had been seeing [the other man] infrequently since starting counselling with me to restore her marriage.' Mr C also recorded that Mrs B had been hiding the affair from Mr B 'the whole time' and that she was going to 'continue seeing [the other man] when the opportunity presented itself.' Mr C documented that he explained to Mrs B that he was now 'conflicted' about providing counselling to Mr and Mrs B and that 'the chance of a good therapeutic outcome was now greatly at risk because of [the disclosure of the affair].'

12. In the 'treatment' section of the notes, Mr C recorded the following:

> 'Disappointed. Feel sorry for [Mr B]. He's been willing to do what it takes to make things wor[k] this whole time. [Mrs B] has knowingly deceived him and then come to counselling to restore her relationship. Not appropriate for me now to continue as their counsellor. Will refer them on. Agreed to see me together on 11th August to discuss their options going forward.'

13. Mrs B was given the opportunity to respond to Mr C's notes. She told HDC that, in her view, the notes are 'not complete/inaccurate' and that she believes they have been fabricated after the sessions. In summary, Mrs B told HDC:

> 'At no time have I ever been suicidal. At no time have I ever had an affair. If Mr C had genuinely thought I had been seriously suicidal and at risk he would have had a duty of care to let someone know, which he did not as this was not true … These notes are not adequate for counselling as no goals or interventions are noted … Evidence that I was [not] experiencing depression or suicidal ideation is in the doctor's referral. The referral made to my doctor related only to anxiety … which was the only issue experienced due to my job which many of our sessions centred around. There was [no] reference to suicidal ideation in the doctor's referral for anxiety medication as this did not exist. If [Mr C] genuinely thought I was suicidal this would have been note[d] for my GP for suitable medication or referral [to] a psychologist for a review. This is because the notes have been fabricated this year and the only item of fact is the doctor's referral for the SSRI, which states anxiety alone (no other conditions).'

Joint counselling session — 11 August 2021

14. Mrs B said that, during the joint counselling session on 11 August, Mr C turned to her and said: 'If you don't tell [Mr B about the medication] I will.' Mrs B said that this made her very anxious, and she said to Mr C that she did not want him to share that information. She stated that Mr C then proceeded to tell Mr B that she had been to see her doctor, and then he explained to Mr B what medication she had been taking and 'what the medication [does].'

15. HDC did not seek evidence from Mr B in relation to this matter.

16. Mrs B considers that this was a breach of her privacy and trust. She told HDC: '[Mr C was] very aware [that] although we had some joint counselling sessions[,] I wanted this information kept private.'

17. Mr C first provided information to this Office in response to the first provisional opinion. In response to Mrs B's complaint, he said that he did not share with Mr B that Mrs B had been taking medication, rather that Mr B discovered the medication in Mrs B's bag of his own volition.

18. Mr C provided what he referred to as being clinical notes from a session with Mr B on 8 July 2021. He recorded the following in relation to the medication matter:

> '[Mr B] commented on how he noticed a change in [Mrs B]. Said he hoped it was a sign things were going in the right direction … Asked me what citalopram was. Told me he found a box of it in her handbag. He said she hadn't told him about it.'

19. Mr C also recorded:

> 'I was careful not to tell [Mr B] I knew [Mrs B] was taking citalopram for anxiety. I do wonder if he now talks to her about it if she will think I told him. It's clear [Mrs B] is keeping this from him.'

20. In regard to the events of 11 August, Mr C documented: '[I] explained that due to a conflict of interest based on new information[5] I learned that I was not comfortable continuing counselling with [Mr and Mrs B].' Mr C noted that Mr B then asked him if this was in relation to the medication that Mrs B 'had not told him about' and that Mrs B then assumed that Mr C had told Mr B about the medication. He documented: 'Quite a bad reaction. I tried to explain he found it in her bag previously, but she wouldn't accept that.' Mr C also recorded:

> '[Mrs B] stormed out of the session. [Mr B] expressed his concern for [Mrs B's] wellbeing after also experiencing constant ups and downs that previous week. Worried she might be becoming suicidal. I suggested [Mr B] talk her into going to her GP for help. Also suggested if he thought she was at risk of harming herself to call 111. He's a [Mr B's occupation] anyway and knows how to deal with these situations.'

Subsequent events

21. Following this session, Mrs B sent a text message to Mr C asking him to telephone her to discuss the reasons why he had disclosed the information to Mr B. The text message read:

> 'Hi [Mr C]. Please can you phone me at a time that suits tomorrow or Friday to discuss last week's session. I'm sure you will understand I do have some reservations about the confidentiality of information I have shared with you, so going [forward] it would be good to chat about the reasons this was shared.'

22. Mr C responded to the above text message with the following: 'Hello! Happy to have a chat with you; however, it will need to be in room and with [Mr B] present.'

[5] Mr C had previously documented that Mrs B told him that she was having an affair with another man (discussed further below at paragraphs 71–74).

23. Mrs B responded to Mr C's text message stating that she would prefer to discuss the matter with Mr C over the phone and that if he was not willing to do that, then she would like a written explanation of 'the reasons for disclosing [her] private medical information.'

24. Mr C responded with the following text message:

> 'I am very willing to have a conversation with you and [Mr B] together at your next scheduled session as is appropriate. It is unreasonable to expect me to [provide] counselling or have conversations regarding counselling outside of our scheduled sessions. I have other people who need my attention also. I am satisfied everything was explained well last session and I have documented everything accordingly … I would appreciate you lowering the hostility toward me. I am here to help and serve you achieve restoration of your relationship. If you want this to happen it is essential you yourself are a willing participant in the process and are proactively making an effort to achieve the desired result with a[n] openness, vulnerability and willingness to take on board the things you refuse to see.'

25. Mrs B told HDC that she felt that this was a 'bully tactic' and said:

> 'I was not asking for a counselling session over the phone, I was asking for [Mr C] to explain the breach of my privacy. The text message I received was accusatory and hostile in tone.'

26. Mr C told HDC that he was not prepared to talk with Mrs B outside of the counselling environment due to her 'hostility toward [him] and [his] genuine concern for her mental health and expression of suicidal thoughts previously.'

27. On 17 August 2021, Mrs B sent an email to Mr C requesting a copy of her clinical notes. In the email, Mrs B wrote: 'I am happy to pay for the report. I understand there is a cost associated with providing a report.' She also advised that she would not be continuing counselling sessions with Mr C. Mrs B told HDC that Mr C did not respond to her email and did not provide her with a copy of her notes.

28. In response to the first provisional opinion, Mr C told HDC that Mrs B had expressed to him that her reason for requesting her documentation was 'due to her wanting to see what [he] had written down regarding [his] appointments with her husband to see if [he] did in fact tell him [about the medication]'. Mr C said:

> 'My reason for not indulging [Mrs B's] requests via text or email at the time were due to the above but more importantly having genuine concern that [Mrs B] was at risk of harming herself. She had expressed she was suicidal in previous sessions and was clearly suffering with mental health issues at this time. I did not want to contribute further to this. In addition, I knew the intent of her request was to gain [Mr B's] information specifically.'

29. Mr C said he does not believe that his request that Mrs B 'lower her hostility' was unreasonable, 'considering the hostility was ongoing from the previous appointment.'

Attempts to contact Mr C

30. On 6 October 2021, HDC sent a letter to Mr C under section 14(1)(m) of the Health and Disability Commissioner Act 1994 (the Act). 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[6] under this Act.' The letter advised Mr C that Mrs B had made a complaint about him, and requested clinical records, a response to the complaint, any relevant policies, copies of all communications between Mrs B and Mr C, and a copy of any incident report. The letter also stated: 'Please let us know if your contact details change.'

31. Mr C requested two[7] extensions on the due date owing to COVID-19 restrictions. On 25 November 2021, Mr C advised that due to COVID-19 restrictions and rent arrears, he was unable to access his office and was therefore unable to provide any further information to HDC. Mr C said that he would contact HDC to provide updates on his ability to access his office, and an extension to provide the response was granted with the new due date being 20 December 2021. However, Mr C did not provide the requisite information and did not advise HDC when he would be able to access his office. All further attempts[8] to contact Mr C were unsuccessful.

32. On 14 February 2022, a letter was sent to Mr C reminding him of the importance of assisting HDC in facilitating the fair, simple, speedy, and efficient resolution of complaints 'by responding promptly to [HDC's] requests for information.' The letter advised that, if Mr C did not respond and provide the clinical records by 28 February 2022, '[HDC would] be forced to accept the complainant's version of events as the established facts and proceed with [HDC's] assessment.'

33. On 19 October 2022, Mr C was advised that the complaint had been transferred to the Investigations team and that a recommendation would be made to the Deputy Commissioner without his response should he fail to provide it by 26 October 2022. Mr C did not provide a response, and on 11 November HDC commenced a formal investigation into Mrs B's complaint. A letter was sent to Mr C requiring information under section 62(1) of the Act.[9]

34. In addition to the letter, Mr C was provided with an HDC brochure titled 'Guide for providers', which outlines the purpose of an investigation, how providers are notified of an investigation, HDC's evidence/information-gathering powers (including that providers will be asked for a written description of their version of events), the provisional and final

[6] HDC has several statutory functions, including acting as the initial recipient of complaints and ensuring that each complaint is dealt with appropriately (s 14(1)(da)) and investigating any action that is, or appears to be, in breach of the Code of Health and Disability Services Consumers' Rights (s 14(1)(e)).

[7] First extension request received on 2 November 2021, and an extension was granted to 16 November 2021. Second extension request received on 17 November 2021, and an extension was granted to 24 November 2021.

[8] See Appendix 1.

[9] Section 62(1) of the Act stipulates: 'The Commissioner may from time to time, by notice in writing, require any person who in the Commissioner's opinion is able to give information relating to any matter under investigation by the Commissioner to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Commissioner are relevant to the subject matter of the investigation.'

report process, information about the Director of Proceedings, and information about recommendations for improvement. The brochure contains a link to the HDC website and states:

> 'Although the Code of Health and Disability Services Consumers' Rights (the Code) focuses on consumers' rights, as a provider facing a Health and Disability Commissioner (HDC) investigation, you also have rights. The Health and Disability Commissioner Act 1994 (the Act) includes facilitation of "the fair, simple, speedy, and efficient resolution of complaints relating to infringements of [consumers'] rights". The Act specifically requires the Commissioner to act fairly when conducting an investigation.'

35. Mr C did not respond to the letter, and all further attempts to contact him prior to issuing the provisional report were unsuccessful.[10]

36. On 26 May 2023, HDC issued the Deputy Commissioner's provisional opinion by way of email. Mr C did not acknowledge receipt of the correspondence, so HDC made further attempts to reach him by telephone.[11] On 14 June, Mr C emailed HDC advising that his email address had changed 'some time ago' and that any attempt to contact him via email '[would] not have been received as a result.' Mr C was asked to respond to the provisional opinion and provide all the information previously requested from him. Mr C subsequently provided a response to the provisional opinion and digital copies of session notes. However, he did not provide HDC with the requested policies.

37. Mr C told HDC that he accepts that he has not dealt with HDC in 'the best way'. He said that this was because he had never had a complaint made against him previously and it had a negative impact on him. Mr C said that he 'avoided the situation rather than deal with it.' In addition, he said that due to the impact of COVID-19 on his business, he experienced high levels of anxiety. Mr C stated:

> 'I also want to point out that from first contact with me HDC did not provide any documentation on who you are, what you do, how to respond to you, or the process involved when receiving the complaint. I was also not offered any support throughout the process. I feel as a practitioner you are quite vulnerable. I also feel this process has been one of guilty until proven innocent … [M]y biggest concern with this situation now is that I'm in a position now as a practitioner where anyone can make any complaint at all about me that actually has no merit and I then have to defend myself. I feel your process [is] one that allows clients with malicious intent to manipulate. This is certainly the case here.'

[10] See Appendix 1.
[11] On 13 June 2023 and 14 June 2023.

38. A summary of the attempts to contact Mr C is outlined in Appendix A.

Responses to first provisional opinion

Mrs B

39. Mrs B was given the opportunity to comment on the 'summary of events' section of the first provisional report (issued prior to information being provided by Mr C). She advised that she was happy with the recording of events.

Mr C

40. Mr C provided some information previously requested from him, necessitating a second issue of the provisional opinion.

41. Mr C told HDC that he finds Mrs B's recollection 'word for word' of what happened on 11 August to be 'astounding given her struggles with memory due to ADHD symptoms and extreme anxiety.' He said:

> 'It seems very convenient of her to now quote me word for word to establish her argument … People presenting with the symptoms outlined often add to the story and distort stories for convenience or even to manipulat[e] for personal gain. This has also been an observation I have made in others with similar symptoms over the course of my career. I have now provided factual documents from the date of the appointments which are relevant. These are fact. Not some recollection of memory. Overall [Mrs B's] complaint is allegation not evidence. Believing someone who was clearly mentally ill, in conflict within [herself] and partner, and self-destructive at the time to be factual sets a dangerous precedent.'

42. Regarding the storage of his records, Mr C said that his documentation was stored in a locked office within a fireproof filing cabinet that was accessible by a code that only he possessed. Mr C stated that the filing cabinet was fixed to a concrete slab below and to the wall and that his office was under video surveillance from the outside.

43. Regarding the proposed recommendations, Mr C said that he would not agree to make an apology to Mrs B for giving her private information to Mr B 'as this did not happen.' He said he is willing to 'express [his] genuine concern for her and regret that [their] time together ended like it did.' In response to HDC's proposed recommendation that he consider joining the New Zealand Association of Counsellors (NZAC), Mr C said that there is no legal reason for him to be a part of the NZAC, although he did try to join in 2019 but did not meet the criteria at that time as he did not have a bachelor's degree. He stated:

> 'Whether I join or not I am still undecided. I want to know first what I get for my investment other than being able to display a logo next to my name, on my website and claim that I'm a member.'

Responses to second provisional opinion

Mrs B

44. Mrs B was given an opportunity to comment on the 'summary of events' section of the second provisional opinion. Mrs B told HDC: 'Mr C did receive an initial request for information in October 2021 and for 18 months refused to provide information, and

following this, fabricated notes … This is testament to the arrogant attitude we were subject to during "counselling" sessions.' In addition, Mrs B told HDC:

> 'Given that counselling in New Zealand is unregulated it is essential that the public are protected from potentially dangerous, unqualified individuals who call themselves "counsellors" as he will likely be working with vulnerable people … Mr C successfully dragged out this investigation for two years. I hope that Mr C gets the training and supervision required to ensure that other victims … are not subjected to Mr C's unprofessional, unethical and dangerous behaviour in the future.'

Mr C

45. I note that Mr C did not provide a response to the second provisional opinion, despite attempts by this Office to contact him.

Relevant standards

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

46. As stated above, Mr C 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.

47. Section 4 of the NZAC Code of Ethics outlines the ethical principles of counselling.

48. Section 4.4 of the NZAC Code of Ethics stipulates that counsellors shall 'respect the confidences with which they are entrusted'.

49. Section 5 of the NZAC Code of Ethics outlines the general guidelines for professional practice.

50. Section 5.7(a) of the NZAC Code of Ethics stipulates that '[c]ounsellors 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.'

51. Section 5.7(e) stipulates that counsellors shall take all reasonable steps to ensure that documentation remains retrievable as long as professionally prudent or as required by law.

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

53. Section 5.14(a) states: 'Counsellors shall refer clients on, where possible, when other specialised knowledge is needed, or when the counselling is not being useful.'

54. Section 6 outlines confidentiality obligations.

55. 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.'

Opinion: Mr C – breach

Introduction

56. 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 C was not associated with NZAC or any other counselling body.

57. As this Office has stated previously,[12] despite not being a member of a relevant association, Mr C is nonetheless bound by the Code of Health and Disability Services Consumers' Rights (the Code). In *Director of Proceedings v Mogridge*,[13] 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.'

58. 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.'

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

60. At the time of these events, Mr C was operating out of his clinic and providing counselling services to Mrs B and her husband, Mr B.

Professional conduct

Confidentiality

61. Section 4.4 of the NZAC Code of Ethics stipulates that counsellors shall 'respect the confidences with which they are entrusted'.

62. On 11 August 2021, Mrs B attended a joint counselling session with Mr C and her husband, Mr B. Mrs B told HDC that during one of her individual sessions with Mr C, he had suggested that she take an SSRI medication to help with anxiety. Mrs B told HDC that, when she advised Mr C that her taking medication might cause issues in her relationship, she was assured that this information would not be shared with Mr B. However, Mrs B told HDC that, during the joint session with Mr B on 11 August, Mr C turned to her and said: '[I]f you don't tell him [about the medication] I will.' Mrs B said that Mr C then proceeded to tell Mr B that she had been to see her doctor for medication, and then explained what medication she had been taking and 'what the medication [does]'.

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[12] See https://www.hdc.org.nz/decisions/search-decisions/2014/12hdc01512.

[13] *Director of Proceedings v Mogridge* [2007] NZHRRT 27 at [103].

63. On the other hand, Mr C's recollection is that Mr B found Mrs B's medication in her bag. Mr C did not provide the original contemporaneous clinical notes. Mr C provided digital transcriptions of his handwritten notes from a session with Mr B on 8 August and from the joint counselling session on 11 August 2021. The notes on 8 August state that Mr B had asked Mr C what citalopram is and that Mr B '[t]old [Mr C] he found a box in [Mrs B's] handbag'. In the 'treatment' section of the notes, Mr C documented: 'I was careful not to tell [Mr B] I knew [Mrs B] was taking citalopram for anxiety. I do wonder if he now talks to her about it if she will think I told him. It's clear [Mrs B] is keeping this from him.'

64. The notes now provided to this Office, which Mr B states are clinical notes dated 11 August, document:

> '[Mr B] asked if it was the medication she had not told him about … Because I said no to [Mr B] in response to his question, [Mrs B] then assumed I had told [Mr B] about it and accused me of telling [Mr B] about the medication … I tried to explain he found it in her bag previously, but she wouldn't accept that.'

65. Mrs B was provided with a copy of the digitally transcribed notes and told HDC that she believes the notes were fabricated after the sessions, as they contain inaccurate information. Mrs B said that she has not ever been suicidal, and she has not had an affair, and that the notes were not shared until 20 months after they were requested. She reaffirmed that it is her view that Mr C told her husband about the medication.

66. Mrs B and Mr C have provided conflicting evidence. I acknowledge that Mr C has provided a digital transcription of notes that outline how Mr B found out that his wife was taking the medication. I also note that I have been unable to obtain evidence directly from Mr B and I have not obtained the original contemporaneous clinical notes. Mr C also told HDC that he doubts Mrs B's recollection of events due to her memory struggles related to ADHD and severe anxiety. However, I find Mrs B's account of the events to be reliable, as she complained to HDC weeks after the events, and provided contemporaneous text messages that support her recollection. When Mrs B sent Mr C a text message following the session on 11 August, Mr C did not dispute that he had shared that information with Mr B. In contrast, Mr C provided his recollection to HDC nearly two years after the events took place, and I acknowledge that the accuracy of memories may diminish over time. Further, Mr C provided unverified digital transcriptions of his handwritten notes, and he did not share these transcriptions with HDC until approximately two years after they were requested.

67. Notwithstanding how Mr B became aware of Mrs B's medication, Mr C was aware of this information prior to the joint session, and I am very concerned that her medication information was discussed within the context of the joint counselling session prompted by Mr C. I note that Mr C has not denied that he made the comment: '[I]f you don't tell him [about the medication] I will.' Further, to make the comment, 'I was careful not to tell [Mr B] I knew [Mrs B] was taking citalopram for anxiety' is an unusual record in the context of a clinical note. For example, clinical notes tend to document the events of the session rather than noting what did not occur. In my view, it is not possible to verify the authenticity of the digital transcriptions as an accurate representation of the session on 11 August. For

these reasons, irrespective of how Mr B learned about the medication, I find that Mr C's management of this information was inappropriate in disclosing it within the session.

68. I have also considered Mrs B's view that the notes are inaccurate/fabricated. Mr C's notes outline that Mr B found the medication on his own and that Mr C specifically documented that he expected that Mrs B would think that he had told Mr B that information. I would expect that, had these notes been written contemporaneously, Mr C would have had no hesitation in sharing them with this Office when he was first notified of the complaint.

69. For the reasons outlined above, I prefer Mrs B's evidence, and I consider that it is more likely than not that Mr C shared Mrs B's personal health information with Mr B during the joint counselling session on 11 August after telling Mrs B that he would do so if she did not disclose it herself. I am very concerned by Mr C's conduct on 11 August and consider that it was inconsistent with the NZAC Code of Ethics Section 4.4, which stipulates that counsellors shall 'respect the confidences with which they are entrusted'.

Clinical notes

Content of notes

70. As noted above, in response to the provisional opinion, Mr C provided this Office with notes that he says are from his sessions with Mrs B. The notes templates contain four sections, including a 'patient progress report', 'assessment', and 'treatment' section.

71. The notes dated 2 August 2021 have entries in the 'patient progress report' section and the 'treatment' section. The information in the 'patient progress report' section includes Mr C's documentation of several statements from Mrs B, including:

> 'Told me she had been having a physical affair … Told me she had been seeing him infrequently since starting counselling with me to restore her marriage … Told me she had been hiding it from [Mr B] the whole time.'

72. Mr C documented that he told Mrs B that he was now 'conflicted' about providing counselling to her and Mr B. He went on to state:

> '[Mrs B] [t]old me she has continued to feel suicidal and it was getting worse. Referred her to her GP again, also told her to call 111 i[f] she was worried about herself. Gave her the number for lifeline.'

73. In the 'treatment' section of the notes, Mr C documented:

> 'Disappointed. Feel sorry for [Mr B]. He's been willing to do what it takes to make things [work] this whole time. [Mrs B] has knowingly deceived him and then come to counselling to restore her relationship.'

74. Mrs B told HDC that she had never been unfaithful to her husband and believes these notes to be fabricated. I can appreciate Mrs B raising this question noting that the reason given by Mr C for not providing notes earlier was that they were locked in a cabinet and inaccessible. However, HDC was presented with a digital transcription of the handwritten notes (not scanned copies of written notes) and, further, two years after being made aware of the complaint issues, the notes are noticeable in their alignment to the

respective issues raised. Notwithstanding this, I can now assess the adequacy of Mr C's notes against what would be expected of a professional counsellor.

75. Section 5.7(a) of the NZAC Code of Ethics stipulates that counsellors shall maintain records in sufficient detail to track the sequence and nature of professional services provided, and that such records shall be maintained in a manner consistent with ethical practice.

76. Although Mr C documents what has been discussed between himself and Mrs B (predominantly in relation to the claims of infidelity), there is no detailed discussion of a treatment plan or other interventions. Mr C's notes template has several different headings for information, including 'patient progress report', 'assessment', 'treatment' and 'body charts'. Mr C's notes from his session with Mrs B on 2 August do not contain any entry in the 'assessment' section of the notes template, and the 'treatment' section (as above) does not contain any detail on possible treatment. In my view, these notes do not detail the sequence and nature of Mr C's care of Mrs B sufficiently, as he has not documented the assessment, interventions, or treatment options adequately. For these reasons, it is my view that the notes taken by Mr C are inconsistent with the principle set out in Section 5.7(a) of the NZAC Code of Ethics.

77. I also have concerns about the safety-netting advice provided to Mrs B. Mr C's notes make several references to Mrs B struggling with suicidal ideation. The notes on 2 August 2021 state that Mrs B was continuing to struggle with thoughts of suicide and that they were getting 'worse'. Mr C documented that he referred Mrs B to her GP, that he told her to call 111 if she was 'worried about herself', and that he gave her the number for Lifeline (a telephone counselling service).

78. While it may have been appropriate to tell Mrs B to call Lifeline if she was worried about herself, I am critical that Mr C advised Mrs B to contact her GP herself rather than make a referral for this issue to her GP or any other service for assessment. In my view, recommending that someone contact 111 is not standard advice for seeking assistance if someone is concerned about their mental health unless it is an emergency. It would have been more appropriate to offer Mrs B, for example, the contact number for the local psychiatric emergency team and 1737[14] for support. Section 5.14(a) of the NZAC Code of Ethics states: 'Counsellors shall refer clients on, where possible, when other specialised knowledge is needed, or when the counselling is not being useful.'

79. As Mr C told HDC that Mrs B's suicidal thoughts had been occurring for some time, I am concerned that there is no reference to Mrs B being referred to a more specialised acute mental health service for assessment and treatment. It is also of note that Mr C did not include these concerns in the letter to Mrs B's GP of 3 June (when requesting an SSRI for anxiety). I note that Mrs B has disputed that she was at any time suicidal, and, while I am unable to determine her clinical presentation at the time, our assessment of the evidence has shown that Mr C perceived her to be struggling with suicidal ideation and possibly

[14] 1737 is a free service, available 24/7, 365 days a year, which people can call or text when feeling 'stressed, worried, down, or needing tautoko (support)'. When someone texts or calls 1737, a trained counsellor will work with the person to develop a care plan. This takes on average between 10 and 20 minutes and could include referral to another service, additional counselling, or providing information and support.

requiring specialised help. In my view, inappropriate advice was provided given the seriousness of the concerns perceived. In addition, Mr C did not organise a referral to Mrs B's GP or to another health provider, which I consider to be a further omission.

Correspondence to and about Mrs B

80. Section 5.8(a) stipulates that counsellors shall use appropriate and respectful language in all communications, verbal and written, to and about clients. In my view, there are several examples in the digital transcriptions of clinical notes made by Mr C, in the text messages to Mrs B following the events of 11 August, and in the correspondence sent to HDC in response to this complaint, that demonstrate Mr C's failure to use respectful language about Mrs B and her experience.

Clinical notes

81. In the 'treatment' section of the notes template (on 2 August), Mr C has documented his judgements of Mrs B, such as that she has 'knowingly deceived' Mr B. In my view, this is an inappropriate judgement and statement for a counsellor to be making about his client.

Tone of text messages

82. Following the events of 11 August, Mrs B asked Mr C (on several occasions) to discuss her concerns with her and to provide an explanation as to why he shared the information about her medication with Mr B. Mr C was unwilling to do so outside of a counselling session or without her husband present. As part of the text message correspondence, Mr C stated:

> 'I would appreciate you lowering the hostility toward me. I am here to help and serve you achieve restoration of your relationship. If you want this to happen it is essential you yourself are a willing participant in the process and are proactively making an effort to achieve the desired result with a[n] openness, vulnerability and willingness to take on board the things you refuse to see.'

83. Mrs B was clearly upset at the events that had occurred on 11 August, and she was seeking an explanation from Mr C. Although I have been unable to make a finding on how exactly Mr B became aware of Mrs B's medication, I have residual concerns that the tone of Mr C's text message above was not helpful to the situation and could have been seen as condescending and minimising of Mrs B's valid concerns.

Correspondence with HDC about Mrs B

84. Mr C told HDC that he finds Mrs B's recollection 'word for word' of what happened on 11 August to be 'astounding given her struggles with memory due to ADHD symptoms and extreme anxiety'. He said:

> 'It seems very convenient of her to now quote me word for word to establish her argument … People presenting with the symptoms outlined often add to the story and distort stories for convenience or even to manipulat[e] for personal gain. This has also been an observation I have made in others with similar symptoms over the course of my career. I have now provided factual documents from the date of the appointments which are relevant. These are fact. Not some recollection of memory. Overall [Mrs B's] complaint is allegation not evidence. *Believing someone who was clearly mentally ill,*

in conflict within [herself] and partner, and self destructive at the time to be factual sets a dangerous precedent.' (Emphasis added.)

85. I am concerned about the language that Mr C has used throughout his correspondence with and to HDC about Mrs B. 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. In my view, the judgements and tone that Mr C has expressed about Mrs B, as outlined above, are meant in a derogatory manner rather than having any clinical basis and therefore clearly do not align with the NZAC Code of Ethics and could be seen to be further minimising Mrs B's experience.

Conclusion

86. Right 4(2) of the Code stipulates: 'Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.'

87. As discussed above, although Mr C 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 C's circumstances.

88. As outlined above, Mr C failed to abide by relevant ethical standards, as reflected in the NZAC Code of Ethics,[15] for the following reasons:

- He did not respect Mrs B's confidence when he put her in a position where her personal health information was shared with her husband without her consent.
- He failed to maintain records in sufficient detail and of an accepted standard to track the sequence and nature of the professional services that he provided to Mrs B.
- He failed to use appropriate and respectful language in communications to and about Mrs B.
- He failed to provide Mrs B with appropriate safety-netting advice and refer her to another health practitioner when he believed she needed further specialised support.

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

Complaint resolution

90. Following the events of 11 August, Mrs B sent a text message asking Mr C his reasons for sharing her personal health information with her husband. She asked Mr C to telephone her at a time convenient to him, to discuss her concerns and her reservations about the confidentiality of information he had shared with her husband. Mr C responded to that text message advising that he would be happy to 'chat' with Mrs B but that it would have to occur with her husband present and at her next scheduled appointment. Mrs B told HDC that she was not asking for a counselling session over the phone, but rather she was asking for Mr C to explain the breach of her privacy.

[15] Particularly sections 4.4, 5.7(a), 5.8(a), 5.14(a) and 6.1(a).

91. Mr C told HDC that he was not prepared to talk with Mrs B outside of the counselling environment due to her hostility toward him and his 'genuine concern for her mental health and expression of suicidal thoughts previously'. Mrs B disputes that she had expressed suicidal thoughts (which I will discuss further below). Mrs B also said that if Mr C was not willing to discuss her concerns with her in person, then she would like a written explanation. However, Mr C was also not willing to do this.

92. In any event, clearly there had been a breakdown in communication between Mr C and Mrs B during the appointment of 11 August 2021. Mr C also stated that he was not comfortable continuing to provide counselling to Mr and Mrs B after the events of 2 and 11 August 2021. Although both parties have different recollections of the events that led to Mr B becoming aware of Mrs B's medication, Mrs B was clearly upset that her personal health information was now known to her husband. In light of this, I consider it reasonable that Mrs B wished to discuss her concerns with Mr C privately and promptly over the phone. In my view, by refusing to do so, or provide a written explanation, Mr C did not make reasonable efforts to resolve Mrs B's valid concerns in a fair, simple, speedy, and efficient manner.

93. I do not accept that Mr C's concerns about Mrs B's risk of harm and belief that she was trying to access Mr B's personal information mitigates Mr C's responsibility to facilitate complaint resolution and, frankly, this is irrelevant to the issue at hand. It is evident that Mr C did not engage with Mrs B's requests to resolve her complaint, including her request for her clinical notes. In my view, Mr C's conduct was unreasonable.

Communication with HDC

Engagement with HDC investigation

94. As I discuss in more detail below, Mr C has refused to cooperate at nearly all stages of this investigation. I am also critical that Mr C did not provide a response to the provisional report until well after his response was due, unduly prolonging this process and necessitating a second issue of the report.

95. 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.

96. In her complaint to HDC, Mrs B outlined her concerns about the care provided to her by Mr C in August 2021. Despite several attempts to contact Mr C to obtain a response and the requisite information, he did not provide this information to HDC until after he received my provisional opinion. I have considered Mr C's submission on 17 November 2021 that he was unable to access his office due to the COVID-19 health order[16] and that he had been declined access to his office because of rent arrears.

[16] From 17 August 2021 until 21 September 2021, Auckland was in Alert Level 4 restrictions, which meant that COVID-19 was not contained in New Zealand and that people were required to stay at home other than for essential movement, including for essential work or to go to the supermarket, clinics, or pharmacies. All businesses other than essential services, including those mentioned above, petrol stations, and lifeline

97. However, despite granting a further extension to 20 December 2021, Mr C did not provide a response to the request for information. HDC followed up again with Mr C on three occasions,[17] but Mr C failed to respond. On 14 February 2022, a letter was sent to Mr C advising that if this Office did not hear from him by 28 February 2022, the Commissioner would accept the complainant's version of events as the established facts and would proceed with assessment of the complaint. Mr C did not respond to the correspondence.

98. On 11 November 2022, HDC commenced a formal investigation into Mrs B's complaint on the basis that Mr C's actions appeared to be in breach of the Code. HDC sought further information from Mr C under section 62 of the Act, including relevant clinical records/consultation notes, company policies, and a substantive response to the complaint, to be provided by 23 December 2022. Section 62 of the Act allows the Commissioner to require a person to give information that is relevant to an investigation. Mr C failed to respond to this correspondence despite several further attempts to contact him.

99. I acknowledge that Mr C explained that initially his response was delayed due to rent arrears and COVID-19 restrictions and that because of those circumstances HDC granted extensions for Mr C to provide his response. However, these are not adequate reasons for his overall non-engagement. Further, the NZAC Code of Ethics section 5.7(e) stipulates that counsellors shall take all reasonable steps to ensure that documentation remains retrievable as long as professionally prudent or as required by law. It appears that Mr C did not back up important information relevant to Mrs B's care so that it could be accessed as required when he was unable to enter his office premises.

100. I note Mr C's comments in response to the first provisional opinion, that his documentation was stored in a locked office within a fireproof filing cabinet that was accessible by a code and fixed to a concrete slab below and to the wall. However, subsequently, Mr C provided this Office with digital transcriptions of his handwritten notes, and he did not provide the original contemporaneous handwritten notes. Accordingly, it is difficult to understand the relevance of this submission by Mr C, and I do not accept that it mitigates his responsibility in this regard.

101. I am not satisfied that Mr C took reasonable steps to ensure that he was able to retrieve clinical records when necessary, and I am critical that Mr C did not provide HDC with information when required.

102. Following the circulation of the provisional report in May 2023, Mr C contacted HDC to advise that his email address had changed and, as a result, he had not received any correspondence from this Office.

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utilities, were required to close. On 3 November 2021, Auckland was in Alert Level 3 (step 1) restrictions, which meant that people were required to stay within their household bubble whenever they were not at work or school, but that people could travel locally, for example to go to work or school, to go shopping, or for exercise. Staff were required to work from home if they could, and businesses could open to the public only if they were contactless.

[17] 11 February 2022, 14 February 2022, and 19 February 2022.

103. I acknowledge that Mr C may have changed his email address some time after his last email to HDC (from his initial email address) on 17 October 2021 and that subsequent emails to that address may not have been received by him. However, the letter sent to him on 6 October 2021 clearly stated, 'Please let us know if your contact details change,' and this Office had also made several attempts to contact Mr C by way of telephone calls to two known telephone numbers. In any event, Mr C was aware at the time of changing his email address that there was an open complaint before him and that this Office was requesting information from him. I also note that Mr C has accepted that he has not dealt with HDC in 'the best way' and that he 'avoided the situation rather than deal with it.'

104. Accordingly, I do not accept that Mr C's circumstances in 2021, or his alleged change in email address, are adequate reasons for not responding to this Office for a period of almost two years.

105. I have also considered the following submission from Mr C: '[F]rom first contact with me HDC did not provide any documentation on who you are, what you do, how to respond to you, or the process involved when receiving the complaint.'

106. The letter sent to Mr C by HDC on 6 October 2021 stated that '[u]nder the Health and Disability Commissioner Act 1994, we gather information to assess complaints.' I note that section 3(k) of the Health and Disability Commissioner Act 1994 defines a healthcare provider as 'any person who provides, or holds himself or herself or itself out as providing, health services to the public or to any section of the public.' In addition, on 11 November 2022 when Mr C was notified of the commencement of an investigation, he was provided with a 'Guide for providers' brochure that outlined in detail the purpose of HDC and the investigation process as well as the information-gathering powers of the Commissioner. The brochure also contained a link to the HDC website, which contains further information about the Office.

107. In my view, it is reasonable to expect that a person defined as a healthcare provider under the Act would be aware of, or have the means to make themselves aware of, their obligations under the Code. Accordingly, I also do not accept this as an adequate reason for Mr C's lack of engagement in this complaints process, and I am further concerned that Mr C is practising as a counsellor when he is unaware of HDC and its function.

Comments about HDC process

108. In response to the provisional opinion, Mr C told HDC:

> 'I was also not offered any support throughout the process. I feel as a practitioner you are quite vulnerable. I also feel this process has been one of guilty until proven innocent … [M]y biggest concern with this situation now is that I'm in a position now as a practitioner where anyone can make any complaint at all about me that actually has no merit and I then have to defend myself. I feel your process [is] one that allows clients with malicious intent to manipulate. This is certainly the case here.'

109. The HDC process is one of impartiality. Mr C was advised of this in the brochure sent to him on 11 November 2022, when he was notified of the commencement of an

investigation. In addition to other information (as noted in paragraph 106 above), the brochure states:

> 'Although the Code of Health and Disability Services Consumers' Rights (the Code) focuses on consumers' rights, as a provider facing a Health and Disability Commissioner (HDC) investigation, you also have rights. The Health and Disability Commissioner Act 1994 (the Act) includes facilitation of "the fair, simple, speedy, and efficient resolution of complaints relating to infringements of [consumers'] rights". The Act specifically requires the Commissioner to act fairly when conducting an investigation.'

110. This means that all parties involved in a complaint will be given the opportunity to be heard and will be dealt with even-handedly. Practitioners are encouraged to seek collegial support as part of the complaints process and are sent information about doing so, and this can be provided by their professional body. I note that in this case, Mr C is not associated with a professional body such as the NZAC, and I recommend that he consider membership of that body in order to be provided with appropriate support. It is difficult to understand how HDC can determine the validity of claims made by Mr C if he is not providing his perspective into the process. In addition, I note that Mr C was advised of HDC's process, including its obligation to be impartial. As such, I do not accept that Mr C's concerns about HDC's process mitigates his responsibility to engage with HDC to facilitate complaint resolution.

111. I also note Mr C's comments that he feels that the process has been one of 'guilty until proven innocent', and that he is now in a position where anyone can make a complaint about him that has 'no merit'. Mr C was given several opportunities to provide documentation and a response to the complaint before him, over a period spanning almost two years, and he chose not to do so. Accordingly, the provisional opinion was issued, and the findings made were based on the information available to this Office, which included information provided by Mrs B. Had Mr C provided the information requested of him earlier in our process, this information would have been considered appropriately alongside Mrs B's. I am also very concerned at Mr C's assertion that he feels he is now in a position 'where anyone can make any complaint at all about [him] that actually has no merit' and that he feels that the HDC process is one that 'allows clients with malicious intent to manipulate', which he considers to be the case in relation to Mrs B's complaint. Mr C had a duty to treat Mrs B's complaint with fairness and to respond to her concerns in line with that obligation. I am concerned about Mr C's comments in this regard, as they do not illustrate that he was willing to respond to Mrs B's concerns fairly.

112. Everyone who uses a health or disability service has the protection of the Code of Health and Disability Services Consumers' Rights (the Code), and providers of healthcare services must enable consumers to use their rights. Right 10 of the Code allows all consumers of health and disability services to complain. In my view, Mr C's concern that the HDC process allows clients with malicious intent to manipulate undermines the importance of the rights of his clients and his obligations under the Code. I find this concerning.

Conclusion

113. Right 10(3) of the Code stipulates that every provider must facilitate the fair, simple, speedy, and efficient resolution of a complaint.

114. The correspondence sent to Mr C between 6 October 2021 and 25 May 2023 represented an opportunity for him to clarify and resolve the issues raised by Mrs B. By Mr C's own admission, he has been reluctant to engage in the complaints process and has actively avoided doing so for a period of almost two years. As such, he unnecessarily delayed Mrs B's right to have her complaint handled in a speedy, efficient, and simple manner. I find this delay to be unacceptable. I am also concerned that Mr C was unwilling to engage with Mrs B to discuss her concerns following the session on 11 August 2021, and that he was not aware of the role of this Office or his obligations as a healthcare provider under the Code. Accordingly, I find that Mr C has breached Right 10(3) of the Code.

Recommendations

115. I recommend that Mr C:

a) Provide a written apology to Mrs B for the failings identified in this report. The apology is to be sent to HDC, for forwarding to Mrs B, 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, and clinical note-taking. Evidence of this training is to be provided to HDC within six months of the date of this report, and Mr C 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 this consideration within three months of the date of this report.

d) Arrange for an NZAC-approved external auditor to undertake an audit of his electronic and written documentation for a period of six months from January 2023. The audit will be for the purpose of assessing the adequacy of his clinical records. Mr C is to report back to HDC with the results of the audit and steps that he has taken to address any inadequacies, within six months of the date of this report.

e) 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

116. Mr C 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 C's failure to provide information over a two-year period to facilitate the speedy and efficient resolution of this complaint. I have also considered Mr C's responsibility to provide information in a separate complaint.

117. Mr C said that he does not consider that a referral to the Director of Proceedings is warranted. He stated: 'I'm sure with the information I have now provided you have the context and evidence needed to make an informed judgement.'

118. I acknowledge that Mr C eventually provided information to HDC regarding Mrs B's complaint. However, his overall failure to engage with this Office adequately to resolve both complaints has unnecessarily delayed those consumers' right to have their complaints investigated efficiently. Mr C continues to work as a counsellor out of his clinic and I believe there is a public interest in accountability for his failures. In addition, as Mr C is not associated with a professional body, there are no other mechanisms available to this Office to hold Mr C to account given the level of concern that I hold with his practice.

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

Addendum

120. Mr C did not comply with any of the Deputy Commissioner's recommendations.

Appendix A: Summary of attempts to contact Mr C

Contact from HDC (date)	Response from Mr C (date)	Notes
On 4 October 2021, a telephone call was made from HDC to Mr C's counselling practice to obtain contact details.	On 5 October 2021, Mr C returned the telephone call and provided his contact details.	
On 6 October 2021, a letter was sent to Mr C under section 14(1)(m) of the Act. The letter advised Mr C that Mrs B had made a complaint about him and requested clinical records and a response to the complaint.	On 2 November 2021, Mr C emailed HDC to request an extension to provide his response.	Mr C said that the extension request was due to the COVID-19 lockdown.
On 2 November 2021, HDC granted an extension to Mr C, with a new due date for his response being 16 November 2021.	On 17 November 2021, Mr C emailed to seek a further extension to provide his response.	Mr C advised that he was not able to access his office due to rent arrears and the COVID-19 lockdown. He provided a letter from his lawyer.
On 17 November 2021, HDC granted a further extension to Mr C, with a new due date for his response being 24 November 2021.	On 25 November, Mr C emailed HDC advising: '[Due to the COVID-19 lockdown,] the government public health order has prevented me from having access to my office where my client files and documents reside.' Mr C told HDC that he would not be able to provide the information until he had access to his office. He also told HDC that the owner of his office building was refusing him access to his office 'due to unpaid invoices over the lockdown period which I have been unable to pay'.	Mr C provided HDC with a copy of a letter from his lawyer to the owner of the office building (dated 24 November 2021), in which they attempted to resolve matters so that Mr C's access to the building could be restored. Mr C advised that he was hopeful of being able to return to his office on 6 December 2021, and that if so, he would be able to respond to HDC within 14 days. He stated: 'At this stage I can not guarantee I will be back on the 6th. I will let you know as soon as I know, hopefully this week.' Mr C did not contact HDC within the indicated timeframe.
On 26 November 2021, a further extension was granted to Mr C with the new due date being 20 December	Mr C did not provide a response to the section 14 request.	

2021.		
On 11 February 2022, HDC attempted to reach Mr C by telephone.	No answer and no option to leave voicemail.	
On 14 February 2022, HDC sent a letter to Mr C outlining all attempts to contact him and asking for a response by 28 February 2022.	No response.	The letter also advised: 'If I do not hear from you by this date, I will be forced to accept the complainant's version of events as the established facts and proceed with our assessment.'
On 19 October 2022, HDC sent an email to Mr C advising of the complaint's transfer to investigations.	No response.	
On 11 November 2022, HDC commenced a formal investigation. HDC requested further information from Mr C under section 62 of the Act, to be provided by 23 December 2022.	No response.	Section 62(1) of the Act stipulates: 'The Commissioner may from time to time, by notice in writing, require any person who in the Commissioner's opinion is able to give information relating to any matter under investigation by the Commissioner to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Commissioner are relevant to the subject matter of the investigation.'
On 18 January 2023, HDC sent an email to Mr C following up on his response to notification.	No response.	
On 18 January 2023, HDC attempted to reach Mr C by telephone.	No answer.	